OFFER LETTER

DATE

Distributor Name
Address

SUBJECT TO CONTRACT

Dear [Individual Distributor name(s)]

RE: “Title” – SS Project Number [ ]

We are pleased to confirm the offer by Scottish Screen (“SS”), subject to contract, on the basis of your application for National Lottery Funding, of an award up to a maximum of £XXX [amount in words] to invest in the distribution of “[film/project name]” (“the Film”) on Scottish Screen’s Specific Terms of Business for Distribution (“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 an Investment Agreement (“the Investment Agreement”).

1. Main Elements

Distribution Company:
Key Personnel:
Budget:
Marketing Plan:
Evidence of P&A investment:
Details of EPK or equivalent:
Project Schedule:
Delivery Formats:
Evidence of Rights or control:

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 an 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 £XXXX

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

The Distributor acknowledges that it is a condition of investment that the Distributor shall use his/her best endeavours to secure as wide as possible Scottish release for the Film on terms acceptable to SS.

4. Special Conditions to this Offer of Award

5. Recoupment

From the Net Receipts, the Distributor shall be entitled to recoup deferrals (if any and subject to prior written approval by SS) prior to any split of proceeds from distribution income. SS shall be entitled to share net proceeds from all Distribution income pro rata to the level of their investment.

6. Conditions Precedent

This offer is subject to SS approval of:

(i) Memorandum & Articles of Association;
(ii) Marketing Plan;
(iii) Budget detailing specific costs and overhead;
(iv) Evidence of all rights held by or controlled through the Distributor (to include as a minimum requirement UK theatrical rights) together with all related agreements;
(v) Distribution Agreement;
(vi) The Film will be capable of qualification as a British film (under the Films Act 1985 (as amended) or capable of qualifying as a specialised film as detailed on our website.

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 distribution of the Film. At such time the offer will be extended by a minimum 3 months or a maximum 6 months

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

We are delighted to be working with you on this Film. 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 our Business Affairs Department will draft an Investment Agreement. If you have any queries, please do not hesitate to contact us.

Yours sincerely

Head of Business Affairs

Agreed by

.............................................  .............................................
X                                      
For and on behalf of 
Distributor

Dated
Scottish Screen
Specific Terms of Business – Market Development (Distribution)

These Specific Terms of Business (“Specific Terms”) form part of, and should be read in conjunction with the offer letter (“Offer Letter”) and Standard Conditions of Scottish Screen Investment (“Standard Conditions”) 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 detailed in the Offer Letter.

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

3. Other Finance
The Distributor shall procure the provision of all other finance required to distribute the Film. Scottish Screen shall have approval over the terms for the distribution of the Film.

4. Approvals
Scottish Screen will have approval rights over all key finance and distribution elements including (without limitation) the Main Elements (as set out in the Offer Letter).

Notwithstanding the above, the Distributor may be required to carry out all changes which Scottish Screen may reasonably require in order for the Film to meet the requirements of 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. The cost of any such changes shall be borne by the Distributor from the Budget and shall be undertaken within the time constraints of the Scottish Screen approved schedule.

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

6. Conditions Precedent
The conditions precedent to the Scottish Screen funding are set out in the Offer Letter.

7. Press Releases
The Distributor shall not issue any press release nor make any public announcements regarding the Distributor 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 Distributor or Scottish Screen’s involvement in this transaction without the prior written approval of the Distributor.
8. Delivery
Scottish Screen Delivery items will include but not be limited to the following:
- Bi-Monthly update reports on progress prior to the UK theatric release of the Film;
- Bi-monthly report showing expenditure against agreed budget and any variances with narrative overview;
- A copy of all publicity material made in connection with this Award to include, Posters, trailer, press releases and press cuttings.
12 weeks following the UK theatric release of the Film:
- Final audited cost report to include evidence of settlement of all third party invoices (providing copies of invoices if required);

9. Underspend
Scottish Screen reserve the right to reduce the award if the Budget for P & A is not met.

10. Credits
Scottish Screen will receive the following credits in respect of the Film:

The Scottish Screen Lottery Funded credit and logo shall appear at the start of the Film (as appropriate) and in all advertising and Publicity Packs in relation to the distribution of the Film.

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

11. Confidentiality
The Distributor 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 Distributor 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 Distributor 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 Distributor prior to making its decision. The Distributor accepts and acknowledges that the decision on disclosure rests solely with Scottish Screen.

12. 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 Distributor will be notified in writing (which will specify the renewal period). If the offer is not renewed or the Investment Agreement is not executed within the Offer Period the offer will lapse and the Distributor will be notified in writing to that effect.

13. Documentation for the Investment Agreement
Scottish Screen requires the following documentation and information:
(i) Memorandum & Articles of Association;
(ii) Budget;
(iii) Delivery Formats;
(iv) Distributors deal memos and distribution agreements including P&A commitments (if applicable);
(v) Details of all holdbacks in relation to the Film ie; DVD, TV broadcast etc;
(vi) Underlying rights documents (evidencing a clear chain of rights for distribution to the Distributor which must include UK theatric rights);
(vii) Detailed distribution schedule for the Film;
(viii) Marketing Plan.

14. Monitoring and Evaluation
The Distributor 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 Film to be completed and delivered to Scottish Screen as part of Delivery (under the Investment Agreement and then again at 6, 12 and 24 months following Delivery).

15. Scottish Screen’s Obligations
Until the Investment Agreement is executed and all Conditions Precedent have been satisfied, Scottish Screen shall have no obligation to provide any investment for distribution of the Film and Scottish Screen cannot accept any liability for any costs the Distributor 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 funding strand. Please note that we may also add specific 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 Film 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 Investment 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 awards 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 brought 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.