

Finder/Executive Producer Agreement

The increase in international co-productions and co-financing has resulted in many film and television producers utilizing the services of individuals to help fill deficits in their production budgets. Finders, or executive producers are usually ex-distribution or broadcasting executives who are well connected in the film and television industry.

Producers will pay the finder a fee which is negotiable but is usually between 5 and 10 per cent of the money raised by the finder. In addition, the finder will require an executive producer or other similar credit. The following agreement is only a guide and should be drafted to suit the particular needs of the producer and the specific circumstances of the transaction.

FINDER/EXECUTIVE PRODUCER AGREEMENT

THIS AGREEMENT is made the day of [year]

BETWEEN:

(‘The Producer’) whose registered office is at [] and Finder of [] (‘the Finder’)

Whereas the Producer owns, controls or otherwise has the exclusive right to produce a [feature film] [television film] [television series] provisionally entitled [] (hereafter referred to as ‘the Film’) based upon a screenplay written by []

Whereas the Finder is engaged in financing and seeking finance in the film and television industry.

Whereas the parties to this agreement wish to enter into an agreement whereby the Finder will introduce the Producer to third parties who may be interested in lending for, investing in, or in any other way financing all or a portion of the [development] [production] [distribution] [exploitation] of the Film and who hereinafter shall collectively be referred to as ‘the Financier’ or ‘Financiers’.

The parties hereby agree as follows:

1 TERM AND SERVICES

- (a) Commencing on the date hereof and continuing until terminated by either party as provided in this agreement, the Finder shall use its best efforts on an [exclusive basis] in [territory] on a [non-exclusive basis] in [territory] to introduce the Financiers who may be interested in co-producing, financing, investing or lending money (either their own or that of third parties) to the Producer in connection with the Film. The term of this agreement shall continue for a period of [] automatically renewable for a further period of [] unless one party notifies the other in writing of their election to terminate this agreement by giving no less than thirty (30) days’ written notice of that fact, but in any event the term shall automatically terminate on the [date].

2 CONSULTATION

- (a) During the term of this agreement the Finder and Producer shall consult with each other in respect of the creative elements of the Film for the purposes of maximizing the opportunity of the Finder to interest Financiers in the Film.
- (b) The Finder shall keep the Producer fully informed of all parties contacted and all negotiations carried out with any and all Financiers and the Finder shall in no event enter into any agreements that in any way binds the Producer or do or refrain from doing any act without the prior written consent of the Producer.
- (c) The Producer shall keep the Finder fully informed of all parties contacted by the Producer and/or any third parties acting on its behalf together with all relevant terms of negotiations made by them in connection with the financing of the Film.

3 REMUNERATION

- (a) If at any time during the term of this agreement or at any time thereafter the Producer enters into any agreement with any Financier or Financiers introduced by the Finder [to invest in], [lend for] or [finance the development], [production] [distribution] or [exploitation] of the Film, the Finder shall be entitled to remuneration in the amount equal to [five per cent (5%)] of the total amount committed to the Film by such Financier or Financiers.
- (b) In the event that any of the contributions made by any Financier is of a technical nature or is provided as production services to the Film, the Finder shall be entitled to remuneration in the amount equivalent to [two per cent (2%)] of the total cash value committed to the Film in the above mentioned form.

- (c) The Producer hereby agrees that the Finder's compensation shall be paid [no later than five (5) working days following the receipt of any and all sums by the Producer]. [On the first day of principal photography of the Film.]

4 EXPENSES

The Finder hereby acknowledges that the services being provided to the Producer are on a contingency basis and the Finder shall not be entitled to any expenses for these services unless such expenses are agreed between the Producer and Finder in writing.

5 CREDIT

In the event that the Finder obtains [per cent (%) or more of the total financing needed to produce the Film] [agreed amount or presale] the Finder shall receive an [Executive, determine type of credit] and the size, position and design of such credit shall be at the Producer's sole discretion.

6 CONFIDENTIALITY

The Producer hereby agrees and undertakes to maintain the confidentiality of any Financier or Financiers introduced by the Finder in respect of the Film and the Finder agrees in good faith to maintain the confidentiality of any information acquired from the Producer in relation to the Film and by virtue of this agreement.

7 NO OBLIGATION

- (a) Nothing in this agreement shall oblige the Finder to obtain any Financier or Financiers nor shall anything in this agreement oblige the Producer to enter into an agreement or agreements with any Financier or Financiers introduced by the Finder.
- (b) The Finder hereby agrees not to sell or offer to sell any form of securities relating to and vesting in the development, production and/or exploitation of the Film.

8 WARRANTIES AND REPRESENTATIONS

- (a) The Producer hereby represents and warrants that it is the sole and exclusive owner of the rights in the Film and are fully authorized to enter into this agreement and will remain so for the full term of this agreement.
- (b) The Finder hereby warrants and represents that it is entitled to enter into this agreement.

9 INDEMNITIES

Each party to this agreement hereby indemnifies and agrees to keep the other party fully and effectually indemnified from and against any and all losses, costs, actions, proceedings, claims, damages, expenses (including reasonable legal costs and expenses) or liabilities suffered or incurred directly or indirectly by each party in consequence of any breach, non-performance or non-observance by the other of any of the agreements, conditions, obligations, representations, warranties and undertakings on the part of each party contained in this agreement.

10 RELATIONSHIP BETWEEN THE PARTIES

- (a) The Finder is an independent contractor and shall not act as an employee, agent or joint venturer of the Producer and nothing in this agreement is intended to or shall be deemed to constitute a partnership between the parties.
- (b) The Finder is authorized by the Producer to represent the Producer in respect of the Film in negotiations with third parties subject to the final decision of the Producer.
- (c) The parties to this agreement shall each be entitled to develop other projects and engage in other activities within the Film and television industries separate and apart from the Film.

11 ASSIGNMENT

This agreement is personal to the Producer and Finder and shall not be assigned in whole or in part without the prior written consent of each party.

12 ADDITIONAL DOCUMENTS

Each of the parties to this agreement agrees to execute any additional documents which may be required to fully effectuate the purposes and intents of this agreement or to carry out the obligations of the parties hereunder provided that they are consistent with the provisions of this agreement.

13 ENTIRE AGREEMENT

This agreement constitutes the entire agreement between the parties and may only be varied by written instrument signed by either party to this agreement.

14 NOTICES

All notices required or desired to be given under the provisions of this agreement shall be in writing and shall be deemed to have been duly served if hand delivered or sent by facsimile or pre-paid first class post addressed to the relevant parties addressed herein as stated or as otherwise advised from time to time.

15 GOVERNING LAW

This agreement shall be read and construed in all aspects in accordance with and shall be governed by the Laws of [England] and the parties hereby submit to the exclusive jurisdiction of the [English] Courts.

16 GENERAL PROVISIONS

- (a) The parties hereby agree that they shall not incur any debts or obligations in respect of the other and nothing in this agreement is intended or should be construed so as to give any right or benefit to any third party as against either or both the Finder and/or the Producer.
- (b) The clause headings in this agreement are for convenience only and do not form part of this agreement.
- (c) Each party to this agreement hereby acknowledges that no representation or warranty not expressly set forth in this agreement has been made to the other party and this agreement constitutes the entire agreement of the parties regarding the subject matter hereof and supersedes all prior agreements either oral or written.

IN WITNESS WHEREOF the parties have executed this agreement on the date set forth above

SIGNED by
For and on behalf of
the Producer
in the presence of:

SIGNED by
For and on behalf of
the Finder
in the presence of:

FINDER/EXECUTIVE PRODUCER AGREEMENT: NOTES

PREAMBLE

Producers should clearly set out the type of project which the finder will be working on. The producer should state whether the finder will introduce them to third parties who will either lend money, invest money or provide facilities to the production.

Producers should be aware that some individuals will invest in a production by lending their post-production facilities in return for a stake in the production. Therefore, it is essential that this is clarified in the preamble of the agreement.

1 TERM AND SERVICES

Producers should state whether the finder's services are on an exclusive or non-exclusive basis and whether the finder's efforts are restricted to a specific territory. For example, if an English film producer wishes to enter into a three-country co-production and already has a French partner then it does not make any sense to engage a finder who wishes to bring French money into the production.

The actual term of the agreement should be quite specific. Most producers tend to set up the agreement for periods of three to six months. Even though the term of the agreement ends, if the producer enters into an agreement with one of the finder's contacts, the producer will still be liable for commission or payments to the finder.

2 CONSULTATION

Both the producer and the finder should ensure that a free-flow of information regarding potential contacts, meetings, be disclosed to each other. It can be embarrassing if the producer takes a project to a potential financier only to discover that the finder has already taken the project to that individual on the producer's behalf.

3 REMUNERATION

- (a) Although payments are usually negotiable, it is the industry's standard to pay a finder 5 per cent of the total amount committed and collected by the producer as a result of the finder's efforts.
- (b) See above note regarding payment for production/post-production facilities. Sometimes, a finder will bring products and services such as transport or flights to a production and may require some form of payment in return.
- (c) Producers should be aware that from the finder's point of view, the finder will usually set out exactly how and when he/she is to be paid. Sometimes, the finder will even set out his bank's sort code and account number for payment.

4 EXPENSES

Producers should clearly set out whether the finder will be paid expenses. Sometimes, the producer will agree to pay for the finder's flights and accommodation, if they travel to see one of their contacts. There is no industry standard and this should be subject to negotiations between the producer and finder. One should not agree to pay the finder any expenses unless agreed in advance.

5 CREDIT

Credits can sometimes be a contentious issue and therefore must be agreed prior to commencement of any of the finder's services. Forms of credit such as executive producer, co-

executive producer, co-production executive, and associate producer are quite common when engaging a finder. Sometimes, other financiers already involved with the production will not accept another credit for a finder. Producers should be aware of this and ensure that the existing financial partners consent before agreeing to an additional credit.

6 CONFIDENTIALITY

Finders may wish to protect their contacts and therefore will ask for a confidentiality clause. From a producer's perspective, they should also ask for a confidentiality clause, since the finder may discover certain aspects about the producer's business and the producer will not want these disclosed.

7 NO OBLIGATION

Producers should set out in the agreement that they will not necessarily enter into an agreement with any financier or source of finance which the finder has introduced them to. In most agreements, the finder will also state that they are not obliged to find a financier for the producer. The producer should ensure that the finder does not have the right to sell securities such as shares on an investment market in relation to the film. It is possible that a producer could engage a finder and that finder could set up some scheme on a stock exchange to raise funds for the producer. Raising funds on a public market can be very expensive and there are specific disclosure requirements that must be complied with.

8 WARRANTIES AND REPRESENTATIONS

This is an area where specific legal advice may be necessary. Most warranties and representations are fairly standard (see earlier chapters).

9 INDEMNITIES

Producers should be aware that when utilizing finders, there is always a danger of the finder entering into some unauthorized transaction in the name of the producer without the producer's consent. Therefore, it is essential that the producer obtain an indemnity from the finder.

10 RELATIONSHIP BETWEEN THE PARTIES

A statement to the effect that the finder is an independent contractor is essential in this agreement. Producers should also restrict the agreement to a particular project and not to other projects which the producer may have in development.

12 ADDITIONAL DOCUMENTS

Producers should be aware that from the finder's perspective that this clause is a necessity. The finder will want to ensure that the producer signs further agreements in order that the finder will be paid.