

Scottish Screen Specific Terms of Business - Content Production
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Scottish Screen uses standard form Funding Agreements. The documents are adjusted to the specific requirements of each project. Scottish Screen will not begin to cashflow a project until the Offer Letter has been signed, the Funding Agreement has been fully executed, all other financial commitments and distribution commitments are in place and the conditions of funding set out in the Funding Agreement have been satisfied.

Please note you should obtain independent legal advice before signing the Funding Agreement.

The following parameters are intended as a guide only. The terms and conditions attached to each investment will differ according to specific arrangements with the relevant financing partners and contributors.

Scottish Screen Investment

The Scottish Screen investment will be advanced by way of an equity investment in accordance with Financiers cashflow schedule approved by Scottish Screen.

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. In exercising this right of approval Scottish Screen will have regard to applicable UK legislation and Inland Revenue guidelines and may elect to withdraw any offer of funding if it has reasonable concerns relating thereto.

It is a condition of any Scottish Screen production funding where third party finance is being provided by a tax partnership (as this term is commonly understood in the industry) that such tax partnerships will be required to provide direct undertakings and warranties to Scottish Screen in respect of the operation of such partnership.

Interest, fees and overheads

- Scottish Screen will not normally agree to contribute funding to a production budget which includes interest, premium or overhead fees charged by other financiers or investors other than bank interest where gap financing is in place or where sales are being discounted.
- The level of overheads and producers' fees within a production budget will be a matter for reasonable negotiation and mutual agreement between producers and financiers taking into account the actual role of the individuals and companies involved.
- Scottish Screen is keen to ensure that film producers receive their full entitlement to a reasonable individual producer fee and production company overhead from within the budget of the film and does not encourage deferral of any such producer fee and/or production company overhead.

Copyright

In the event other financiers seek a share of copyright, 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.

Approvals

Scottish Screen will have approval rights over the following:

- The script including all drafts and the final shooting script;
- Production company/ies, co-producer(s), individual producer(s) and executive producer(s), line producer, director, principal cast and crew including all heads of department, production accountant, post-production facilities, composer, music supervisor, and the terms of their contracts including fees;
- Chain of title and all underlying rights documentation for the film;
- Scottish Production Spend detailed budget;
- Budget for the film;
- Production Schedule;
- Scottish Production and/or Post Production Schedule (as applicable);
- Identity of all other co-financiers and the terms of business for the balance of the funding for the film and the finance costs related thereto;
- Sales agent, sales estimates and the deal terms of the sales agency agreement including the right to approve marketing materials;
- Distributor/s and terms of deal memo and distribution agreements including P&A and minimum release commitments and holdbacks;
- Broadcaster(s) and terms of licence agreement including licence fee, terms and number of transmissions;
- Collection agent and terms of collection agreement;
- Completion guarantor and terms of completion guarantee;
- Identity of auditor;
- Delivery date;
- Running time;
- Film certificate;
- Aspect ratio;
- Processing Laboratory/facilities house(s);
- Sound post production facilities house(s);
- Details of production account including signatories and bank mandate;
- Production insurance (including errors and omissions insurance) on which Scottish Screen will require to be named as an additional insured;
- Credits;
- Final Cut (together, where applicable, with full consultation rights with other Financiers);

And other such approvals as Scottish Screen may require from time to time.

Completion Guarantee and insurance:

Where a production has a budget of £1million pounds or over, the production budget should contain a provision for an independent guarantee of completion and delivery the terms of which will be subject to Scottish Screen approval. The completion guarantee must be on risk before Scottish Screen will advance funds. Scottish Screen will require approval over the identify of the completion guarantor.

Scottish Screen expects producers to effect all customary production insurance (including errors and omissions insurance) on which Scottish Screen will require to be named as an additional insured.

Credits

Scottish Screen will require contractual credits as follows:

A main title credit on a separate card in the form of

“Scottish Screen and [] present”

A closing credit in the form of

“Supported by the National Lottery through Scottish Screen” together with the Scottish Screen Lottery funded logo.

The Scottish Screen presentation credit and logo shall also appear in the billing block for the film and in all paid advertising for the film throughout the world (subject to customary exclusions).

Scottish Screen will also be entitled to receive an Executive Producer credit for the Film s a main title credit along with a block of up to three further credits in the end credit sequence.

Main title and closing credits will be negotiated in good faith between the parties. Scottish Screen will have the right to approve all credits.

Collection arrangements

All revenues for the film shall be collected by an independent collection agent to be approved by Scottish Screen. The recoupment structure, which will be set out in the Collection Agreement, must be approved and signed by all the financiers before Scottish Screen will advance any funds.

Distributors and sales agents

Scottish Screen will require a right of approval of the appointment of all distributors, distribution agreements, sub-distribution deal memos, principal deal terms and longform contracts. Scottish Screen will have a right of approval over the appointment of all sales agents and its obligations and contractual arrangements in respect of the film (including commissions and expenses).

Scottish Screen will require contractual capped sales expenses and minimum sales estimates. No sales below the minimum Take prices in all territories and all media should be made without the prior approval of Scottish Screen.

Recoupment

Scottish Screen shall recoup the Scottish Screen Investment in accordance with the Recoupment Schedule which shall be agreed in advance of funding negotiations.

In any event (i) the Scottish Screen investment shall be recouped pro rata pari passu with all other investors and (ii) where a sales agent or distributor is recouping an advance, Scottish Screen will expect to receive a corridor of revenues against such sales agent or distributor.

Net Profit Participation

The Producer shall receive a 50% share of Net Profits. Equity Investors (including Scottish Screen) will share the remaining 50% of Net Profits pro rata pari passu to the level of their respective investments (unless otherwise agreed).

Broadcasters

Where a UK broadcaster is providing both equity funding or is also the UK or international distributor of the film, the UK TV rights must be valued at a fair and reasonable rate.

Residuals

The Producer shall ensure that the Budget will cover the costs of the clearance of all rights in the Film worldwide in all media. Under no circumstances will Scottish Screen assume responsibility for, or guarantee, payments to talent or for residuals, repeat fees or royalties.

Underspend

Producers are encouraged to delivery on budget and Scottish Screen will agree to producer participation in underspend on their films of up to 50%.

Trust Account

Where Scottish Screen provides production funding, it will require all funds to be paid into a separate dedicated trust account. Completion of a Scottish Screen approved bank mandate for the trust account will be a pre-condition to Scottish Screen advancing funds.

Skills Investment Fund Levy

The Skills Investment Fund levy is a key component in helping to deliver a comprehensive training strategy for the UK film industry. All films that receive funding from Scottish Screen are required to pay a contribution towards the Skills Investment Fund ("SIF") of 0.5% of the production budget up to a maximum contribution of £39,500. This is mandatory and the Producer shall make allowance in the budget of the Film for such SIF Levy and shall pay the same to SIF on or before the first day of principal photography of the film. Scottish Screen has the right to retain a sum equal to the levy payable to the Skills Investment Fund and to deduct this sum from any payment of Scottish Screen funding due to the Producer if this has not been paid by the Producer.

Scottish Screen will also expect the production budget to contain provision for any appropriate trade association fees.

Scottish Screen Legal Fees

The Producer shall make provision in the Budget towards Scottish Screen legal fees as follows:-

For film projects with a budget of £1m or over and where our investment is between £250,000 and £300,000 we will require a £5,000 contribution to our external legal costs.

For film projects with a budget of £1m or over and where our investment is between £300,000 and £500,000 we will require a £7,500 contribution to our external legal costs.

For all projects under £1m or with investments less than £250,000 we will absorb our external legal costs.

Legal fees will be due and payable on closing the transaction.

Security

Scottish Screen will take a fixed charge over the company incorporated for the purposes of owning and producing the film, its rights, assets, interest and revenue entitlement in relation to the film as security for the Scottish Screen investment until such investment has been recouped in full. Scottish Screen may also take a charge over any co-producer of the film, if appropriate.

Access for people with sensory impairments

Scottish Screen is committed to enabling all sectors of the community to participate in and enjoy film, but for many disabled people opportunities to appreciate and enjoy the medium are limited. You will therefore be required to ensure, as a minimum, that any agreement for the distribution of the film in the UK provides for distribution of a sub-titled film print in the UK cinemas and the inclusion of a subtitled track (for the hearing impaired) and an audio-description track (for the visually-impaired) on any UK DVD release of the film (except in relation for a foreign language film).

Compliance

The film should be produced in accordance with the requirements of all unions and guilds (e.g. BECTU, Equity or Screen Actors Guild) having jurisdiction and all applicable laws and statutes (including in relation to tax, immigration and health and safety) and should comply with all relevant EU Directives.

Production information

The information required during production of the film (as reflected in the Funding Agreement) will include:

Weekly during production:

- Copies of all rushes available on video or DVD to be sent to the Head of Talent & Creativity at Scottish Screen; and
- Progress reports and call sheets by e-mail to the Head of Talent & Creativity and to Head of Business Affairs.

Weekly until completion of principal photography and each month thereafter (to the Head of Talent and Creativity and the Head of Business Affairs)

- Cost statements with narrative showing movement since last report
- Statements of finance and expenditure (including reconciliation);
- Trial balance detail;
- Such other financial information as required from time to time; and
- Statement of creditors and debtors.

As issued/available to the Head of Talent and Creativity

- Copies/access to cut scenes and assemblies;
- Crew and cast lists;
- Script changes; and
- Schedule changes

Delivery Requirements

Scottish Screen will require delivery of the following items, the cost of which must be contained in the production budget:

- (a) Film & Video Elements
 - (i) deposit of one mint 35mm positive print of original negative gauge of the Film (which SS shall deposit at the National Library of Scotland to be held for archive preservation);
 - (ii) five VHS PAL copies of the Film (or five DVD copies of the Film if already created by the Delivery Date);
 - (iii) one Digibeta PAL copy of the Film

- (b) Disability Access Materials
 - (i) subtitle file (to include dialogue and sound effects of the Film suitable for use for captioning/subtitling purposes for the hearing impaired) and audio description track (for the visually impaired) in appropriate form on two CD Roms or DVDs;
 - (ii) one 35mm release print of the Film incorporating lasered (hard) subtitles in English for the hearing impaired and accompanying subtitle file in appropriate format;
 - (iii) conversion to 25 (twenty-five) fps of the subtitle file and audio-description track referred to above to be delivered on two copies in an appropriate format for use on the DVD of the Film;
 - (iv) dub of the audio-description track referred above to be delivered on 2 (two) copies of an appropriate format for use on the DVD;

(unless the film has been produced in a foreign language in which case (b) i-iv will not be required).

- (c) Publicity Materials
 - (i) two copies of the poster for the Film (when available);
 - (ii) one electronic press kit for the Film (when available) including biographies of Principal Cast, Individual Producer(s), Director, Writer(s) and key crew, production information, interviews with actors and other persons connected with the Film, feature stories and news releases;
 - (iii) ten colour prints and/or digital stills (300 dpi Jpegs) from the Film (which must be labelled clearly to indicate the name of the Film, the names of the actors who appear in each shot and the characters they play and what the shot depicts);
 - (iv) when available the Film soundtrack on CD.

- (d) Documents
 - (i) two copies of the shooting script, one for deposit at the National Library of Scotland for archive preservation and one to be used for educational purposes through the Shiach Library;
 - (ii) evidence of payment to the Skills Investment Fund;
 - (iii) one certified audited cost statement in respect of the Scottish Production Spend Terms – by an independent accountant approved by the Scottish Screen;
 - (iv) one certified final audited cost statement for the Film and certified as accurate; and

(v) a fully completed Monitoring & Evaluation Form in a form supplied by Scottish Screen.
and such other materials as Scottish Screen may reasonably require from time to time.

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.