# 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 directors**

**(Directors’ contract)**

between

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

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

Member of the collective management organisation: .......................................................................................

hereinafter referred to as “Director”,

and

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

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

hereinafter referred to as “Producer”.

1. **Subject matter of the contract**

1.1.

The Director undertakes to manage the realisation of the cinematographic work described hereinafter and to assign the rights in this work listed below to the Producer.

1.2.

The Producer undertakes to pay the Director the remuneration for this as agreed in the following.

1.3.

Furthermore, the contract governs the exploitation of the work and the allocation of the revenues generated from it.

1. **Description of the production**

The Parties agree to produce the cinematographic work described hereinafter.

Title: ............................................................................................................... (working title)

Type: ...................................................... (e.g. documentary film, feature film, TV film, series etc.)

based on the book/script: .................................................................................................(title)

by: ......................................................................................................................................

Based on an idea/template by: .................................................................................................

Intended exploitation: .............................................................................................................

Format: ................................................................ (for the shooting and the main exploitation)

approximate length: ...............................................................................................................

Original version: ...................................................................................................................

Language version (where applicable) ................................................. (subtitling, dubbing version)

Approx. duration of the pre-production: ....................................................................................

Approx. duration of the shooting period: ...................................................................................

Budget: ...............................................................................................................................

Estimated date of completion: .................................................................................................

Script, scheduling and production budget shall form part of this contract and must be signed by both Parties as amended from time to time.

1. **Work performance of the director**

3.1.

The Director shall manage the realisation of the above-mentioned cinematographic work and takes artistic responsibility. This also includes the following activities:

1. organising the script for the definitive shooting template,
2. co-determining the selection of artistic personnel, actors and cinetechnicians,
3. decoupage of the script, setting the scene and selecting the shooting locations and contributing to the analysis of the set expenditure,
4. directing the actors and providing creative direction for the remaining personnel,
5. selecting the film score in agreement with the Producer,
6. directing the editing of the film, setting the light, any post-dubbing processes, the film score production and the final mix,
7. ....................................................................................................................................... .

Director and Producer mutually agree on the definitive film title.

3.2. *(Please delete the inapplicable variation)*

With regard to the realisation of the work, the Director must observe the framework conditions which arise from the script, the schedule for the preparation, shooting and post-production and the production budget. The Director must carry out the tasks assigned to her/him with due diligence and observe the interests of the Producer in good faith. She/he is obliged to follow the instructions of the Producer.

*Variation 1:*

Within these framework conditions, the Director has the artistic licence and determines the final version of the cinematographic work.

*Variation 2:*

Within these framework conditions, the Director has the artistic licence and determines the final version of the cinematographic work in agreement with the Producer. In the absence of an agreement, the Producer decides on the final version of the cinematographic work.

3.3.

The Director has knowledge of the employment conditions for the technical and artistic personnel under her/his authority. She/he undertakes not to issue any instructions that are in conflict with said employment conditions.

3.4.

The Director is obliged and entitled to contribute to the public relations for the cinematographic work. She/he must be present and mentioned by name at important press conferences and premières and important film festivals where the film is shown, respectively is entitled to do so.

Insofar as the Producer requests that the Director undertakes additional work for a better exploitation of the film, this shall be subject to a special remuneration.

3.5.

Names, texts and image representations which are deemed as direct or indirect advertising, can only be included in the cinematographic work upon mutual agreement.

3.6.

Employment starts on...................... and ends once the film has been completed.

3.7.

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 Director in writing of any such assignment. The Producer remains jointly and severally liable to the Director for the performance under this contract.

1. **Salary and social benefits**

4.1.

For her/his activities, the Director shall receive a salary of

a) CHF ......................... for preparation;

 CHF ..........................for shooting;

 CHF ..........................for post-production;

 CHF ..........................for public relations;

 CHF ..........................for ..............................

 and a holiday allowance of CHF ......................, that is a total of CHF ...................... .

*or else*

b) CHF ................................. gross per ................................. (time unit)

 and a holiday allowance of CHF ......................, that is a total of CHF ...................... .

The statutory social security contributions and, if applicable, withholding tax will be deducted from these amounts. Contributions to occupational benefit schemes depend on the regulations of the Vorsorgestiftung Film und Audiovision [Foundation for benefits in film and audiovision].

4.2.

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

4.3.

The Director will be insured by the Producer against any consequences of an occupational or non-occupational accidents. The premium for non-occupational accident insurance shall be at the expense of the Director.

The Producer assumes:

a) the statutory obligation to pay a salary in the event of illness

*or*

b) the insurance of the Director within the collective health insurance of the Producer

*or*

c) half of the premiums of the daily benefits insurance that the Director has concluded, and which must cover at least 80% of the loss of earnings.

*(Please decide for a, b or c and delete the other two variations.)*

If the inability to work induced by illness or accident lasts more than one day, the Director must provide a doctor’s certificate.

4.4.

The Director shall also be entitled to reimbursement of her/his actual expenses (e.g. travel and hotel costs, meals, equipment) against proof of cost.

4.5. *(Please delete the inapplicable variation)*

Salaries and supplements shall be paid out

a) monthly,

*or else*

b) when the contract is concluded: CHF ..............................

 when shooting starts: CHF ..............................

 when shooting ends: CHF ..............................

 when the final mix is completed: CHF ..............................

 when ................................. CHF ..............................

1. **Rights in the work**

5.1.

The Director assigns to the Producer the exclusive copyright arising for the Producer from her/his activities, unlimited in time and space, under preservation of the moral rights and subject to the rights and/or remuneration rights/compensation claims assigned to a collective management organisation. With regard to the cinematographic work realised under her/his direction (hereunder referred to as the “CW”) shall include the exclusive right, unlimited in time and space, to:

1. publish the CW,
2. to translate the CW from the original language by means of dubbing or subtitling;
3. to reproduce the CW on audiovisual recordings or data carriers of any kind;
4. to offer, sell or otherwise distribute the CW;
5. to perform, present or otherwise make available the CW, directly or by any means, in such a way that persons have access to it from places and at times of their choice;
6. to broadcast and retransmit the CW by television or similar means and to make the broadcast production perceptible;
7. to use excerpts from the cinematographic work;
8. to use the characters, images etc. contained in the cinematographic work for merchandising purposes;
9. to incorporate the CW into a multimedia product and to market such product;
10. to use parts of the CW 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;

5.2. *(Please delete the inapplicable variation)*

*Variation 1:*

The right 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 Director.

*Variation 2:*

The Director grants the Producer for the duration of…... the geographically unlimited, exclusive right 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 6.4.).

5.3. *(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 Director.

*Variation 2:*

The Director grants 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 6.5).

5.4.

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

5.5.

The Producer is entitled to make changes to the work with the consent of the Director, insofar as they are necessary with respect to the exploitation or for other substantial reasons. The message and character of the work must not be impaired in the process. The Director must not refuse her/his consent in breach of good faith.

5.6.

If the Director leaves her/his employment before the completion of the production or if it is impossible for her/him to continue her/his work within a reasonable period of time for reasons that lie in her/his person, the Producer is entitled to use the already existing parts of the production for the realisation of the film work under the direction of another director. If the Producer terminates the contract without good cause within the meaning of Article 337 OR [Swiss Code of Obligations], the rights pursuant to item 5.1 shall revert to the Director.

5.7.

The Producer is not obliged to exercise the rights assigned to her/him under this contract.

5.8.

The Director is entitled to be mentioned in the usual form and order in the opening and/or closing credits of the cinematographic work and in the entire advertising campaign for this production.

1. **Exploitation**

6.1.

The exploitation of the cinematographic work is the responsibility of the Producer. The Producer undertakes to carry out the best possible exploitation activities on the basis of an exploitation concept.

However, the Director is to be consulted as far as possible on all important decisions regarding the distribution, the production of the promotional material, the participation in festivals and competitions as well as the conception of public relations.

The Director is entitled to non-commercial exploitation of the film for cultural purposes and personally accompanied screenings at her/his own expense, as long as these do not interfere with the Producer's exploitation concept.

6.2.

The Producer is entitled to assign the exploitation responsibility in whole or in part to a third party.

The Producer shall register the cinematographic work with the collective management organisation SUISSIMAGE for the purpose of collective remuneration rights management.

6.3.

The Director shall also be entitled to the royalties collected by the collective management organisations (SUISSIMAGE, ProLitteris, SSA etc.) provided that the Director 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, Luxemburg, 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.

6.4.

In the case of exploitation proceeds pursuant to item 5.2. (stage plays, plays, radio plays and audio books), the Director is entitled to receive ......% of the net amounts (pursuant to item 6.6.).

6.5.

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 5.3, the Director shall be entitled to a share of .....% of the net amounts (pursuant to item 6.6) of the derivative work.

If the Producer manages to sell the rights to third parties, the share for the Director shall increase to .... % in total of the net proceeds from the sale of the rights pursuant to item 6.6.

6.6. *(Please delete the inapplicable variation)*

*Variation 1:*

For all other exploitation proceeds, the Director 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-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 Director 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 copyright royalties paid via a collective management organisation for the production;
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. stated costs for copying, subtitling or dubbing;
6. stated costs for transport, insurances, customs and fiscal charges.

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 Director.

*Variation 3:*

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

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

6.7.

Awards and premium prizes shall be allocated to the Producer with .........% and to the Director with ............%, irrespective of who they are addressed to by the institution granting them. Awards and premiums shall not represent exploitation proceeds within the meaning of item 6.6.

6.8.

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 production. She/he shall send this account statement to the Director without being requested to do so and shall transfer to the Director any share of the proceeds due to her/him by the end of March of the following year at the latest, less the statutory social security contributions for the employer, where applicable. The Producer undertakes to keep proper accounts for the exploitation of the production and to grant the Director 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 Director, the costs of the trust agency shall be borne by the Producer.

1. **Further provisions**

7.1.

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

7.2.

Changes to this contract must be made in writing in order to be valid. This shall also apply for changes to the script, schedule and production budget.

7.3.

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

7.4.

The contract shall be governed by Swiss law. In the absence of any agreement to the contrary, the provisions of Article 319 ff. OR [Swiss Code of Obligations] on the employment contract shall be applicable.

7.5.

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.

7.6.

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

|  |  |
| --- | --- |
| Director | Producer |
| Place and date |  |

*Suissimage January 2023*