

Template Offer Letter and Specific Terms of Business For Short Film Production

OFFER LETTER

Date

Producer Name

Producer Address

SUBJECT TO CONTRACT

Dear [Individual Producer name(s)]

RE: "Title" – SS Project Number []

We are pleased to confirm the offer by **SCOTTISH SCREEN ENTERPRISES LIMITED** incorporated under the Companies Act Registered Number: SC169527 having its registered office at 249 West George Street, Glasgow G2 4QE ("**SS**" which expression shall include its successors in title licensees and assigns), subject to contract, on the basis of your application for National Lottery Funding, of an award to the maximum of £XXX [amount in words] in the short film presently titled "**[project name]**" ("the Film"), based on the draft screenplay dated [] written by [] ("the Screenplay") on SS's Specific Terms of Business for Short Film Production ("Specific Terms") and the Standard Conditions of Scottish Screen Investment ("Standard Conditions") which are attached hereto and included herein by reference and on the terms and special conditions set out below and subject always to the execution of a Funding Agreement with SS ("the FA").

1. Main Elements

Production Company ("the Producer");

Individual Producer(s):

Co-Producer(s):

Director(s):

Writer(s):

Line Producer;

Production Accountant;

Principal Cast:

Script:

Budget:

Scottish Production Spend;

Insurances;

Contingency;

Production Fee;

Production Schedule:

Post Production Schedule

Running time:

Shooting Ratio:
Shooting Format:
Delivery Format:
Delivery Date:

SS to have prior written approval of any changes to the above. Elements are only approved where stated.

2. SS Award

£X by way of an equity Investment ("the SS Investment") in accordance with a cashflow schedule to be approved by SS.

3. Other Finance (Subject to paragraph 2 above)

- 1.
- 2.
- 3.
- 4.

TOTAL OTHER FINANCE

£XXXXXX

The Producer must make suitable arrangements (by hedging, insurance or otherwise) to provide for currency fluctuations in order to meet the Budgeted Cost and any currency gains shall be paid into the Production Account.

SS to have approval over all other finance and the terms thereof. Finance is not approved unless stated.

The terms of the appointment of the Distributor and/or Sales Agent will be subject to the approval of SS. SS shall have approval over "ask" / "take" estimates for the Sales Agents Territory. SS shall have approval over any sale by the Sales Agent at below pre-approved "take" prices.

The Producer acknowledges that it is a condition of the SS Investment that the Producer uses his/her best endeavours to secure a UK theatric release of the Film on terms acceptable to Scottish Screen.

The Producer shall ensure that in the Distribution Agreement (and for any UK TV broadcast licence) there is incorporated therein a customary holdback (to be approved by SS) against television exploitation of the Film in the UK so as to maximise the theatrical and videogram revenues for the Film.

4. Special Conditions applied to this Offer of Award

5. Recoupment

From the Net Receipts, the Producer shall be entitled to recoup deferrals (if any and subject to prior written approval by Scottish Screen) prior to any split of proceeds from

distribution income and SS shall be entitled to share net proceeds from all distribution income to the level of their investment. SS shall receive 40% of Net Receipts and the Producer shall receive 60%. All other equity investors will recoup from the Producer's share of 60%.

6. Conditions Precedent

This offer is subject to SS approval of:

- (i) Memorandum & Articles of Association;
- (ii) script;
- (iii) underlying rights and chain of title documents (evidencing a clear chain of rights to the Producer), together with all development finance agreements (as applicable);
- (iv) Director(s), Individual Producer(s), all Key Cast and Crew;
- (v) Principal Artists Agreements, Writer, Director and Agreements;
- (vi) Sample HOD and Crew agreements together with all related documentation;
- (vii) Production Budget including Contingency and SIF/ITF levy (as appropriate);
- (viii) Production Schedule;
- (ix) Production and Financiers' Cashflows;
- (x) the financing structure and all agreements relating thereto and related security documentation;
- (xi) Production insurances;
- (xii) the Film being capable of qualification as a British film (under the Films Act 1985 (as amended) or through satisfaction of the requirements of a relevant UK co-production treaty);
- (xiii) bank account and all related documentation;
- (xiv) the terms of the Sales Agency Agreement, the UK Distribution Agreement and UK Broadcaster Agreement (if applicable);
- (xv) evidence of all Distribution/pre-sale Agreements (where appropriate) with supporting documentation;
- (xvi) signed acceptance of the National Lottery common branding policy regulations;
- (xvii) registration documentation for PACT Very Low Budget Feature (if appropriate);
- (xviii) the Scottish Production Spend element of the budget.

7. Review

SS's offer of investment is subject to review in 6 months from the effective date of this Offer Letter (being [date]) if you have not closed financing for the project nor commenced principal photography. At such time the offer will be extended by a minimum 3 months or a maximum 6 months.

SS shall be entitled to assign the benefit and burden of this Agreement to any successor body or any other legally designated distributor of National Lottery Funds or any party delegated or appointed under the National Lottery etc. Act 1993 (as amended) and SS shall notify the key personnel in writing of such assignment.

In the event of a conflict between the terms of this Offer Letter, Specific Terms and Standard Conditions the terms of this Offer Letter shall prevail.

We are delighted to be working with you on this project. If you wish to accept this offer you must do so within 7 days of receipt by signing and returning the attached duplicate letter. Your signature will also serve to confirm that you have read and agreed the Specific Terms and the Standard Conditions attached to this Offer Letter.

Once we have received all the required documents and information Business Affairs Department will draft a Funding Agreement. If you have any queries, please do not hesitate to contact us.

Yours sincerely

Linda McClure
Head of Business Affairs

Agreed by

.....
X
For and on behalf of
Producer

.....
Dated

Scottish Screen

Specific Terms of Business – Short Film Production Investment

These Specific Terms of Business in relation to Short Film Production Investment (“Specific Terms”) form part of and should be read in conjunction with the offer letter (“Offer Letter”) issued by Scottish Screen.

1. Main Elements

Scottish Screen shall have approval over all Main Elements. Approval to be given in writing and there shall be no changes to any Main Element without Scottish Screen’s prior written approval.

Main Elements are as set out in the Offer Letter.

2. Scottish Screen Investment

The Scottish Screen Investment shall be advanced by way of an equity investment in accordance with a Scottish Screen approved Cashflow Schedule.

3. Other Finance

The Producer shall procure the provision of all other finance required to produce and deliver the Film. Scottish Screen shall have approval over the identity and business terms of all other financiers and finance for the Film.

4. Bank Account

For awards up to £14,999, the Producer is required to set up a designated bank account specifically to be used for this project which will require a bank no right of set off letter. For awards of £15,000 or over, Scottish Screen will require the Producer to set up a Trust Account naming Scottish Screen, over which Scottish Screen will have approval of authorised signatories to the account.

5. Copyright/Rights

The producer will assign to Scottish Screen the entire copyright to hold. Following and subject to completion of the Film and Delivery and due performance by the Producer of its obligations, Scottish Screen will reassign the entire copyright to the Producer.

In the event other financiers seek a share of copyright then Scottish Screen will take a share of the copyright and all other rights in the Film pro-rata to the level of its investment in relation to other equity investors as security for repayment and will re-assign such share to the Producer on repayment of the Scottish Screen Equity Investment.

6. Scottish Screen Rights

Scottish Screen will reserve the non-exclusive and non-commercial right to publish extracts from or synopsis of the Film on the Scottish Screen website and/or in the Scottish Screen Short Film Brochure for the purposes of promoting projects that Scottish Screen have supported and/or for educational purposes. Scottish Screen will retain the non-exclusive and non-commercial right to exhibit the Film or extracts therefrom in

Scottish Screen Short Film promotional DVD's made from time to time. For the avoidance of doubt Scottish Screen will retain a right but not an obligation to exhibit.

7. Approvals

Scottish Screen will have approval rights over all key creative, finance and distribution elements including (without limitation): Main Elements (as set out in the Offer Letter); all drafts of the Script including final shooting script; chain of title; all heads of department and key crew members; production accountant; composer; soundtrack album agreement; music supervisor; final cut; production schedule; cashflow schedule; laboratory; completion guarantor (if applicable); sales agent and agreements including commissions expenses (and all sales below minimum sales estimates); financing costs; distributors and agreements; other investors and agreements and collection agent (if applicable).

8. Final Cut

Scottish Screen shall have the right of consultation (or joint consultation with other Financiers as applicable) over the final cut of the Film.

Notwithstanding the above, the Producer shall in any event (i) carry out all changes which Scottish Screen may reasonably require in order for the Film to meet the requirements of the relevant UK Broadcasting authorities and the British Board of Film Classification and/or to comply with any warranty, representation or other contractual specification relating to the Film or to conform to legal advice received by Scottish Screen; and (ii) give full consideration in good faith to all suggestions and comments made by Scottish Screen in respect of all cuts of the Film. The cost of any such changes or editing shall be borne by the Producer from the Budget of the Film and shall be undertaken within the time constraints of the Scottish Screen approved post-production schedule.

9. Recoupment

Scottish Screen shall recoup the Scottish Screen Investment in accordance with the terms of the Offer Letter.

10. Conditions Precedent

The Conditions Precedent to the Scottish Screen Investment are set out in the Offer Letter.

11. Delivery

The Producer shall produce and deliver the Film to Scottish Screen and all other parties requiring delivery in a timely first class manner. Scottish Screen Delivery items will be as set out in the Funding Agreement.

If delivering on film, Scottish Screen will require one 35mm positive print of original negative gauge of the Film plus one digital master copy of the Film complete with stereo sound mix.

If delivering on digital format only, Scottish Screen will require two digital copies of the Film complete with stereo sound mix.

In addition to the above, all related materials including script, stills and publicity materials will be required and will be detailed in the Funding Agreement.

12. Credits

Scottish Screen will receive the following front screen credits in respect of the Film:

1. Throughout The World

(first card) Scottish Screen and [] Present
(second card) in association with []
(third card) []

2. Billing Block and Paid Advertising

The Scottish Screen presentation credit and logo shall appear in the billing block for the Film and in all paid advertising for the Film throughout the World.

3. Back end credits

For Scottish Screen “Supported by The National Lottery through Scottish Screen” together with Scottish Screen Lottery Funded logo.



4. Executive Producer credits

X of Scottish Screen shall receive an Executive Producer credit for the Film. The position of such credit and all other Executive Producer credits shall be subject to the approval of Scottish Screen.

The above-mentioned Executive Producer credit shall appear as a front screen main title credit and in the billing block for the Film and in all paid advertising for the Film.

All other credits in the end roller credits for such additional persons at Scottish Screen to be at the discretion of the Producer (such credits to be approved by Scottish Screen). Scottish Screen will have approval over all other front and end

credits. All Executive Producer credits on the Film shall be on a shared card, same size and type as the Producer credit.

13. Security

As security for its investment Scottish Screen will take a charge over the copyright and all other rights and materials granted to or owned by the Producer in relation to the Film and over the income stream to which the Producer and Scottish Screen will be entitled.

14. Confidentiality

The Producer acknowledges that the terms and conditions of this Offer Letter and any other information obtained regarding this letter or in connection with this transaction as a whole ("the Confidential Information") is and shall remain strictly confidential. The Producer shall not disclose to any third party or make public the Confidential Information without Scottish Screen's prior consent.

Scottish Screen will endeavour to keep such Confidential Information confidential, but as a Public Authority in terms of the Freedom of Information (Scotland) Act 2002, may require to disclose certain information when required to do so under that Act. Where the Producer stipulates at the time of providing the information to Scottish Screen that it believes the information should be considered exempt from disclosure under that Act, and a request to Scottish Screen is subsequently made for disclosure of some or all of that information. Scottish Screen will endeavour to discuss such disclosure with the Producer prior to making its decision. The Producer accepts and acknowledges that the decision on disclosure rests solely with Scottish Screen.

15. Public Announcements

Once Scottish Screen has confirmed its Offer of Investment in writing (via email) Scottish Screen have the right to publicise their Offer of Investment on the Scottish Screen website, in E-Roughcuts and Scottish Screen's hard copy publication Roughcuts.

The Producer shall not issue any press release nor make any public announcements regarding the Producer or Scottish Screen's involvement in this transaction without the prior written approval of Scottish Screen. Scottish Screen shall not issue a press release regarding the Producer or Scottish Screen's involvement in this transaction without the prior written approval of the Producer.

Scottish Screen's announcement of their Offer of Investment does not place Scottish Screen under any obligation to release funds until such time as all contractual negotiations are complete and Scottish Screen's Conditions Precedent have been met and the Long Form Funding Agreement signed off.

16. Review

Scottish Screen's offer of investment is subject to review. The Offer Letter sets out the review period. If after review, the Offer is renewed, the Producer will be notified in writing (which will specify the renewal period). If the offer is not renewed or the FA is not executed within the Offer Period the offer will lapse and the Producer will be notified in writing to that effect.

17. Documentation for FA

Scottish Screen requires the following documentation and information:

- (i) Script;
- (ii) Director(s), Writer(s), Producer(s) agreements;
- (iii) Principal Cast and HOD/Crew agreements;
- (iv) Budget (to include contingency and SIF/PACT training levy) and identified Scottish Production Spend Budget;
- (v) Proposed Cash Flow Schedule;
- (vi) Completion Guarantor and draft of Completion Guarantee and Completion Guarantor's agreement with Producer (if applicable);
- (vii) Distributors, deal memos and distribution agreements including P&A commitments (if applicable);
- (viii) Sales companies and their agreements (if applicable);
- (ix) Co-financiers and terms of co-financing agreements including Interparty Agreement and UK Broadcaster Agreement (if applicable);
- (x) Identity of Auditor (if applicable) and Production Accountant;
- (xi) Underlying rights and chain of title documents (evidencing a clear chain of rights to the Producer), together with all development finance agreements (as applicable);
- (xii) Details of production insurances;
- (xiii) Detailed production schedule;
- (xiv) Estimated running time of film;
- (xv) Processing laboratory/facilities house agreements;
- (xvi) Certificate of incorporation of Production Company;
- (xvii) Completed Short Film Information Form;
- (xviii) Colour or black and white film;
- (xix) Shooting Format;
- (xx) Delivery Format;
- (xxi) Ratio;
- (xxii) Laboratory;
- (xxiii) Locations;
- (xiv) Delivery Schedule;
- (xv) Unit Publicist (if applicable);

18. SIF/ITF Training Funds

All films that receive funding from a public body or expect to qualify as a British Film under the Films Act 1985 (as amended) are required to pay a contribution ("the SIF Levy") towards the Skills Investment Fund ("SIF") of 0.5% of the budget of the Film up to a maximum contribution of £39,500 or in the case of television projects make a contribution to the Indie Training Fund (ITF) which is administered by Pact. This is a voluntary payment based on 0.25% of annual production turnover for the previous year (with a cap of £100,000). The Producer shall make allowance in the Budget of the Film for such SIF or ITF Levy. The Producer acknowledges that Scottish Screen has the right to retain a sum equal to the levy payable and to deduct this sum from any payment of Scottish Screen Investment due to the Producer under this Letter of Offer.

19. Additional Delivery Requirement

The Producer shall provide information and materials as required by Scottish Screen to meet audit requirements for submission of a Monitoring & Evaluation Report to the DCMS from time to time.

A Monitoring & Evaluation Report shall mean a report of the Film to be completed and delivered to Scottish Screen as part of Delivery (under the Funding Agreement and then again at 6, 12, 24 and 36 months following Delivery).

20. Scottish Screen's Obligations

Until the Funding Agreement is executed and all Conditions Precedent have been satisfied, Scottish Screen shall have no obligation to provide any funding for the Film and Scottish Screen cannot accept any liability for any costs the Producer may incur.

Standard Conditions of Scottish Screen Investment

If your application is successful, you will have to comply with the following conditions. In addition to the Standard Conditions of Scottish Screen Investment ("Standard Conditions") there are other more Specific Terms of Business, which relate to each investment strand. Please note that we may also add special conditions to your particular Investment.

1. You must use the Investment for the project/activity you applied for and for the purpose set out in the approved application. At no time can you make any important changes to the project/activity described in the approved application without the written consent of Scottish Screen.
2. You cannot transfer the Investment to any other organisation without the written consent of Scottish Screen. Scottish Screen will only accept the industry practice of forming specific company vehicles to undertake a production where it is clear that the people who applied for the Investment are still those responsible and contractually committed to seeing the project/activity through to its delivery or completion
3. If there is an underspend on the project/activity you must return the appropriate share of the Investment to Scottish Screen.
4. You will be required to supply Scottish Screen with regular progress reports as required and with any further financial or other information that may be deemed necessary by Scottish Screen to monitor the Investment expenditure.

You will be required to comply with monitoring arrangements as required by Scottish Screen in relation to the project/activity and to provide Scottish Screen with any information it requires to establish that the project/activity has been completed properly in accordance with the Offer Letter and Funding Agreement.

5. The Investment may have to be repaid in full or in part if any of the Investment conditions are breached.
6. If there is a material change of purpose, ownership or organisation structure during the life of the project then Scottish Screen reserves the right to reconsider the application and you may be required to repay the Investment.
7. In addition to the above, and subject to the provisos below, the Investment shall become repayable and any future payments stopped where:
 - i) the organisation ceases to operate (unless it merges with, or is replaced by another body, which is able to fulfil the purposes of the investment to Scottish Screen's satisfaction);
 - ii) your organisation closes down or is declared bankrupt, goes into receivership or liquidation;

- iii) you fail to apply the Investment for the purposes for which it was intended.
 - iv) you do not complete the project/activity;
 - v) we discover that you gave incorrect, misleading or fraudulent information on your application form;
 - vi) where at any time during and in respect of completion of the project/activity or initiative, you have acted:
 - (1) fraudulently; or
 - (2) negligently, to the extent that in the opinion of Scottish Screen it has a material effect on the project or activity;
8. Scottish Screen can only guarantee to pay you the Investment if Scottish Screen continues to receive funds for this purpose;
9. If you overspend on the project/activity, you must let Scottish Screen know immediately. Scottish Screen cannot increase Investments which have already been offered and accepted. Any variation in the level of support would have to be supported by a robust case in a Supplementary Application and will be subject to re-assessment by Scottish Screen.
10. You cannot sell or give away assets which you bought with the Investment without the written permission of Scottish Screen. If you sell these assets, you must pay Scottish Screen an appropriate share of the money you receive for them.
11. Scottish Screen must have prior written approval of any mortgages or charges over the project/activity.