

Template Offer Letter and Standard Terms of Business For Market Development Fund

OFFER LETTER

DATE

Applicant Name
Company Name
Address
Letter of Offer

SUBJECT TO CONTRACT

Dear [Company name(s)]

RE: Project Title and 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 up to a maximum of £XXX [amount in words Sterling] to invest in the Market Development Initiative presently titled "XXXXXX" ("the Initiative") on the terms and special conditions set out below and the Standard Conditions of SS Investment ("Standard Conditions") attached hereto and included herein by reference subject always to the execution of an investment agreement with SS ("the Investment Agreement").

1. Main Elements

Applicant Organisation ("the Company"):

Key Personnel:

Project Budget:

Plan for the Initiative:

Evidence of co-investment:

Publicity materials:

Initiative Schedule:

Delivery Formats (if applicable):

Evidence of Rights or permission from rights holder (if applicable):

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

2. SS Funding

£XXXX (amount in words Sterling) by way of an investment ("the SS Investment") in accordance with a cashflow schedule to be determined by SS.

3. Other Finance (Subject to paragraph 2 above)

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

The Company acknowledges that it is a condition of the SS Investment that the Company will be responsible for

- Encouraging exploration of the social issues of disability, cultural/ethnic diversity and social exclusion through the content and range of individual projects;
- Monitoring the Initiative to ensure that the process is effectively managed;
- Providing SS with specified contracted delivery requirements at such time as agreed;
- Devising and implementing an innovative and effective plan for the Initiative to ensure that content reaches as wide an audience as possible, particularly in Scotland;
- Working with and reporting to SS. Preparing regular reports on the status of all elements of the Initiative including planning, launch, training, content and projects and promotion of selected talent;
- Preparing a thorough final appraisal report on the Initiative, as per the Investment Agreement;
- Seeking feedback from the appropriate industry stakeholders about the effectiveness of the Initiative, and detailing findings in the final appraisal report;
- Contributing to any events arranged by SS to support and promote Scotland's moving image culture;
- Representing SS and the wider Scottish screen industries in such a way as not to bring either into disrepute

4. Specific Conditions

5. Recoupment of Distribution Income

From the Net Receipts, companies receiving investment to support the UK theatrical release of a film 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 and SS shall be entitled to share net proceeds from all distribution income to the level of their investment.

6. Conditions Precedent

This offer is subject to

- SS approval of Memorandum and Articles of Association of the Company;
- SS approval of Budget, Schedule and Cashflow for the Initiative;
- SS approval of the financing structure and all agreements relating thereto;
- SS approval of bank account and related documentation;

- Evidence of rights held by the company, together with all related documentation, or evidence of permission to promote and screen the film(s) (if applicable);
- Completion of all financing agreements;
- Appropriate insurances approved by SS (if applicable);
- SS approval of project specific costs and overheads;
- Related films being capable of qualification as a British film (under the Films Act 1985 (as amended) or capable of qualifying as a specialised film as outlined on the Scottish Screen website.

7. Press Release / Public Announcements

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

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

SS's announcement of their Offer of Investment does not place SS 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.

8. Bank Account

For awards of up to £14,999, the Company is required to set up a designated bank account specifically to be used for this Initiative which will require a bank no right of set off letter. For awards of £15,000 or over SS will require the Company to set up a trust account naming SS, over which SS will have approval of authorised signatories to the account.

9. 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. 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 and the Standard Terms, 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 to me the attached duplicate letter and Documentation Checklist.

Once we have received all the required documents and information (set out in the Standard Terms of Business), our Business Affairs Department will draft a long form Investment Agreement. If you have any queries, please contact Business Affairs or Market Development.

Yours sincerely

Linda McClure
Head of Business Affairs

Agreed by

.....
X
For and on behalf of
Company

.....
Dated

**Scottish Screen
Market Development Investment
Standard Terms of Business**

These Standard Terms of Business ("Standard Terms") form part of, and should be read in conjunction with any offer letter ("Offer Letter") issued by SS.

1. You must use the SS 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 SS.

SS shall have approval over all Main Elements as described in the offer letter. Approval to be given in writing and there shall be no changes to any Main Element without Scottish Screen's prior written approval.

2. The SS Investment shall be advanced by way of an [equity] investment in accordance with a SS approved Cashflow Schedule.

3. If there is an underspend on the project/activity you must return the appropriate share of the Investment to Scottish Screen.

4. SS will have approval rights over all key finance and project elements including (without limitation) the Main Elements (as set out in the offer letter).

Notwithstanding the above, the Company may be required to carry out all changes which SS may reasonably require in order for the Film(s) 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(s) or to conform to legal advice received by Scottish Screen. The cost of any such changes shall be borne by the Company from the Budget and shall be undertaken within the time constraints of the SS approved schedule.

5. SS shall recoup the SS Investment in accordance with the terms of the Offer Letter.

6. The conditions precedent to the SS Investment are set out in the Offer Letter.

7. SS Delivery items will be as set out in the Investment Agreement.

8. SS will receive the following credits in respect of the Project:-

The SS Lottery Funded credit and logo shall appear in all advertising and publicity material in relation to the project.

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



LOTTERY FUNDED

9. The Company 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 Company shall not disclose to any third party or make public the Confidential Information without SS's prior consent.

SS 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 SS that it believes the information should be considered exempt from disclosure under that Act, and a request to SS is subsequently made for disclosure of some or all of that information, SS will endeavour to discuss such disclosure with the Company prior to making its decision. The Producer accepts and acknowledges that the decision on disclosure rests solely with SS.

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

11. SS's offer of investment is subject to review. The Offer Letter sets out the review period. If after review, the offer is renewed, the Company 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 Company will be notified in writing to that effect.

12. SS requires the following documentation and information:

- (i) Budget
- (ii) Delivery Formats (if applicable)
- (iii) Distributors deal memos and distribution agreements including P&A commitments (if applicable)
- (iv) Details of all holdbacks in relation to the Film ie: DVD, TV broadcast etc. (if applicable)
- (v) Underlying rights documents (evidencing a clear chain of rights for distribution, or permission to promote and screen the film, to the Company),
- (vi) Details of transport, storage and useage insurances

- (vii) Detailed project schedule
- (viii) Laboratory/facilities house agreements (if applicable)
- (ix) Certificate of incorporation of Company

13. You will be required to supply SS with regular progress reports as required and with any further financial or other information that may be deemed necessary by SS to monitor the SS Investment expenditure.

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

14. Until the Investment Agreement is executed and all Conditions Precedent have been satisfied, SS shall have no obligation to provide any funding for the Initiative and SS cannot accept any liability for any costs the Company incurs.

15. The SS Investment may have to be repaid in full or in part if any of the SS Investment conditions are breached.

16. If there is a material change of purpose, ownership or organisation structure during the life of the project then SS reserves the right to reconsider the application and you may be required to repay the SS Investment.

17. In addition to the above, and subject to the provisos below, the SS 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 SS Investment to SS's satisfaction);
- (ii) your organisation closes down or is declared bankrupt, goes into receivership or liquidation;
- (iii) you fail to apply the SS 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 SS it has a material effect on the project or activity;

18. SS can only guarantee to pay you the SS Investment if SS continues to receive funds for this purpose;

19. If you overspend on the project/activity, you must let SS know immediately. SS 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 SS.

20. You cannot sell or give away assets which you bought with the Investment without the written permission of SS. If you sell these assets, you must pay SS an appropriate share of the money you receive for them.

21. SS must have prior written approval of any mortgages or charges over the project/activity.