

Terms of Trade Effective 1 July 2014

This version issued 2 March 2022 (see pages 16-19 for change log).

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Introduction

VicScreen is Victoria's creative and economic screen development agency.

These Terms of Trade:

- generally align with Screen Australia's Terms of Trade. For clarity, any requirements specific to VicScreen are in **pink**
- broadly set out the core terms on which VicScreen conducts its business. Applicants for funding should refer to these Terms of Trade and the relevant [program guidelines](#) under which they are applying for funding at vicscreen.vic.gov.au

Agreements between VicScreen and funding recipients will include obligations and requirements from these Terms of Trade and relevant program guidelines.

VicScreen will vary its Terms of Trade and program guidelines from time to time. The Terms of Trade and guidelines in force at the time an applicant is approved for funding will apply.

VicScreen reserves the right to vary its Terms of Trade and/or program guidelines at any time, to exercise its discretion to make an exception under the Terms of Trade or guidelines in exceptional circumstances, and to terminate any program at any time.

Please refer to the [Glossary](#) on VicScreen's website for an explanation of italicised terms mentioned in these Terms of Trade.

Terms of Trade

These Terms of Trade do not apply to VicScreen's incentive programs.

1. General Matters

1.1 General eligibility for VicScreen funding

In the following provisions:

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

1.2 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.

- (a) An **individual applicant** must:
 - (i) be an Australian citizen, or
 - (ii) be an Australian resident, being a person who is lawfully domiciled in Australia, and who has actually been in Australia, continuously or intermittently, for at least six months immediately preceding the application, and
 - (iii) **meet the eligibility requirements set out in the relevant program guidelines.**
- (b) An individual applicant may not be:
 - (i) an employee of a broadcaster or an employee of a commissioning platform (e.g. an SVOD service), or
 - (ii) **an employee of a State or Federal government Screen department/agency.**

- (c) An **applicant that is a company** must:
 - (i) be incorporated and carrying on business in Australia, and
 - (ii) **have the eligibility credit requirements as set out in the relevant program guidelines or employ (on the project which is the subject of funding application) a key creative who meets the credit requirements.**
- (d) An applicant that is a company may not be:
 - (i) a broadcaster,
 - (ii) a commissioning platform (eg, an SVOD service),
 - (iii) a holding company or subsidiary of a broadcaster or commissioning platform,
 - (iv) owned or jointly owned by one or more companies referred to in (a) (b) or (c), or
 - (v) **a State or Federal Government Screen department/agency.**
- (e) **All applicants** must also:
 - (i) not be in breach of any obligation under any agreement they have with VicScreen,
 - (ii) always act 'in good faith' in all their dealings with VicScreen (see 1.5 below),
 - (iii) have the capacity and resources to carry out the project or proposal that is the subject of the application,
 - (iv) 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, VicScreen will expect, at the least, an appropriate option (see 5.1 for Development projects),
 - (v) have meaningful creative control of the project that is the subject of the application, and
 - (vi) **have an ABN (refer to item 1.8).**
- (f) Where a related party to an applicant is in breach of an obligation under an agreement with VicScreen, VicScreen reserves the right to regard the applicant as ineligible.
- (g) VicScreen 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 of agreement with VicScreen by that person or a related party.

1.3 Project eligibility

VicScreen is unable to accept applications:

- (a) for projects that are *reality television, infotainment, magazine shows, variety, light entertainment, how to, sports telecasts, news, current affairs, corporate or promotional media, training videos or community television shows,*
- (b) for projects that will be developed as part of a course of study, or
- (c) for projects and/or from applicants that will contribute to credits for a course of study.

1.4 Application eligibility

VicScreen is unable to accept:

- (a) late or incomplete applications,
- (b) applications for funding that is retrospective,
- (c) applications for funding that is for capital expenditure, or
- (d) applications that have previously been through the assessment process and rejected for funding, unless the application is substantially reworked (at VicScreen's determination).

1.5 Acting in good faith

- (a) VicScreen acts in the public interest and must exhibit the highest levels of propriety in its dealing with applicants. VicScreen requires applicants to act in the same way in their dealings with VicScreen. Applicants must be honest and open in all dealings with VicScreen. They must not mislead or deceive VicScreen by act or omission.
- (b) In addition VicScreen expects that communications between its staff and funding applicants will be courteous and respectful. VicScreen reserves the right to not accept or process applications for funding from any person who VicScreen forms the view persistently treats our staff in a discourteous, hurtful or intimidating fashion, nor will VicScreen enter into correspondence with any such person.
- (c) VicScreen 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:
 - (i) 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.
 - (ii) 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*.

1.6 Fees

VicScreen may charge fees for some services and the administration of some programs, as set out in Schedule A.

1.7 Audit rights

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

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

1.8 GST

Generally, GST is payable on VicScreen's funding and fees. VicScreen requires the applicant to have an Australian Business Number (ABN), and to register for GST if required by law. Where GST is payable, VicScreen will provide a recipient created tax invoice.

1.9 Reporting and information provision

For all projects and activities with funding from VicScreen, the recipient will be required to provide some form of reporting/acquittal.

The information requirements will be set out in the relevant funding agreement.

1.10 Assessment

- (a) Funding decisions are determined considering the terms of and available funding for the relevant program and the number and quality of competing eligible applications.
- (b) Assessment is based on the application and supporting documentation submitted and any other information provided as requested by VicScreen.
- (c) Preference is given to applications fully developed and/or produced by Victorians in Victoria.
- (d) In order to be eligible for funding, an applicant must also be able to demonstrate to VicScreen that their project provides cultural and economic benefit to Victoria and the Victorian screen industry.
- (e) The level of previous/current funding support for a project and/or an applicant from VicScreen and/or Screen Australia may be considered during assessment.
- (f) VicScreen may also take into consideration an applicant's non-compliance with any contractual terms under any other funding agreements with VicScreen, such as not meeting Victorian Spend requirements.

- (g) In its assessments, VicScreen will not support screen content which, in the opinion of its assessors, is exploitative or which may harm an individual or group. Additionally, VicScreen will not support digital games where, in the opinion of its assessors, monetization and data collection strategies are implemented in an unethical manner.
- (h) VicScreen encourages all applicants to consider issues of diversity and equality in their applications - particularly relating to the nature of content presented on screen (eg. storylines and themes), how this is represented on screen (eg. casting choices) and through personnel engaged in key creative and production roles. The level to which the applicant addresses the promotion, recognition and acceptance of all persons will be considered as part of the assessment process.
- (i) Assessment is undertaken by VicScreen, its staff, panels and committees. Applicants will be advised of the outcome of their application within the timeframes set out in relevant program guidelines.

2. Crediting VicScreen

VicScreen requires acknowledgement of its support, for example by way of a credit on the project and its publicity materials. Credit requirements vary according to the nature of the support provided by VicScreen and are detailed in the funding agreement.

[Click here for more information on VicScreen's logo requirements.](#)

3. Indigenous Content and Acknowledgement

Where there is Indigenous content or participation in any production, the producer is required to 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](#).

VicScreen encourages producers to acknowledge in their production credits the traditional owners of the land on which their project was produced. The following text is suggested:

The Producers would like to acknowledge the Traditional Owners of the land on which [Name of Production] was produced.

OR

Where a producer would like to provide details of the traditional owners of the land on which the project is produced, the following text is suggested:

The Producers would like to acknowledge the [Traditional Owners Name] people as the Traditional Owners of the land on which [Name of production] was produced.

For information, please refer to the Traditional Owners map on the [Victorian Aboriginal Heritage Council](#) website for assistance.

4. Terms of Funding

4.1 Grants

- (a) Funding provided by way of grant does not have to be repaid other than:
 - (i) in case of breach by the funding recipient, or
 - (ii) where not all of the grant is required.

4.2 Assigned Production Investment for Film, Television, Online and Digital Games

- (a) **VicScreen provides funding for production of:**
 - (i) narrative fiction and documentary programs for cinema, television, online and virtual/augmented/mixed reality platforms, and
 - (ii) digital games on all platforms and all media.

by way of production investment that is assigned to the producer for their benefit. This Assigned Production Investment (API) must be recognised in the finance plan as part of the producer's investment in the project.

- (b) VicScreen is not entitled to any recoupment, profit share or sequel, remake or spin-off fees from projects receiving API. VicScreen's API Agreement is non-negotiable.

4.3 Development funding repayments

- (a) **Projects 100% produced and post produced in Victoria**

Projects which have received VicScreen development investment and which are 100% produced and post produced in Victoria will receive the development investment to re-invest into their projects as API. This arrangement will be formalised in an API Agreement with VicScreen. The development investment must be recognised in the production budget (as an above-the-line cost) and will become part of the producer's total equity in the project. The development investment will not attract a premium.

- (b) **Projects not 100% produced and post produced in Victoria**

Projects which have received VicScreen development investment and, which are not 100% produced and post produced in Victoria (unless otherwise agreed at the time of development funding) must repay to VicScreen the development investment plus a 25% premium, no later than commencement of principal photography. The premium amount is a substantially reduced accounting of the loss of economic activity to Victoria.

4.4 Outstanding obligations

VicScreen reserves the right to withhold any payment due to an applicant if an applicant or a related party, has not complied with any terms under an agreement with VicScreen.

4.5 Cashflow

- (a) VicScreen pays funding in instalments in accordance with drawdown schedules specified in its funding agreements.
- (b) The first payment will be made within 14 business days of receipt of the signed funding agreement and once all payment pre-conditions have been satisfied.
- (c) API for film, television and online will be cashflowed as follows, following full signature of the API Agreement and satisfaction of all payment preconditions:
 - (i) Payment 1: 50% of API - on commencement of principal photography
 - (ii) Payment 2: 30% of API - on completion of principal photography
 - (iii) Payment 3: 20% of API - on VicScreen's receipt of all deliverables
- (d) API for digital games will be cashflowed generally in three instalments to be determined in accordance with the needs of each project, following full signature of the API Agreement and satisfaction of all payment preconditions.

4.6 Contracting timeframe

VicScreen may revoke its funding unless contracting is completed within, the following time frames (unless otherwise agreed) from the funding approval date, to ensure that funds are available to support the Victorian screen industry in a timely manner:

- (a) Grants and Development Investment - one month, and
- (b) Assigned Production Investment - four months.

4.7 Delivery timeframe

Funding recipients are required to provide all deliverables to VicScreen by the contracted dates, unless otherwise agreed in writing by VicScreen. Failure to do so will enable VicScreen to immediately revoke any outstanding funding.

5. Rights for Development and Assigned Production Investment

5.1 Copyright and underlying rights

- (a) VicScreen requires the applicant to have, or be in a position to acquire on appropriate terms, all *underlying rights* required to make and exploit the project.
- (b) In relation to API funding, VicScreen will require the producer to provide a satisfactory *chain of title* opinion letter from an appropriately qualified solicitor (Solicitor's Opinion Letter).

- (c) For Development funding, funding recipients must demonstrate that they have or are able to obtain an option for the *underlying rights* with an initial period of at least 12 months and a further option period of at least 12 months. VicScreen may also require all *chain of title* documents and/or a Solicitor's Opinion Letter where the *chain of title* is particularly complex or VicScreen considers there to be exceptional circumstances.

5.2 Copyright interest for Development investment

- (a) Prior to 1 July 2016 VicScreen acquired a 1% *copyright* interest in all projects for which it provided development investment. For these projects, VicScreen will assign its *copyright* interest to the producer where its investment is reinvested as API or when its investment plus premium is repaid (see 4.2 and 4.3 above for further details), or upon request from the producer.
- (b) VicScreen does not acquire a copyright interest in projects for which it provides development investment. For these projects, VicScreen will reinvest its investment as API or require repayment in accordance with clauses 4.2 and 4.3.
- (c) VicScreen must receive a credit on all projects when produced, when development investment has been provided.
- (d) VicScreen does not take a copyright interest in projects for which it provides API.

5.3 Promotional rights

VicScreen requires the right to use the project and promotional materials for corporate and promotional purposes, including promotion of the Victorian screen industry (as applicable). VicScreen's rights extend to online use of excerpts of the project including on VicScreen's website, Instagram, Facebook, Twitter, TikTok, YouTube and other social media platforms.

6. Accessibility of Screen Content

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

VicScreen requires feature films that it funds to be captioned and audio described to provide access for the hearing and/or visually impaired, for cinemas and DVD. The producer will need to budget for these requirements. Feature film producers are also required by VicScreen to use reasonable endeavours to ensure that all Australian distribution agreements include access for the hearing and/or visually impaired via captioned and audio-described theatrical screenings and DVDs.

VicScreen also encourages producers of all non-feature film content to budget for captioning and audio description, and for accessible web design, to provide access to their projects for both hearing and visually impaired audiences.

VicScreen digital games funding has accessibility recommendations in program guidelines specified at vicscreen.vic.gov.au/funding/games

7. Safe Workplaces

VicScreen 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 on all projects and other initiatives we fund.

VicScreen 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.

VicScreen expects employers (including producers) to comply with:

- All legislation relating to providing a safe workplace including state and federal harassment and discrimination legislation,
- Industry codes of conduct, including the [Victorian Screen Industry Code of Conduct](#) and [Screen Industry Code of Practice](#).

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

8. Delivery items for VicScreen

The project deliverable requirements will be set out in the relevant funding agreement.

Glossary

Capital Expenditure

The purchase, maintenance or improvement of assets such as buildings, cameras, computers or other major equipment.

Cashflow

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

Chain of Title

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.

Eligibility Credit Requirements

Specific credit and expertise requirements set out in program guidelines that require prior project credits are:

- in the same role as that of a current application, and
- on projects that have been commercially released

For the calculation of cumulative credit totals a program that is considered in normal industry practice as a "broadcast hour" or "commercial hour" shall be counted as 60 minutes. Similarly, a program considered in normal industry practice as a "broadcast" or "commercial" half-hour shall be counted as 30 minutes.

Commissioning Platform

The company commissioning content primarily for free-to-air or subscription television broadcast, paid video-on-demand (VOD) or paid subscription video-on-demand (SVOD) or similar.

Copyright

The exclusive right to copy, broadcast, perform, exhibit, communicate to the public and otherwise commercially deal with and exploit works such as novels, stage plays, scripts, music, film and sound recordings, pursuant to the *Copyright Act 1968 (Cth)*. *Copyright* 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*.

Indigenous Cultural & Intellectual Property Rights

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, 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.

Infotainment or Lifestyle Program

The Australian Content Standard defines an infotainment or lifestyle program as "a program the sole or dominant purpose of which is to present factual information in an entertaining way, where there is a heavy emphasis on entertainment value."

For a more detailed discussion of the distinctions between documentary and infotainment and light entertainment, refer to [acma.gov.au/-/media/Diversity-Localism-and-Accessibility/Advice/pdf/Documentary-Guidelines-Interpretation-of-documentary-for-the-Australian-Content-Standard.pdf](https://www.acma.gov.au/-/media/Diversity-Localism-and-Accessibility/Advice/pdf/Documentary-Guidelines-Interpretation-of-documentary-for-the-Australian-Content-Standard.pdf).

Light Entertainment

The Australian Content Standard defines light entertainment as programs designed primarily to entertain rather than provide factual information. The term is understood in the commercial television industry to refer to games shows, talk shows and variety shows.

For a more detailed outline of light entertainment, refer to [acma.gov.au/-/media/Diversity-Localism-and-Accessibility/Advice/pdf/Documentary-Guidelines-Interpretation-of-documentary-for-the-Australian-Content-Standard.pdf](https://www.acma.gov.au/-/media/Diversity-Localism-and-Accessibility/Advice/pdf/Documentary-Guidelines-Interpretation-of-documentary-for-the-Australian-Content-Standard.pdf)

Reality Television

In accordance with the Australian Content Standard, we define reality television as programming with the primary purpose of providing a vehicle within which participants' characters can be observed and assessed, often with a competitive element. The primary purpose is not to explore and interpret an idea.

We understand that the delineation between reality television programming and documentary is a complex one and encourage applicants to refer to the standard for an in depth discussion of this issue at [acma.gov.au/-/media/Diversity-Localism-and-Accessibility/Advice/pdf/Documentary-Guidelines-Interpretation-of-documentary-for-the-Australian-Content-Standard.pdf](https://www.acma.gov.au/-/media/Diversity-Localism-and-Accessibility/Advice/pdf/Documentary-Guidelines-Interpretation-of-documentary-for-the-Australian-Content-Standard.pdf)

Underlying Rights

The bundle of rights that must be acquired in order to be able to produce and commercially exploit the project, such as rights in relation to the novel or play on which the script is based.

Victorian (definition for purposes of determining applicant eligibility)

An Australian citizen or permanent resident who is on the Victorian electoral roll, and has been for a minimum of six (6) months immediately prior to the date of the application. Or, an Australian citizen or permanent resident who can substantiate residency in Victoria for at least six (6) months immediately prior to the date of the application.

Schedule A: Fees

Nil

Change Log

18 June 2015

Applicant Eligibility

"professional" removed from the term "credit requirements"

1.1.2 Project Eligibility

Wording added for clarity

Item 1.5 GST

Wording added regarding Recipient Created Tax Invoices

Wording removed requiring invoices

Item 1.7 Assessment

Wording added to assessment criteria of an applicant's non-compliance with any other funding agreements

Item 3 Indigenous Content and Acknowledgement

Wording added to include a suggested acknowledgement in production credits, for traditional owners of the land on which a project is produced (as developed in consultation with the Victorian Aboriginal Heritage Council).

Item 4.4 Outstanding...Loans

Item removed.

Item 4.6 Cashflow

Wording changed to *completion of principal photography*

Item 4.7 Contracting Time Frame

Wording changed to clarify that the contracting time frame commences from the funding approval date

Item 7 Delivery Items for VicScreen

Specific deliverables removed

Glossary – Credit Requirements

Wording amended for clarity

1 July 2016

Item 1.1.1 Applicant Eligibility

Inclusion of online content provider (video on demand and subscription video on demand services) companies (and their employees) as being ineligible to apply for funding.

Item 1.7 Assessment

Inclusion of diversity and equality considerations as assessment criteria which aligns VicScreen's programs to broader state government policy objectives around social inclusion.

Item 4.2 Assigned Production Investment for Film, Television, Online and Games

Removal of hyperlink to Finance Plan as the links are outdated and are available through the Screen Australia website.

Item 4.6 Cashflow

Removal of the requirement to provide an invoice, as this is no longer a pre-condition to payment.

Item 5.1 Copyright and Underlying rights

Changes to provide flexibility for VicScreen in requesting chain of title documents for development projects.

Removal of VicScreen's requirement to be assigned a 1% share of copyright for development projects.

Glossary

Additional wording to Eligibility credit requirements

Addition of Online Content Provider definition.

1 July 2017

4.2 Assigned Production Investment for Film, Television, and Games

Addition of Virtual Reality, Augmented Reality and Mixed Reality added for narrative fiction and documentary programs

6 Accessibility

Further detail provided on current requirements.

Glossary

Online Content Provider definition updated

Victorian Producer removed as definition not used

Victorian definition updated

1 April 2018

New Item 7

Safe Workplaces Added

Item 7

Renumbered to Item 8

1 July 2018

Introduction

Transitional language removed.

Addition of language confirming VicScreen's ability to amend Terms of trade and program guidelines

1.1.1

Addition of the word "lawfully" before domiciled

Addition of item confirming applicants have an ABN for clarification

"Online content provider" changed to "commissioning platform" for consistency with Screen Australia and to allow for technological neutrality.

1.7

Amending timeframes for funding decisions to be within program guidelines

4.2

Addition of "digital" before games

Glossary

Commissioning Platform definition added

Online Content Provider definition removed

1 July 2019

Introduction

Reference to "Cash Flow Facility" removed

1.1.1

Addition of the word "including any special purpose rights holding and/or production services companies"

Residency requirements changed to "six months" from "twelve months"

Government employee changed to employee of a Government Screen agency

1.2

Deferrals removed as being unacceptable

4.2

API Agreement as non-negotiable included.

7

Screen Australia Code of Conduct reference changed to Screen Industry Code of Practice.

Glossary

Cashflow, Chain of Title, Copyright, Light Entertainment, Reality Television definition added

Online Content Provider definition removed

1 July 2020

1.7

Ethical considerations included as part of assessment

2 March 2022

Film Victoria references replaced with new trading name VicScreen.