
TERMS OF TRADE

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INTRODUCTION.....	2
TERMS OF TRADE	3
1. General matters	3
2. Crediting Film Victoria	6
3. Indigenous content.....	6
4. Terms of funding	6
5. Rights for development and assigned production investment	8
6. Accessibility	9
7. Delivery items for Film Victoria.....	9
GLOSSARY	10
SCHEDULE A: FEES	12
CHANGE LOG.....	13

INTRODUCTION

Film Victoria is the State Government agency that provides strategic leadership and assistance to the film, television and games sectors of Victoria.

These Terms of Trade align with Screen Australia's unless otherwise stated. For clarity, any requirements specific to Film Victoria are in **green**.

These Terms of Trade broadly set out the core terms on which Film Victoria 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 <http://www.film.vic.gov.au/>.

These Terms of Trade do not apply to Film Victoria's [Cash Flow Facility Loan Program](#) and its [Incentives programs](#).

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

Film Victoria 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, unless otherwise agreed. It is Film Victoria policy that no funding recipient is to be worse off under a pre-existing funding agreement, than it would be if the funding had been provided under an agreement subject to these Terms of Trade.

Please refer to the [Glossary](#) on Film Victoria'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 those programs set out in the Introduction.

1. GENERAL MATTERS

1.1 General eligibility for Film Victoria 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 (if different from the original applicant).

An individual applicant must:

- (a) be an Australian citizen; or
- (b) be an Australian resident, being a person who is domiciled in Australia, and who has actually been in Australia, continuously or intermittently, for at least 12 months immediately preceding the application; and
- (c) meet the eligibility credit requirements set out in the relevant program guidelines.

An individual applicant may not be:

- (a) an employee of a broadcaster
- (b) an employee of an [online content provider](#);
- (c) an employee of a State or Federal government agency.

An applicant that is a company must:

- (a) be incorporated and carrying on business in Australia; and
- (b) 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.

An applicant that is a company may not be:

- (a) a broadcaster;
- (b) an [online content provider](#);

- (c) a holding company or subsidiary of a broadcaster; or
- (d) jointly owned by one or more companies referred to in (a) or (b); or
- (e) a Federal or State Government department or entity.

All applicants must also:

- (a) not be in breach of any obligation under any agreement they have with Film Victoria;
- (b) always act 'in good faith' in all their dealings with Film Victoria (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, Film Victoria will expect, at the least, an appropriate option (see 5.1 for development projects); and
- (e) have meaningful creative control of the project that is the subject of the application.

Where a related party to an applicant is in breach of an obligation under an agreement with Film Victoria, Film Victoria reserves the right to regard the applicant as ineligible.

Film Victoria 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 Film Victoria by that person or a related party.

1.1.2 Project eligibility

In order to be eligible for funding, an applicant must also be able to demonstrate to Film Victoria that their project provides cultural and economic benefit to Victoria and the Victorian screen industry.

Film Victoria 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.

1.1.3 Application eligibility

Film Victoria 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*;
- (d) applications that have previously been through the assessment process and rejected for funding, unless the application is substantially reworked (at Film Victoria's determination)

1.2 Acting in good faith

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

In addition Film Victoria expects that communications between its staff and funding applicants will be courteous and respectful. Film Victoria reserves the right to not accept or process applications for funding from any person who Film Victoria forms the view persistently treats our staff in a discourteous, hurtful or intimidating fashion, nor will Film Victoria enter into correspondence with any such person.

Film Victoria 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. In general Film Victoria does not accept deferred payment arrangements, however, in some circumstances deferred payments may be considered;
- (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*.

1.3 Fees

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

1.4 Audit rights

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

Where an independent audit report is not required, Film Victoria may require the funding recipient to provide a statutory declaration verifying the expenditure report(s). In all cases, Film Victoria 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 Film Victoria's funding and fees. Film Victoria requires the applicant to have an Australian Business Number (ABN), and to register for GST if required by law. Where GST is payable, Film Victoria will provide a recipient created tax invoice.

1.6 Reporting and information provision

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

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

1.7 Assessment

Funding decisions are determined considering the terms of and available funding for the relevant program and the number and quality of competing eligible applications.

Assessment is based on the application and supporting documentation submitted and any other information provided as requested by Film Victoria.

Preference is given to applications fully developed and/or produced by Victorians in Victoria

The level of previous funding support for a project and/or an applicant from Film Victoria and/or Screen Australia may be considered during assessment.

Film Victoria may also take into consideration an applicant's non-compliance with any contractual terms under any other funding agreements with Film Victoria, such as not meeting Victorian Spend requirements.

Film Victoria 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.

All applications will be acknowledged within five working days of receipt. Assessment is undertaken by Film Victoria's panels and committees. Applicants will be advised of the outcome of their application up to 12 weeks from the date of submission.

2. CREDITING FILM VICTORIA

Film Victoria 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 Film Victoria and are detailed in the funding agreement.

[Click here for more information on Film Victoria'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](#)

Film Victoria 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 by Film Victoria:

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 [Aboriginal Name] people as the traditional owners of the land on which [Name of production] was produced.

[Please refer to the Aboriginal Australia Map on the Victorian Aboriginal Heritage Council website for assistance](#)

4. TERMS OF FUNDING

4.1 Grants

Funding provided by way of grant does not have to be repaid other than:

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

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

Film Victoria provides funding for production of film, television and games 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.

Film Victoria is not entitled to any recoupment, profit share or sequel, remake or spin-off fees from projects receiving API.

4.3 Development funding repayments

Projects 100% produced and post produced in Victoria

Projects which have received Film Victoria development investment and which are 100% produced and post produced in Victoria will receive the development investment to re-invest into their projects as Film Victoria's API. This arrangement will be formalised in an API Agreement with Film Victoria. 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.

4.4 Projects not 100% produced and post produced in Victoria

Projects which have received Film Victoria 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 Film Victoria 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.

4.5 Outstanding obligations

Film Victoria 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 Film Victoria.

4.6 Cashflow

Film Victoria pays funding in instalments in accordance with drawdown schedules specified in its funding agreements.

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.

API for films, television and online will be cashflowed as follows, following full signature of the API Agreement and satisfaction of all payment preconditions:

Payment 1: 50% of API - on commencement of principal photography

Payment 2: 30% of API – on completion of principal photography

Payment 3: 20% of API – on Film Victoria’s receipt of all deliverables

API for 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.

4.7 Contracting time frame

Film Victoria 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:

- Grants and Development Investment - one month; and
- Assigned Production Investment – four months.

4.8 Delivery Timeframe

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

5. RIGHTS FOR DEVELOPMENT AND ASSIGNED PRODUCTION INVESTMENT

5.1 Copyright and underlying rights

Film Victoria 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.

In relation to API funding, Film Victoria will require the producer to provide a satisfactory *chain of title* opinion letter from an appropriately qualified solicitor (**Solicitor’s Opinion Letter**).

For development funding, Film Victoria may require that funding recipients provide all *chain of title* documents. Funding recipients will need to 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. Film Victoria may also require a Solicitor’s Opinion

Letter for development funding where the *chain of title* is particularly complex or Film Victoria considers there to be exceptional circumstances.

Copyright Interest for Development Investment

Prior to 1 July 2016 Film Victoria acquired a 1% *copyright* interest in all projects for which it provided development investment. For these projects, Film Victoria 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.

From 1 July 2016, Film Victoria will not acquire a copyright interest in projects for which it provides development investment. For these projects, Film Victoria will reinvest its investment as API or require repayment in accordance with clauses 4.2 and 4.3.

Film Victoria must receive a credit on all projects when produced, when development investment has been provided.

Film Victoria does not take a copyright interest in projects for which it provides API.

5.2 Promotional Rights

Film Victoria requires the right to use the project and promotional materials for corporate and promotional purposes, including promotion of the Australian film, television, digital media and games industries (as applicable). Film Victoria’s rights extend to online use of excerpts of the project including on Film Victoria’s websites, Twitter, YouTube channel and other social media platforms;

6. ACCESSIBILITY

Film Victoria 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).

7. DELIVERY ITEMS FOR FILM VICTORIA

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

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.

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 LIGHT ENTERTAINMENT 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 please see <http://www.acma.gov.au/webwr/aba/tv/content/requirements/australian/documents/documentaryguidelines.pdf>

ONLINE CONTENT PROVIDER

A major company providing content to viewers via streaming or download through paid video-on-demand (VOD) such as iTunes and Amazon or paid

subscription video-on-demand (SVOD), such as Netflix, Hulu, Presto, Stan, Quickflix or Youtube channels.

REALITY TELEVISION

In accordance with the Australian Content Standard, we define reality television as programming where “the primary purpose of the program 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

<http://www.acma.gov.au/webwr/aba/tv/content/requirements/australian/documents/documentaryguidelines.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 PRODUCER

A Victorian Producer is a producer (individual or company) based in and operating out of Victoria for at least 12 months prior to the funding application.

VICTORIAN

An Australian citizen or permanent resident residing in Victoria at the time of application and for at least 12 months immediately prior to the date of the application.

Schedule A: Fees

Unless otherwise indicated in the program guidelines, Film Victoria charges the following non-refundable fees (plus GST) application fee:

- \$500 for an Assigned Production Investment application for film, television, online and games

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 4.6 Contracting Time Frame

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

Item 7 Delivery Items for Film Victoria

Specific deliverables removed

Glossary – Credit Requirements

Wording amended for clarity

16 June 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 Film Victoria'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 Film Victoria in requesting chain of title documents for development projects.

Removal of Film Victoria'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.