# ARF/FDS GARP SFP

Association of Film Directors Authors’, Directors’, Producers’ Swiss Association

and Scriptwriters Switzerland Group of Film Producers

# IG SUISSIMAGE

Independent Swiss Swiss Authors' Rights Cooperative for

Film Producers Audiovisual Works

This model contract is recommended by the organisations mentioned above. You may, of course, amend the contract as required. If you do, however, make amendments to the model contract which go beyond any proposed modifications or selection of variations, you may no longer list the above-mentioned organisations on the contract.

## Model contract for scriptwriters (Screenplay/Script-writing agreement)

Between

member of the collective management organisation:

hereinafter referred to as “Scriptwriter”,

and

hereinafter referred to as “Producer”.

1. **Subject matter of the contract**

1.1.

The Producer intends to create and develop a script which is intended for the production of a cinematographic work. The idea for this comes from ..............................

1.2.

The Scriptwriter undertakes to create the work described hereinafter and within the scope of item 3 assign the right to the Producer to use this work for the creation of a cinematographic work.

1.3.

The Producer undertakes to pay the Scriptwriter the compensation for this as agreed in the following.

1. **Work and delivery**

2.1.

The Scriptwriter creates the following work:

.......................................................................................................................(working title),

based on the following foundation: ............................................................................................................................................

....................................................................................................................................

2.2.

When it comes to creating the work, the Scriptwriter must adhere to the following framework conditions (content, genre, scope, playing time, budget etc.; please refer to a separate description, where applicable):

...........................................................................................................................................

.....................................................................................................................................

2.3.

The Scriptwriter delivers the work to the Producer in stages by the following dates (*please delete inapplicable stages, add further drafts*):

1. synopsis/exposé by ............................................................(date)
2. treatment by .....................................................................(date)
3. scene sequence by...............................................................(date)
4. first draft of the script by ...........................................................(date)
5. second draft of the script by........................................................(date)
6. ........................................................................(any further stages)
7. shooting script by ..............................................................(date)

2.4.

The Scriptwriter undertakes to revise the work in individual points after delivery of the respective drafts at the Producer’s request, insofar as this is reasonable. The Producer must communicate the respective requests for revision to the Scriptwriter within ..... days after delivery at the latest and must grant a period of at least ........... days.

2.5. *(Please delete inapplicable variations)*

*Variation 1:*

Changes to the delivered work that go beyond the agreed content-related framework conditions, are only possible with the consent of the Scriptwriter and the Scriptwriter is entitled to make these changes her/himself. The Scriptwriter is entitled to additional compensation for this work.

The Scriptwriter and the Producer may, instead and by mutual consent, involve a cCo-scriptwriter.

*Variation 2:*

The Producer is entitled to rewrite the work involving a Co-scriptwriter. The Scriptwriter has a right of co-determination regarding the choice of the Co-scriptwriter. The Parties shall agree on the nature and scope of any further cooperation and the payment of financial entitlements of the Scriptwriter pursuant to item 4.

*Alternative 3:*

The Producer is entitled to rewrite all versions and to create new versions with the involvement of additional scriptwriters. The Producer is also entitled to decide after each of the stages mentioned in item 2.3 respectively after each version whether to continue the cooperation with the Scriptwriter. The Scriptwriter is to be presented with the edited work; the decision whether his/her name may continue to be used remains solely with her/him. She/he shall inform the Producer in writing. Financial entitlements of the Scriptwriter pursuant to item 4 shall be adjusted appropriately.

2.6.

The Producer may only refuse to accept the work if it has considerable qualitative defects or if the agreed framework conditions have not been met. In this case, the Scriptwriter must be given an adequate period to remedy the defect. A justified notice of defect must be given within 30 days of delivery of the work at the latest. After the expiry of this period, the work shall be deemed accepted.

2.7.

The Scriptwriter shall reach an agreement with the Co-scriptwriter on the split of the copyright remuneration. In the absence of an agreement, the rules of the collective management organisations in charge shall apply.

1. **Rights in the work**

3.1.

The Scriptwriter warrants to the Producer that she/he holds all rights to the work to be created. The Scriptwriter indemnifies the Producer against any third-party claims regarding the rights in the script which could be raised in the event of the work being used in accordance with the contract.

3.2.

Insofar as the work is based on a pre-existing work, it is the Producer’s responsibility to have the rights required for the creation of a derivative work assigned to her/him by the rightsholders. This also applies if the Producer involves a Co-scriptwriter for the creation of the work.

3.3.

When creating the cinematographic work, the Producer is entitled to edit the script to the extent required by the special features of an audiovisual work. In particular, the title of the cinematographic work does not have to correspond to the title of the script. However, the message and character of the work must not be impaired in the process. If possible, any editing should be carried out with the consent of the Scriptwriter.

3.4.

The Parties agree that: *(Please delete inapplicable option/s)*

1. The direction of the film will be transferred to .................................................
2. The Producer is free to choose the director.
3. ......................................................................................................................

3.5.

With regard to her/his rights contained in the cinematographic work, the Scriptwriter assigns to the Producer the exclusive right, unlimited in time and space, under preservation of the moral rights and subject to the rights and/or remuneration rights assigned to a collective management organisation:

1. to publish the work (script) to be created by her/him, to produce a cinematographic work from it, as well as to translate and reproduce the script for this purpose;
2. to edit the cinematographic work (production of versions);
3. to translate the cinematographic work from the original language by means of dubbing or subtitling;
4. to reproduce the cinematographic work on audiovisual recordings or data carriers of any kind;
5. to offer, sell or otherwise distribute the cinematographic work;
6. to perform, present or otherwise make available the cinematographic work, directly or by any means, in such a way that persons have access to it from places and at times of their choice;
7. to broadcast and retransmit the cinematographic work by television or similar means and to make the broadcast production perceptible;
8. to use the characters, images etc. contained in the cinematographic work for merchandising purposes;
9. to incorporate the cinematographic work into a multimedia product and to market such product;
10. to use parts of the cinematographic work for the production of a cinematographic documentation of the making and realisation of the cinematographic work (“making of”) and the exploitation for bonus material on audiovisual recordings or carriers or in video-on-demand and for advertising and public relations.

3.6. *(Please delete the inapplicable variation)*

*Variation 1:*

The rights to publish and exploit accompanying publications to the film (e.g. book to the film) using copyrighted parts or elements of the work as well as to produce, publicly perform, broadcast, make available, reproduce and distribute stage plays, plays, radio plays and audio books on the basis of the work and the production shall remain with the Scriptwriter.

*Variation 2:*

The Scriptwriter assigns to the Producer for the duration of...... the geographically unlimited, exclusive right,

a. to publish and exploit accompanying publications to the film (e.g. book to the film) using copyrighted parts or elements of the work (cf. item 4.4);

b. to produce, publicly perform, broadcast, make available, reproduce and distribute stage plays, plays, radio plays and audio books on the basis of the work (cf. item 4.4.).

3.7. *(Please delete the inapplicable variation)*

*Variation 1:*

The right to create a “remake”, subsequent films (“sequel/prequel”), “spin offs” or TV series after the cinematographic work has been published shall remain with the Scriptwriter.

*Variation 2:*

The Scriptwriter assigns to the Producer for the duration of ..... the geographically unlimited, exclusive right, to create a “remake”, subsequent films (“sequel/prequel”), “spin offs” or TV series or to sell the right to third parties (cf. item 4.5).

3.8.

In other respects, the rights in the work shall remain with the Scriptwriter.

3.9.

The Producer is not obliged to exercise the rights assigned to her/him under this contract. If the Producer has, however, not made use of the right to use the work for the creation of an audiovisual work (cinematographic work) within ..... years after delivery of the final version to the extent that filming has begun, all rights assigned with this contract for both Parties shall revert to the Scriptwriter without compensation.

The Producer is entitled to extend this period to a maximum of ..... years. If she/he wishes to make use of this right, she/he has to notify the Scriptwriter in writing prior to the expiry of the above-mentioned period. In this case, the Producer shall owe the Scriptwriter an additional compensation amounting to .... of the original compensation per extension year pursuant to item 4.1.

3.10.

In the opening and/or closing credits of the film, the first name and last name of the Scriptwriter are mentioned in the same way as the director. Whenever further artistic contributors are mentioned on printed or electronic promotional material in addition to the directors and the main actors, the Scriptwriter must also be mentioned in line with the above rules. Each printed or electronic press kit shall contain the CV of the Scriptwriter.

3.11.

If the compensation owed pursuant to item 4.1 has not been paid despite written notice within a year after the given period, all rights that have been assigned under this contract shall revert to the Scriptwriter. In case there is a lack of agreement when it comes to the adoption of the final version, the running of this period shall be suspended until final adoption. The period shall also be suspended in case of a mediation procedure pursuant to item 5.5 regarding the acceptance of the script.

3.12.

The Producer is entitled to assign her/his rights, in whole or in part, to third parties, or to have them exercised by third parties. She/he shall also be entitled to assign her/his rights and entitlements arising from this contract in their entirety to another entity. The Producer shall notify the Scriptwriter in writing of any such assignment. The Producer remains jointly and severally liable to the Scriptwriter for the performance under this contract.

1. **Compensation**

4.1.

The Producer undertakes to pay the Scriptwriter a fee of

CHF................. .

The Scriptwriter declares that she/he pays her/his social security contributions independently. The Scriptwriter undertakes to provide the Producer with a corresponding confirmation of the social compensation fund in charge for the activity in question. The Producer may withhold a salary amounting to the statutory social security deductions (employee and employer contributions) until this confirmation has been produced.

Said fee will be due for payment as follows *(the stages should be analogous to item 2.3):*

1. on conclusion of the contract: CHF
2. on delivery of the synopsis: CHF
3. on delivery of the treatment: CHF
4. on delivery of the scene sequence CHF
5. on delivery of the first version: CHF
6. on delivery of the second version: CHF
7. on acceptance of the shooting script: CHF ..............................

In addition to the fee owed, the Scriptwriter shall receive % respectively CHF of the paid out fee when filming begins.

The Scriptwriter shall also be reimbursed for the following expenses:

............................................................................................................................................

....................................................................................................................................

With the payment of this fee, all rights assigned as mentioned in item 3 of the contract shall be deemed settled, subject to the following provision:

4.2.

The Scriptwriter shall receive the amount of CHF ............... from her/his Succès Cinéma credit from the Federal Office of Culture (film section).

4.3.

The Scriptwriter shall also be entitled to the royalties collected by the collective management organisations (SUISSIMAGE, ProLitteris, SSA etc.) provided that the Scriptwriter is entitled to them on the basis of the respective membership agreements and distribution regulations.

In the case of television sales in Switzerland/Liechtenstein, France, Belgium, Bulgaria, Estonia, Canada, Italy, Latvia, Luxembourg, Monaco, Spain, Poland and Argentina, the Producer shall make the corresponding reservation (so-called “reservation clause” or “clause de réserve”) with regard to the broadcasting rights to be settled via the collective management organisations, if necessary.

The same applies when the work is made available on a video-on-demand service (VOD) in countries where it is customary to remunerate these rights through collective management organisations.

4.4.

In the case of exploitation proceeds pursuant to item 3.6. (accompanying publications, stage plays, plays, radio plays and audio books), the Scriptwriter is entitled to receive ......% of the net amounts.

4.5.

If the Producer creates a “remake”, subsequent films (“sequel/prequel”), “spin-off” or TV series after the release of the film work in accordance with item 3.7, the Scriptwriter shall be entitled to a share of ...% of the net amounts (pursuant to item 4.6) of the additional work, provided that she/he does not create the script her/himself.

If the Producer manages to sell the rights to third parties, the share for the Scriptwriter shall increase to .... % in total of the net proceeds from the sale of the rights pursuant to item 4.6.

4.6. *(Please delete inapplicable variations)*

*Variation 1:*

For all other exploitation proceeds, the Scriptwriter is entitled to a share of ........% of the net receipts. For the purposes of this provision, net proceeds shall be deemed to be the monies collected by the Producer, less:

1. the Producer’s stated costs for copying, subtitling and dubbing;
2. the Producer’s stated costs for transport, insurances, customs and fiscal charges;
3. the stated costs of the Producer, distributors, agents and world distributors for sales-related expenses, promotion and advertising;
4. the Producer’s stated costs for festival support;
5. the copyright royalties paid via a collective management organisation for the production.

If the Producer also acts as a sales agent, it may claim a sales commission of 25%.

*Variation 2:*

For all other exploitation proceeds, the Scriptwriter is entitled to a share of ...% of the net proceeds, insofar as the total net proceeds exceed the uncovered production cost share. For the purposes of this provision, net proceeds shall be deemed to be the monies collected by the Producer, less:

1. Participations by the following investors who shall be granted a contractual priority obligation of repayment:…………………………………………………………………………………………………………………………………
....................................................................................................................................
2. the Producer’s stated costs for copying, subtitling and dubbing;
3. the Producer’s stated costs for transport, insurances, customs and fiscal charges;
4. the stated costs of the Producer, distributors, agents and world distributors for sales-related expenses, promotion and advertising;
5. the Producer’s stated costs for festival support;
6. the copyright royalties paid via a collective management organisation for the production;

If the Producer also acts as a sales agent, it may claim a sales commission of 25%.

The Producer's reference funds (Succès Cinéma, Succès Passages Antenne) are not deductible vis-à-vis the Scriptwriter.

*Variation 3:*

The Scriptwriter is entitled to a bonus

a) of ..... CHF per cinema ticket in Switzerland which exceeds the number of ..... admissions, whereby the Procinema statistics are authoritative;

b) of .... CHF per cinema ticket in ....., which exceeds the number of ..... admissions;

c) of ..... CHF per sold work copy respectively download to own irrespective of the selected technical format, which exceeds the number of .... copies respectively downloads.

4.7.

If the Scriptwriter publishes a derivative work in book form on the basis of the script created within the framework of this contract, the Producer is entitled to .....% of the net proceeds. A publication is only possible after the cinematographic work has been released.

4.8.

Awards and prize monies which are expressly granted for the script shall be due to the Scriptwriter.

4.9.

At the end of each calendar year, the Producer shall draw up an account of the expenses and income generated by the exploitation of the cinematographic work. She/he shall send this account statement to the Scriptwriter without being requested to do so and shall transfer to the Scriptwriter any share of the proceeds due to her/him by the end of March of the following year at the latest. The Producer undertakes to keep proper accounts for the exploitation of the production and to grant the Scriptwriter or a trust agency instructed by her/him access to the books and receipts upon request.

If the inspection reveals that the accounting deviates by 5% or more from the share due to the Scriptwriter, the costs of the trust agency shall be borne by the Producer.

1. **Further provisions**

5.1.

The Parties mutually undertake to provide each other with the documents required to enforce the claims existing on the basis of this contract.

5.2.

Changes to this contract must be made in writing in order to be valid.

5.3.

The possible invalidity of a provision of this contract shall not affect the validity of the remaining contents of the contract.

5.4.

Th contract shall be governed by Swiss law. In the absence of any agreement to the contrary, the provisions of Article 363 ff. OR [Swiss Code of Obligations] on the contract for work and services shall be applicable.

5.5.

If disputes arise from this contract, the Parties agree to conduct mediation within the meaning of the Swiss Federal Code of Civil Procedure before taking recourse to the court.

5.6.

The exclusive place of jurisdiction for all disputes arising from this contract is ...................................... (as a rule, the registered office of the Producer).

|  |  |
| --- | --- |
| Scriptwriter  | Producer |
| Place and date |  |

*Suissimage, January 2023*