



national film and video foundation
SOUTH AFRICA
an agency of the Department of Sport, Arts and Culture




**PRESIDENTIAL EMPLOYMENT STIMULUS PROGRAMME
AD HOC PANEL
TERMS OF REFERENCE
APRIL 2023**

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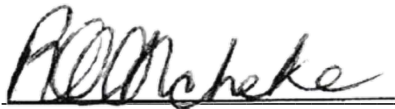
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The signatories to this document confirm their acceptance of the contents and authorise its adoption.

Signature:



Chairperson of the Council

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1. PURPOSE

The purpose of these Terms of Reference is to set out the Presidential Employment Stimulus Programme Ad Hoc Panel's ("the Panel") roles and responsibilities, as well as the requirements for its composition and meeting procedures.

2. BACKGROUND

The National Film and Video Foundation ("NFVF") has been tasked by the Department of Sport, Arts and Culture (DSAC) to administer the Presidential Employment Stimulus (PESP), aimed at supporting the audio-visual industry through various streams.

The main objective of the PESP is job creation, with the aim to:

- Assist practitioners in executing projects given the on-going financial constraints brought on by the COVID-19 pandemic; and
- Assist in job creation.

The Department of Sport, Arts and Culture ("DSAC") has allocated to the NFVF, R152,3 million for the 22/23 FY ("PESP3") set against a target of 9 000 jobs and R179,3 million for the 24/25 FY ("PESP4"), set against a target of 11 000.

The DSAC requested the NFVF to implement PESP3 and PESP4 across 3 streams:

- **Stream 1: Production Open Call** - Production proposals in fiction and non-fiction scripts e.g. (but not limited to) documentaries, television concepts (and any other audio-visual proposals); with an ability to create ten (10) or more jobs in a twelve (12) month period.
- **Stream 2: Training Open Call** - Training and development initiatives and proposals (including graduate development programmes) with a demonstrated job creation ability of ten (10) or more jobs in a three (3) month period (PESP3) / six (6) month period (PESP4).
- **Stream 3: Marketing and Distribution Open Call** – Marketing and Distribution strategy proposals such as public screenings, film festivals/markets hosting targeting job creation of ten (10) or more jobs in a three (3) month period (PESP3) / six month period (PESP4).

Business Recovery, which was the fourth stream in PESP 1 was excluded from the official allocation letter from the DSAC issued to the NFVF.

3. PURPOSE OF THE AD HOC PANEL

- 3.1. The purpose of the Panel is to discharge its responsibilities in accordance with this Terms of Reference and to oversee compliance by the National Film and Video Foundation (“NFVF”) with legislation that constitute this Committee.
- 3.2. The PESP Ad Hoc Panel Committee is established in accordance with chapter 3 (clauses 3.2.1 – 3.2.3), chapter 6 (clause 6.1 and 6.2.6), chapter 9, chapter 11 and chapter 13 of the Council Charter.
- 3.3. The Panel is constituted in compliance with the following applicable legislation:
- 3.4. Section 23(1) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);
- 3.5. National Film and Video Foundation Act;
- 3.6. Basic Conditions of Employment Act, 1997 (as amended);
- 3.7. Labour Relations Act 1995 (as amended);
- 3.8. King IV Code of Governance;
- 3.9. The Panel has an independent role with accountability to the Council.

4. CONSTITUTION OF THE AD HOC PANEL

- 4.1. The Panel shall be made up of:
 - 4.1.1. All three (3) streams’ chairpersons;
 - 4.1.2. Chairperson of the NFVF Council; and
- 4.2. The five (4) members of the Panel shall elect a Chairperson, who shall preside over the Panel meetings.

5. ROLE, RESPONSIBILITIES AND AUTHORITY OF THE PANEL

- 5.1. The role of the Panel is to:
 - 5.1.1 advise and make recommendations to the NFVF Council on matters arising from the administration and distribution of the PESP funding.
 - 5.1.2 These recommendations may include, but are not limited to:
 - (i) cancelling of PESP funding contracts;
 - (ii) suspending of PESP funding;

- (iii) re-allocation of rejected PESP funding;
 - (iv) claiming of specific performance against a beneficiary;
 - (v) amending the conditions of funding;
 - (vi) appointment of a forensic investigator;
 - (vii) referral of matters to the Auditor General, Public Protector, South African Police Services; or
 - (viii) any other reasonable recommendation that the Panel deems fit under the circumstances.
- 5.2. The Panel acts in accordance with the delegated authority of the Council as recorded in these Terms of Reference and the statutory requirements.
- 5.3. The Panel shall have access to the organization's records, facilities, and employees necessary to discharge its duties and responsibilities.
- 5.4. The Panel shall have the powers to review all relevant documentation that will assist it in carrying out its duties.
- 5.5. The Panel shall have the powers to request a beneficiary or any other concerned third party to furnish any documentation or written submission to assist it in carrying out its duties.
- 5.6. The Panel may invite any person to attend a meeting to advise, inform, or present to the Panel on any matter.
- 5.7. The Panel shall make recommendations to the Council for approval, on any or all matters that fall within its scope and function as may be required.
- 5.8. The Panel must make these recommendations within a reasonable time to ensure that referrals are considered speedily and efficiently.
- 5.9. The Panel must comply with any reasonable instruction given by the NFVF Council.
- 5.10. The Panel must ensure that its processes do not take the form of an appeals process.

6. DECISION-MAKING PROCESS AND CONCURRENT AUTHORITY OF THE COUNCIL

- 6.1. The Panel shall consider any matter relevant to it and recommend to Council for approval and noting matters that fall within its scope as provided in section 5.
- 6.2. A Panel member's judgement in respect of a matter or decision under consideration must

always be exercised in the best interests of and for the sole benefit of the NFVF. A Panel member shall be deemed to have exercised their judgment reasonably if they have taken all due care to become informed about the subject matter of the judgement and does not have a personal and/or financial interest in the subject matter thereof.

- 6.3. The Panel may request any documentation or information from Management to make decisions referred to in section 5.1.

7. MEETINGS AND QUORUM OF MEETINGS

- 7.1. The Panel shall meet as and when is necessary to consider issues relevant to its mandate before the closest quarterly meeting of Council.
- 7.2. Panel members must attend all meetings.
- 7.3. If the Chairperson is not present at a panel meeting, the members present must appoint another member to preside over the meeting.
- 7.4. Quorum
- 7.4.1 The quorum for any meeting of the Panel shall be at least 50% + 1 of the total members of the Panel.
- 7.4.2 A quorum should be present at the commencement of, and throughout the meeting.
- 7.4.3 A decision of the majority of members present at any quorate meeting shall constitute a decision of the Panel.
- 7.5. In the event of an equality of votes, the Chairperson of the meeting has a casting vote.

8. RECORD OF MEETINGS

A record of the proceedings of every meeting of the Panel must be:

- 8.1. Electronically recorded and kept in a manner that it cannot be altered or tampered with; and
- 8.2. The meeting secretariat must submit minutes to the next meeting of the Panel for consideration and, when adopted, should be signed by the Chairperson.

9. CONFLICT OF INTEREST

- 9.1. A conflict of interest arises in any instance in which a reasonable person may perceive a risk or possibility that a Panel member's private interests or those of a related person (whether natural or juristic) may impede that member's ability to perform his or her duties and obligations as a Panel member in a fair, unbiased and proper manner;

- 9.2. In terms of section 11(10) of the NFVF Act, a member of an advisory panel is prohibited from voting or participating in proceedings at any meeting of the advisory panel, if they have any interest in the matter before the panel that precludes them from performing their functions in a fair, unbiased, and proper manner.
- 9.3. The Panel members are obliged to disclose any interest they have within the organization or outside the organization that might interfere with the performance of their duties in line with the NFVF Conflict of Interest Policy.
- 9.4. A Panel member who becomes aware, at any stage prior to a meeting of the committee or advisory panel, that they have a conflict of interest in relation to a matter to be discussed at that meeting, must disclose such conflict of interest in writing to the chairperson of the Panel, as soon as reasonably possible.
- 9.5. Where the conflict of interest or perceived conflict of interest relates to the chairperson of the Panel, the members shall vote for one amongst them to chair the meeting.
- 9.6. All information that members of the Panel have access to, whether it is regarding employees and organizational information provided to members in the furtherance of their duties, must be held and kept confidential.
- 9.7. The Panel and its members must safeguard all organisational information supplied to it.
- 9.8. A Conflict-of-Interest form will be circulated for signature before the convening of each meeting.

10. CONFIDENTIALITY

- 10.1. Each Panel member acknowledges that, in the course of the performance of their obligations, it will become possessor or have access to certain propriety information (collectively referred to as the "Confidential Information"), including but not limited to all information that has commercial value and is not available to the public.
- 10.2. Each panel member shall keep confidential the information received and use the same care to do so as it uses to protect its own Confidential Information.
- 10.3. Each panel member shall not disclose or grant access to the Confidential Information or any part thereof to any other person unless it is necessary in order to perform its obligations in terms of the PESF.
- 10.4. Each panel member shall not use the Confidential Information or any part thereof for any purpose other than the performance of its obligations; and

- 10.5. If the Panel member is uncertain about whether any information is to be treated as confidential, (s)he shall be obliged to treat it as such until confirmation in writing is obtained from the NFVF.

11. RESOLUTIONS OF THE AD HOC PANEL WITHOUT A MEETING

- 11.1. The Panel may adopt a resolution without a meeting if at least a majority of the members indicate their support for the resolution in a manner and per a procedure determined by the Panel and in line with corporate governance principles.

12. SECRETARIAT OF THE AD HOC PANEL

- 12.1. The NFVF shall appoint a Secretariat of the Panel.

13. ANNUAL REVIEW

The Terms of Reference will be reviewed by the Panel annually and recommended for approval by the Council.

