

## Template Offer Letter and Specific Terms of Business for Content Development

### 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]** towards the content development costs of [describe animated, drama, screenplay etc and then the title] on SS's Specific Terms of Business for Content Development ("Specific Terms") and the Standard Conditions of SS 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 the Loan Agreement and Assignment in Security with SS ("the LA").

#### 1. Main Elements

Production Company:

Individual Producer(s):

Writer(s):

Script:

Budget:

Development Schedule:

[Director (if applicable)]:

[Script Editor (if applicable)]:

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

#### 2. SS Award

**£XXX** by way of content development funding ('the SS Loan') in accordance with a cashflow schedule to be approved by SS.

The total developments costs for this project should not exceed **£XXXXXX** as detailed in the budget approved by SS.

3. Total Other Finance (Subject to paragraph 2 above)

- 1.
- 2.
- 3.

TOTAL OTHER FINANCE                      £XXXXXXXX

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

4. Special Conditions applied to this Offer of Award

5. Recoupment

The Producer shall repay to SS on the first day of principal photography the SS Loan (which may in addition include SS's legal or other expenses enforcing repayment under this Loan), the "Repayment Sums".

6. Profit Participation

The Producer shall in addition to the Repayment Sums, pay or procure Payment to SS of [X%] of 100% of 'Producer's Net Profits' of the Film to be defined on a most favoured nations basis with any other financiers of the Film. The Producer shall make or procure such payment to SS within one month of receipt of such funds by the Producer or any such collection agency appointed by the Producer with the approval of SS.

If the costs of the development are less than the Approved Budget then a pro rata share of any underspend on the project must be returned to SS.

7. Conditions Precedent

This offer is subject to SS approval of:

- (i) Memorandum & Articles of Association;
- (ii) financing structure and agreements relating thereto;
- (iii) underlying rights and chain of title documents (evidencing a clear chain of rights to the Producer) together with all existing development finance agreements (as applicable);
- (iv) agreements for Writer, Director and Script Editor;
- (v) the detail of development programme of work to be undertaken;
- (vi) bank account and all related documentation;
- (vii) executed co-development agreement for [up to XX%] of the Total Development Costs;
- (viii) signed acceptance of the National Lottery common branding policy regulations.

8. Review

SS offer of award is subject to review in 6 months from the effective date of this Offer Letter (being [date]). At such time the offer may be extended by a minimum 3 months or a maximum of 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 conflict between the terms of this Offer Letter, the Specific Terms and Standard Conditions, the terms of this Offer Letter shall prevail.

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 Conditions of Business for Content Development and the Standard Conditions for Scottish Screen Investment attached to this Offer Letter.

Once we have received all the required documents and information Business Affairs Department will draft a Loan Agreement. If you have any queries please don't hesitate to contact us.

Yours sincerely

Head of Business Affairs

.....  
For and on behalf of  
XXXXXXXXXXXXXXXXXX

.....  
Dated

## **Scottish Screen Specific Terms of Business for Content Development Funding**

These Specific Terms of Business for Content Development Funding (“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 will be given in writing and there shall be no changes to any Main Element without Scottish Screen’s 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 a loan in accordance with a Scottish Screen approved cashflow.

### **3. Other Finance**

The Producer shall procure the provision of all other finance required for the Content Development. Scottish Screen shall have approval over the identity and business terms of all other financiers and finance for the Content Development.

### **4 Bank Account**

For awards of 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. Assignment**

By way of security for the payment and discharge of the repayment sums the Producer will assign to Scottish Screen all its right, title and interest in the Script, Development Work (and the Underlying Rights Documents) any service agreements entered into by the Borrower with third parties.

This security is continuing and will remain until such time as repayment in full is made to Scottish Screen of the Repayment Sums referred to under Recoupment in the Offer Letter.

The rights and obligations of the Producer under the Loan Agreement and this Security shall not be assigned and the Producer shall not assign the Loan in whole or in part unless otherwise approved by Scottish Screen.

### **6. Re-Assignment**

On repayment in full of the Repayment Sums, Scottish Screen will, at the Borrower’s expense, release this Security and re-assign the rights to the Borrower.

7. Recoupment

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

8. Net Profit Share

Scottish Screen shall receive a share of Net Profits in accordance with the terms of the Offer Letter.

9. Conditions Precedent

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

10. Delivery

The Producer shall deliver the script development materials to Scottish Screen and all other parties requiring delivery in a timely manner. Scottish Screen delivery items will be as set out in the Loan Agreement.

11. Credits

Scottish Screen will receive the following credit on all copies of the Script issued by the Producer or under its control:

“Supported by The National Lottery through Scottish Screen”

and, in addition, the Producer will ensure that the Script shall contain a copyright notice in the following form:-

“© 200X Scottish Screen”

The Producer will ensure that any Film based on the Development Work will contain a credit on screen and in all related advertising issued by or under the Producer in the following form:

“Supported by The National Lottery through Scottish Screen”

12. 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 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.

13. Scottish Screen's Obligations

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

14. 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.

15. Monitoring and Evaluation Reports

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

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

## 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 funding 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 Loan 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.