# 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 authors of a series concept

between

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

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

member of the collective management organisation: ........................................................................................

hereinafter referred to as “Author”,

and

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

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

hereinafter referred to as “Producer”.

1. **Subject matter of the contract**

1.1. Creation

The Producer intends to create and develop a series concept/bible (hereinafter referred to as “Work”) which is destined for the production of an audiovisual series.

The creation and the developments are based on: .....................................................................

1.2. Duties of the Author

The Author undertakes to create the Work described hereinafter and within the scope of item 4 assign the right to the Producer to use this Work for the creation of a series.

1.3. Duties of the Producer

The Producer undertakes to pay the Author the compensation for this as agreed in item 5.

1.4. Share of copyright for the series concept of the series

*(Please select a variation)*

*Variation 1 (idea for the series originates from the concept author)*

The Parties assume that the present series concept represents 10% of the share of the scripts of the series from a copyright point of view; reference will be made to this rule in future agreements with other authors.

*Variation 2 (idea for the series does not originate from the concept author)*

The Parties assume that the present series concept represents ....% of the share of the scripts of the series from a copyright point of view; reference will be made to this rule in future agreements with other authors.

1. **Work and delivery**

2.1. Description

The Author creates the following Work:

.................................................................................................................. (working title);

which consists of a series concept, which contains the following documents:

- .............................. (... pages)

- .............................. (... pages)

2.2. Framework conditions

When it comes to creating the Work, the Author must adhere to the following framework conditions:

- content:

- genre:

- budget:

- mandatory elements: .......................... *(Please indicate this on a document in the annex, if necessary)*

- number of episodes:

- duration of an episode:

- language:

- shooting locations:

- ..............................:

2.3. Periods

The Author delivers the Work to the Producer in stages by the following dates:

* idea/basic concept by.......................................... (date)
* series concept draft 1 by ................................. (date)
* series concept draft 2 by ................................. (date)
* *(additional drafts)*............................................ (date)
* Final version by . ........................................... (date)
* ...

2.4. Editing/Revision

The Author undertakes to revise the Work in individual points after delivery of the respective versions at the Producer’s request, insofar as this is reasonable and feasible within the agreed framework conditions pursuant to item 2.2. The Producer must communicate the respective requests for revision to the Author within ....... days after delivery at the latest and must grant her/him a period of at least
........ days.

Should the Producer request more substantial changes which go beyond the agreed conditions, the Author is entitled to additional remuneration.

2.5. Refusal to accept the Work

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 Author 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.

2.6. Interruption

*(Please select a variation)*

*Variation 1 (interruption only in case of illness)*

The Producer and the Author undertake not to interrupt the writing of the ordered texts. If, however, the Author is forced due to illness or accident to interrupt her/his Work on the texts, it is agreed that the continuation of his writing of the texts is postponed to a later date, provided that the circumstances permit this. However, if postponing is not possible,

*(Please select an option)*

*Option 1:*

the Producer shall select a substitute author. In this case, the remuneration foreseen for the delivered texts is due (item 5.1). The share in the revenues (item 5.4) can be reassessed depending on the share contributed by the substitute author. Furthermore, the further developed Work must be presented to the Author who shall decide whether her/his name may continue to be used.

*Option 2:*

the Author and the Producer shall select a substitute author by mutual consent. In this case, the remuneration foreseen for the delivered texts is due (item 5.1). The share in the revenues (item 5.4) can be reassessed depending on the share contributed by the substitute author. Furthermore, the further developed Work must be presented to the Author who shall decide whether her/his name may continue to be used.

*Option 3:*

the Author prohibits the taking over of and changes to her/his texts by a third party author. The Parties shall settle the consequences of this option with a separate additional agreement.

*Variation 2 (interruption due to a declaration of one or both parties)*

*(Please select the option, it is also possible to agree on several options)*

*Option 1:*

The Producer may, at any time, terminate the cooperation with the Author. In this case, the remuneration foreseen for the delivered texts is due (item 5.1). The share in the revenues (item 5.4) can be reassessed depending on the share contributed by the substitute author. Furthermore, the further developed Work must be presented to the Author who shall decide whether her/his name may continue to be used.

*Option 2:*

The Parties may, at any time, mutually agree to discontinue further cooperation. In this case, the Author and the Producer shall select a substitute author by mutual consent. In this case, the remuneration foreseen for the texts delivered so far is due (item 5.1). The share in the revenues (item 5.4) can be reassessed depending on the share contributed by the substitute author. Furthermore, the further developed Work must be presented to the Author who shall decide whether her/his name may continue to be used.

*Option 3:*

The Author may decide, at any time, to discontinue the cooperation and may, at the same time, prohibit that another Author continues to work on the text. This means the following in relation to the remuneration agreed pursuant to item 5.1: ...................................................................................................................................

**3. Co-writing**

3.1. On conclusion of the contract

At the conclusion of the contract, it is agreed that:

*(Please select an option)*

*Option 1:*

the series concept will be written by the Author alone.

*Option 2:*

the series concept will be written by the Author in cooperation with .................

3.2. During the writing process

During the writing process of the series concept, the involvement of new co-authors is:

*(Please select an option)*

*Option 1:*

possible at any time.

*Option 2:*

excluded, unless otherwise agreed at a later stage.

If it is agreed to involve one or several new co-authors, they shall be selected as follows:

*(Please select an option)*

*Option 1:*

by the Producer and the Author by mutual consent.

*Option 2:*

by the Producer.

If it is agreed to involve one or several new co-authors, a decision will be formed about the work result of the co-author as follows:

*(Please select an option)*

*Option 1:*

by the Producer and the Author by mutual consent.

*Option 2:*

by the Producer. The latter does, however, have to present the edited Work to the Author who shall decide whether her/his name may continue to be used. She/he shall inform the Producer in writing about her/his decision.

*Option 3:*

by the Author.

Involving one or several new co-authors:

*(Please select an option)*

*Option 1:*

has no consequences on the remuneration foreseen in this contract.

*Option 2:*

has the consequence that financial entitlements of the Author pursuant to item 5 shall be amended in an adequate manner.

3.3. Division of the copyright to the series concept

The Author shall reach an agreement with the co-author on the split of the copyright to the series concept.

3.4. Headwriting and hierarchy

The Producer and the Author agree that

*(Please select an option)*

*Option 1:*

the Author of the series concept shall be responsible for the headwriting of the entire series/of the first season/of any further seasons *(Please delete as applicable)*.

The responsibilities of the headwriter and any other conditions will be set by the Author of the series concept and the Producer by mutual consent.

*Option 2:*the Author of the series concept shall not be responsible for the headwriting of the series or individual seasons.

*Option 3:*the Producer shall decide on the allocation of the headwriting alone at a later point in time.

**4. Rights in the Work**

4.1.Warranties and Indemnity

The Author warrants to the Producer that she/he holds all rights to the Work to be created. The Author 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.

4.2.Pre-existing work

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-author for the creation of the Work.

4.3.Rights assignments

With regard to her/his rights contained in the series concept, the Author grants the Producer, under preservation of the moral rights and subject to the rights and/or remuneration rights/compensation claims assigned to a collective management organisation:

*(Please select an option)*

*Option 1:*

the exclusive right, unlimited in time and space:

*Option 2:*

the exclusive right, unlimited in space, for the duration of .... years after the contract has been signed:

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

m) after the release of the series to sell additional seasons, a “remake”, “sequels/prequels”, “spin-offs” or to sell the right to third parties.

n) to publish and exploit publications about the series (book on the series) using copyrighted parts or elements of the Work as well as to produce, perform, broadcast, make available, reproduce and distribute dramatic or stage works, radio plays, audio books on the basis of the Work.

4.4.Rights not mentioned

In other respects, the rights in the Work shall remain with the Author.

4.5. No obligation for further development

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

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 Author in writing prior to the expiry of the above-mentioned period. In this case, the Producer shall owe the Author an additional remuneration amounting to...% of the original remuneration per year of extension pursuant to item 5.1. (para. 1).

4.6. Renunciation

If the Producer renounces in writing on the exploitation of the delivered Work, the Author is entitled to use the Work before the period mentioned in item 4.5 for other purposes. Financial settlement is in this case a matter of negotiation.

4.7.Naming

The first name and last name of the Author are mentioned in the usual manner in the opening and/or closing credits of each episode of the series in the same way as the director.

In each episode of the series, it shall be mentioned that the series is based on the idea of the Author even if the Author has not been involved in the script.

The Author shall be named in imprinted or electronic promotional material in line with the above rules. Each printed or electronic press kit shall contain the CV of the Author.

4.8. Title

The final original title of the series shall be:

*(Please select an option)*

*Option 1:*

determined by ............................alone *(please select, who alone shall determine the original title: author, director or producer).*

*Option 2:*determined by mutual consent between .....................and .........................*(please select, who shall determine the original title together with whom: e.g. author, co-authors, director and producer).*

4.9.Rights reversal in the case of non-payment

If the remuneration owed pursuant to item 5.1 has not been paid despite written request for payment subject to a notice within a year after the given period, all rights that have been assigned under this contract shall revert to the Author. 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 7.5 regarding the acceptance of the Work.

4.10.Rights assignments to third parties

*(Please select a variation)*

Variation 1:

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

Variation 2:

The Producer is not entitled to assign her/his rights, in whole or in part, to third parties, or to have them exercised by third parties without written consent of the Author.

**5. Compensation**

5.1. Fee

The Producer undertakes to pay the Author a fee for ................. (specification of services pursuant to item 2) in her/his function as ................. A fee of CHF................... .

The Author declares that she/he settles her/his social security contributions independently and undertakes to provide the Producer with the respective confirmation of the compensation fund in charge. 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:

1. on conclusion of the contract: CHF ..............................
2. on delivery of the idea/basis: CHF ..............................
3. on delivery of the first draft of the series concept: CHF ..............................
4. on delivery of the second draft of the series concept: CHF ..............................
5. on delivery of ................ Version........................: CHF ..............................
6. on delivery .............................:
7. on delivery of the final draft of the series concept: CHF ..............................

The Author shall also be reimbursed for the following expenses:

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

With the payment of this remuneration, all rights assignments mentioned in item 4 of the contract are settled, subject to the following provision:

5.2. Copyright royalties

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

5.3. Sale to third parties

*(Please select a variation)*

*Variation1:*

If the Producer sells the rights to third parties (pursuant to item 4.10), the Author shall receive .........% of the profit.

*Variation 2:*

If the Producer sells the rights to third parties (pursuant to item 4.10), the Author shall not participate in the sales proceeds.

5.4 Participation in the exploitation proceeds or settlement

*(Please select a variation and delete as applicable)*

*Variation 1:* Participation in the exploitation proceeds

For all other exploitation proceeds, the Author 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:

* own capital contributed as shown in the financing plan and reserves of the Producer, (incl. Succès Passage Antenne credits as well as the following reference funds: .............................................................................................................);
* Reimbursements to any co-producers and funding institutions,
* any copyright royalties paid via a collective management organisation for the production;
* any sales commission of a maximum of 35% to an agent, distributor or a world distributor;
* the Producer’s stated costs for insurances and fiscal charges;
* the Producer’s stated costs for sales-related advertising;

revenues from exploitations for which broadcast remuneration is paid directly to the Author shall not be taken into consideration for calculating the net proceeds.

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

*Variation 2:* Settlement/buy-out

The Author shall receive a settlement of CHF .......................and shall not participate in the exploitation proceeds.

5.5.Prize monies and awards

Prize monies and awards which are expressly granted for the series/the series concept shall be due to the Author. The Author shall come to an agreement with any other authors on the division of the prize monies and awards granted to the series created from it.

5.6.Accounting

*(Please delete the provision in the case of a buy-out)*

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 series. She/he shall send this account statement to the Author without being requested to do so and shall transfer to the Author 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 Author 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 Author, the costs of the trust agency shall be borne by the Producer.

**6. Follow-up of the development**

6.1. Writing the scripts of the episodes

*(Please select a variation)*

*Variation 1:*

The Parties agree that writing of the scripts of the individual episodes (of the first season/the second season/the subsequent seasons *(please delete as applicable*)) of the series shall be assigned to

*(Please select an option)*

*Option 1:*

the Author (of the series concept) alone.

*Option 2:*

to the Author of the series concept in cooperation with one or several co-authors who are selected by the Producer and the Author by mutual consent.

*Option 3:*

to one or several other Authors who are selected by the Producer and the Author by mutual consent.

In any case, the writing of the scripts shall be subject matter of a new

additional (scriptwriting) agreement.

*Variation 2:*

The Producer may write the scripts of the individual episodes of the first (and subsequent) season(s) without the Author and with a new author of her/his choosing.The scripts must be presented to the Author who shall decide whether her/his name may continue to be used.

6.2. Screen adaptation

*(Please select a variation)*

*Variation 1:*

The Parties agree that the screen adaptation of the episodes / the series shall be assigned to .......................................................

*Variation 2:*

The Producer determines freely on the selection of the director for the episodes / series.

*Variation 3:*

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

6.3. Sequels, prequels, spin-offs, remakes

If the Producer creates sequels, prequels, spin-offs or a remake after the broadcast of the series (item 4.4 m) without the involvement of the Author, the Author shall receive ........% of the net amounts of the additional work, provided that she/he does not create the script her/himself. The same applies if the Producer sells the rights to third parties. The net proceeds shall be calculated on the basis of the sales price.

6.4. Additional exploitations

if the Producer publishes publications on the series, stage plays, plays, radio plays and audio books, books, cartoons etc. after the broadcast of the series (item 4.4 n), the Author is entitled to receive a share of ........% of the net proceeds. The same applies if the Producer sells the rights to third parties. The net proceeds shall be calculated on the basis of the sales price.

**7. Further provisions**

7.1.Mutual support

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. Variation

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

7.3.Partial invalidity

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

7.4.Supplementary law

This 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.

7.5.Mediation provision

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.Place of jurisdiction

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

The Author: The Producer:

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Place and date:

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