



Writing Film



**Guidelines for screenwriters and those
working with writers in the film industry**

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***Here I am paying big money
to you writers and what for?
All you do is change the words.***
SAMUEL GOLDWYN

1. INTRODUCTION

These guidelines are for screenwriters and anyone who works with writers in film.

They are intended to clarify the journey from a first idea to a film in production.

Film-making can be a roller-coaster, with thrilling creative highs and corresponding lows. We hope that, by explaining the various stages and contracts involved and outlining suggestions of best practice, your particular ride will be easier, happier and more productive for all concerned.

This is a document written by working screenwriters from their own experience, with the benefit of expert advice. It is not a substitute for the work of agents and media lawyers.

2. AIMS

- To encourage co-operation and good working relationships between writers and other film-makers
- To enhance the rights and status of writers in the development and production process and, in particular, to safeguard original work
- To offer practical guidance as to what writers should expect, seek or accept in negotiating contracts and working on scripts
- To encourage writers to be responsible for their own work and to engage positively with the practicalities of the film-making process.

3. BRITISH FILM INDUSTRY – A WRITER’S VIEW

British film lurches from triumph to disaster and back in a familiar but unpredictable cycle nudged on by tax regimes, government subsidy and the rise and fall of the wider economic climate.

Blessed and cursed by the common language, the UK film industry has a poor cousin relationship with Hollywood, neatly reflected in the difference between the closed shop muscle of the Writers’ Guild of America and the small scale lobbying position of the Writers’ Guild of Great Britain (WGGB).

However the WGGB has been punching above its weight in recent years, especially in television and, by strengthening links with the other entertainment unions and producers’, directors’ and agents’ organisations, progress is being made in film.

There are few film production companies in this country with the resources and infra-structure to nurture and develop projects long-term and the result is a situation in which most producers, even well-established ones, survive and re-finance from project to project.

The UK Film Council, the body charged and funded by the Government to support British film-making, has tried various initiatives to improve this, such as slate funding (money given to a production company to develop a portfolio or slate of films).

This hand-to-mouth situation tends to favour the development of films based on known quantities, i.e. adaptation, over original scripts.

The inherent uncertainty of the industry also means that most writers for film in the UK also write for television, both to see their work in production and to make a living.

The nine Regional Film Agencies in England and national bodies in Scotland, Wales and Northern Ireland also have a development brief and may support less overtly commercial work. This varies around the country, as the agencies interpret their wide remit differently, but is certainly worth exploring.

There is a gulf between pay and working conditions on the few larger budget films, often made with US involvement, and the more plentiful mid to low budget films.

At the micro-budget end fees for writer, producer and director are often deferred, usually indefinitely, and in some cases no one on the film gets anywhere near their normal rate. The principal reward for participation in such a film is the product itself, especially for first-time film-makers: the “calling card” effect.

4. KEY RELATIONSHIPS

To be a successful screenwriter it is necessary but not sufficient to be good at writing scripts. Film-making is an intensely collaborative process: a screenwriter must be able to work effectively as part of a team. A writer who prefers to work alone might consider the satisfactions of the novel.

Three professional relationships are central to a screenwriter’s career: with producer, director and agent. Some film-makers combine writing with directing or producing. All are subject to the demands of the market as expressed by film financiers.

AGENT

Can’t get work without an agent, can’t get an agent without work ...

The start of most writers’ experience of agents is the struggle to get one. The difficulty of climbing that cliff can give rise to unrealistic expectations of what an agent can do.

Do not try to get an agent before you are ready: write scripts, build relationships, get some work before you look for the right agent. Do not send unsolicited scripts to agents. Do look at their client list and their areas of expertise.

Do not assume that an agent will get work for you.

He/she will represent you; that is, put your writing before producers s/he thinks might be interested in it and suggest you for suitable commissions. It is up to you to sell yourself by your wonderful scripts and your ability to dazzle in meetings (or at least look like a writer).

Is an agent really necessary?

Almost all professional screenwriters have agents. The best way to get your script read is through an agent: most film companies and producers will not read unsolicited work. An agent has contacts, industry experience, an overview. He or she can advise you on how to place your work, who to work for or avoid. A good agent will give you honest advice about your strengths and weaknesses.

An agent will negotiate contracts on your behalf, get the best deal for you, send invoices and chase up payments. The agent may also offer general or legal advice, hand-holding and emotional support.

UK agents do not often “package” in the way Hollywood agents do; that is, put together script and talent to sell a complete package to the studios. Larger agencies will share information and cross-fertilise projects between clients.

DIRECTOR

The director is responsible for what goes up on the screen. His/her work generally begins with an intent reading of the script and/or underlying material and the writer will usually produce a director’s draft based on meetings or notes.

Subject to commercial constraints, the director casts the film, makes the key decisions about Heads of Department and explains to them his/her vision of the film. It is that vision that everyone works to make. It helps considerably therefore if the screenwriter and director want to make the same film. Working on the director’s draft can be one of the most enjoyable periods for the writer.

On set, the director makes all the major decisions – and hundreds of minor ones – about what is shot every day. S/he directs the actors and the camera.

In post-production the director works with the editor to cut the best possible version of the shot material. This may involve losing story elements, structural changes and unexpected discoveries. Unfortunately the writer is rarely consulted at this stage.

The director and cast are generally the public face of the finished film and do the majority of the press and publicity work.

PRODUCER

What does a producer do? Well, that depends. What kind of producer? At what stage of the project?

Fundamentally, the producer makes the film happen. S/he may do this primarily by raising money or attracting talent; s/he may be closely or distantly involved with the scripting; s/he may be a one-man-band or the representative of a large company.

The producer is ultimately responsible for the multi-million pound enterprise that is a film production. S/he devises, finances and manages the budget in development, shooting and post and is responsible for delivering the film to the financiers.

Often the producer is the first person on the project and the last person to leave. Like the writer, a good producer is passionately involved in making the best possible film. It can be a long, frustrating and nerve-racking process and the better the relationship the writer and producer maintain, the higher the chance that it will turn out successfully.

5. WORKING TOGETHER

Apart from inexhaustible creativity, there are two essential elements to getting on (in both senses) as a writer in the film industry. One is a clear, fair, appropriate contract (dealt with below 6 to 14). The other is good behaviour – by all parties.

Writers should accept the responsibilities as well as the rights and privileges which are their due as co-creators of the film. The key words are communication and mutual respect. If a writer is banned from a set or prevented from seeing a cut of the film then communication has catastrophically broken down. Behaving well towards each other can avoid this.

Just as producers try to find the writer best suited to a project, the writer should look at the producer’s work and working methods to decide if they will be good partners. Be choosy: making a film is a long-term undertaking.

IN DEVELOPMENT

Once you have agreed the terms of your contract, stick to them. Respect delivery dates, deliver the work you have been asked for (over-enthusiasm can be as awkward as slackness: a 30-page treatment when you were asked for a two-page outline is not necessarily helpful).

Go to meetings with the director, producer, or their agreed representative, in a positive spirit. Do not feel that criticism of your script is personal. If competent script readers say there is a problem, there is a problem, though they may not have correctly identified the solution. Listen carefully to what is said and do not rush blindly to defend your work. Do explain what your intentions were and how you feel the material is or could be achieving them.

After meetings read any notes you have been sent and address them in your rewrite. If you are not sent notes from the meeting (you should be), it is strongly advised that you write notes of the meeting yourself and send them to the producer or development person so that there is no ambiguity as to the work you are undertaking.

The producer should ensure that notes from different sources are unified before they reach you. If you are getting contradictory notes from different sources (e.g. director and financiers) do not struggle to please everyone but explain the situation to the producer at the earliest opportunity.

If you have trouble fulfilling your brief, whether writing the script or addressing notes, do not run or hide! Not answering the phone or returning emails are at best temporary solutions. Explain, discuss, look for solutions.

It is essential that the contracted writer be given the best possible chance to take the project from start to finish but if, after all efforts, it is clear that there is a lack of connection with the material or insurmountable creative differences have emerged, and a cut-off point has been reached, the writer can expect a certain etiquette in being replaced (see Writer Services below 10).

The writer should be informed of the full reasons for the decision before a second writer has been contracted. He/she should be given the option of a face-to-face meeting. Credits, as agreed in the contract, must be respected.

In the case of an original screenplay, replacing the writer should only be a very last resort.

Below is a check-list from a highly respected producer for how producers and script editors should behave towards writers in script meetings

DO

- Make them feel valued
- Respond quickly if briefly
- Spend time reading and digesting (the script, treatment etc.)
- Impart the headlines before the meeting
- Always start the meeting with something positive
- Clear the desk, hold phone calls
- Be honest about the problems
- Ask questions, explore characters and storyline
- Make and give notes
- Go the distance – go 'where the writer wants to go'
- Be lateral, open and engaging – let the project evolve
- Listen
- Make sure you want to make the same film early on

DO NOT

- Leave a response for weeks/ keep them in suspense
- Think you can survive on a quick flip – whatever number of draft you're at
- Keep them waiting for meetings
- Have constant interruptions
- Begin with a list of criticisms
- Lie or bullshit
- Lay down the law
- Give too many notes at one time
- Cut the discussion off short
- Be close-minded, rigid and stubborn – don't lecture
- Carry on if you're trying to make different films
- Talk at cross purposes

NEVER assume you know what's in the writer's mind

NEVER underestimate how difficult writing a script is

NEVER think you know all the answers

And here are some reciprocal suggestions by writers as to how writers should behave to producers, directors and script editors

DO

- Meet your deadlines
- Be prepared for meetings
- Be honest about the problems
- Listen
- Be lateral, open and engaging – let the project evolve
- Be open and willing to take on board good ideas, even if they aren't your own
- Make sure you want to make the same film early on
- Know your own worth and argue your case
- Respect your collaborators
- Be prepared to rewrite

DO NOT

- Think "it's good enough" or "this will do"
- Go AWOL
- Lie or bullshit
- Assume the director/producer/development person is your enemy
- Take criticism personally
- Lose your temper
- Be close-minded, rigid and stubborn
- Carry on if you're trying to make different films
- Think you're isolated. You are part of a team

Scriptwriting can be a great, collaborative process. Producers and directors are there to bring your script from paper to screen. Respect their skills – just as they should respect yours!

PRODUCTION AND POST-PRODUCTION

Unless the writer is also the director s/he may not be much involved in production. It can be a shock, after months of intensive script development, to be left behind in the rush to shoot.

On some films the writer is a welcome collaborator and on others definitely not. This may depend on how helpful a presence s/he is, but it depends much more on the working practice of the director and producer.

There are no hard and fast rules. Some directors like to involve their writers throughout: in rehearsals with the actors, during the shoot and again in the editing room. Some don't. Some writers hate hanging around on set but are keen to be involved in the edit, where the writer can be a pair of fresh eyes, with the story's best interest at heart, but without the director's attachment to the shot material.

It is usual for the writer to visit the set during the shoot but this can vary between being there all day every day to a polite handshake and admiration of the actors' costumes on a single day trip. While set visits can be written into a contract they are best decided by consultation with the director.

At times the atmosphere on set can be very delicate. A writer must be aware of this and act appropriately. It is not good practice, for instance, for a writer to give notes directly to the actors. That is the director's job and should be respected.

A screening of the rough cut may be included in the contract. Beyond this the writer's involvement in post-production is again very variable. S/he may be asked to write additional dialogue or voice over. This may be separately contracted or taken as being part of the scripting process.

There is usually a clause in the writer's contract which forbids comment on the film or the process of filming except as agreed by the producers. You are not at liberty to go round telling everyone it is a travesty of your script. This also applies to those whose work is adapted: polite public deflection and private grief/rage is the order of the day.

If, as one hopes, the writer is very happy with the final work s/he may be asked to do publicity for the film. Very few people, including film journalists and critics, know anything about script writing. It does not hurt to explain in what ways the writing makes the film special: it was your idea to make the camera a character; to have a completely silent character; to colour code different story lines ...

While the director and producer should take every opportunity to credit the writer and make sure s/he is included in panel discussions, awards ceremonies, etc, often writers (and producers) find that the press only want to hear from the director and actors. It is to the benefit of all writers to attempt to change this attitude with wit, grace and persistence. Remember always to be generous in your appraisal of others' contribution.

DRAFT

PART TWO CONTRACTS

Good behaviour will get you a long way but it is no substitute for a good contract. Contracts are there to deal with all eventualities, good and bad, and to reassure everyone involved with certainties in what can often seem a nebulous business.

6. EXISTING AGREEMENTS

The PACT/WGGB 1992 Agreement, with recommended rates updated to reflect inflation, is the only extant agreement for film writer contracts in this country. It can be downloaded from the Guild's website: www.writersguild.org.uk – follow the link for Rates and Agreements

The PACT agreement is now little used and shows its age, for instance, by not mentioning digital issues. The WGGB suggested increase in minimum rates in line with inflation is a recommendation only.

Credits are presently covered by the Screenwriting Credits Agreement (1974) and disputed credits are arbitrated by the Writers' Guild (see below 13).

Animated films are not covered by the PACT Agreement but the Writers' Guild has issued Guidelines for writers in animation (mainly aimed at television work).

Television scriptwriting is covered by a series of agreements between the Writers' Guild and the various parties involved. They can all be downloaded from the Guild's website: www.writersguild.org.uk – follow the link for Rates and Agreements.

If you are writing for television we recommend that you look at the WGGB Television Guidelines. There are significant differences in the writer's role in film and Television and in the way projects are commissioned and financed.

7. FROM IDEA TO SHOOTING SCRIPT

A good idea is an excellent starting point for a film but it is no more than that.

Anyone can have an idea; a screenwriter can write a script based on the idea; the screenwriter who succeeds is prepared to rewrite the script until it makes a great film.

If you have a good idea you are advised to develop it yourself at least to an **outline** stage. From then on you have a piece of paper as evidence that this good idea is yours, although it is unlikely at this stage to be saleable unless you are a writer with a significant track record. Copyright is vested in the detail of an idea.

The more completely you develop your idea before selling it the more ownership you may claim: a **spec script** is potentially worth much more than a one-page outline. However this work is at your own risk – if no one likes your spec script, you will have spent months or years working for nothing (hence the term speculative script). You must balance risk against control.

Writers can sometimes get direct funding from the Film Council or regional Screen Agencies for development, without surrendering rights.

If a producer or director comes to a writer then the more developed their idea is the less control the writer is likely to have. The simplest version of this is the **writer for hire agreement** (see below 10): you are hired by the producer to write a script for money. He/she controls the project: you get paid up front, on delivery and on production.

If a producer wants to develop a writer's original project they will usually need an **option agreement** and its consequent **assignment of rights**. (see below 8 and 9). As there is almost always further writing to be done a **writer's services agreement** (see below 10) is also essential at this stage.

If you wish to **adapt** a story, novel or other source material, you (or your producer) will probably need to secure an **option** on the rights for that original work. (A writer's estate continues to control rights for 70 years after his/her death. After that they are in the public domain.)

If you are working from a true story you should be aware of potential legal issues e.g. clearances, libel.

The script development process usually involves several stages: outline; treatment; first draft; first draft revisions; second draft; and so on (for definitions see below 11). It is important if you are working with or for a producer in development to be clear about the work expected in each of these stages as payments are related to commencement and delivery, as set out in the **writer services agreement**.

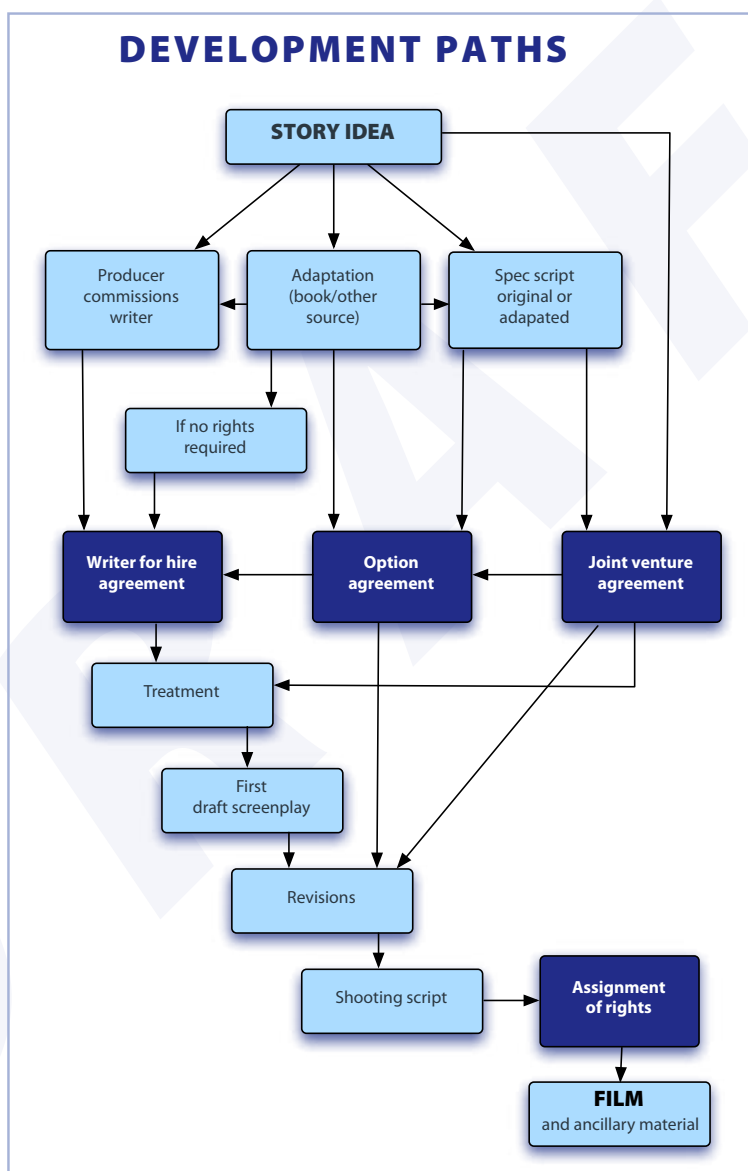
However, the Guild proposes another possible relationship between producer and writer: a **joint venture agreement** (see below 12) whereby you work together, sharing the risk and rewards.

By the time a script goes into production, the **rights must be assigned** to the production company.

The writer may be involved in **re-writing** up to and during shooting and post-production. This may be on an informal basis but may also be contracted at the time, as an **additional clause** to your writer contract.

The writer services or writer for hire agreement will include **credit clauses** for sole and shared credit. Credits should be subject to the **Screenwriting Credits Agreement**. In the event of disputed credits the producer submits the credits to the Writers' Guild for **arbitration** (see below 13).

The contractual path from an idea to a finished film



8. ASSIGNMENT OF RIGHTS

When you write an **original script** you (and your heirs) own **all rights** in the 'Property' throughout the universe for the full period of copyright, unless and until you **assign** some or all of those rights to someone else.

For a film to be produced from your script, the **film rights** must be **assigned** to the Producer or Production company which wants to make the film.

Hence the **Assignment of Rights Agreement**, which sets out the terms on which the Writer is prepared to assign the right to make the film to the Producer, and the disposition of any other rights in the property.

In practice, you will have to assign the **Film Rights**, including the right to produce, copy, exhibit, rent the film, and the TV and DVD rights, in order for the film to be made. Any financier must be assured that the Producer owns the right to make the film s/he invests in. The ownership of the rights (**chain of title**) must be clear and unencumbered.

Depending on how much the producer wants the script and on the writer's experience and clout, the writer may be able to **Reserve Rights**, including Novelisation, Stage, and Radio, often with a hold back period before the rights owner can exploit them. Sequels and Remake Rights will certainly be sought by the financier for an additional payment on production. A producer would expect to allocate roughly 5% of the budget to rights – including underlying material.

Other rights which may sometimes be negotiated include Merchandising, Games and new media or multi-platform.

At root, though, you are trading the exclusive right to produce a film from your script for a remuneration and an agreement on credits.

Usually, the biggest part of the Remuneration is the **Purchase Price**, the amount of money the producer must pay you to secure the rights. In a perfect world this is a significant sum of money but it is usually only paid if and when the film actually gets made and the production funding flows.

In order that the producer can be sure s/he can acquire the rights if the film gets made, without committing to the full purchase price before finance is in place, he or she will first want an **option** on the rights. For this reason the **Assignment of Rights** is almost always linked to an **Option Agreement**.

9. OPTIONS

An **option** is essentially an **exclusive right to acquire the rights**, given to a producer or a production company in order to develop the script and set up a production of the film. An option does *not* grant the producer any copyright or other rights in the work, but only the option to acquire those rights. This will be for a certain period of time and for a certain fee or consideration. The time is limited (typically 12 to 18 months renewable for the same term). The consideration may vary widely. The initial option fee is usually paid on account of the purchase price but the renewal is in addition.

Each situation is different. If the property is 'hot' then the option fee will be correspondingly high. But many options in the UK are low price speculative gambles for both parties.

If the Producer has little money to buy exclusivity over the property then the writer is effectively participating in the Producer's risk. So, if you are offered a low option price, you may wish to negotiate a higher purchase price, status or back end deal if the film goes into production.

If the producer pays the purchase price within the term specified in the **Option Agreement**, the rights are automatically assigned. This is called **Exercising the Option**. The agreed *rights* pass to the producer, the *compensation* passes to the writer and the production process, hopefully leading to the writer's *credit* on the finished film, can get under way.

Once you **transfer ownership** of the rights in your script (property) you may provide your services as a Writer as if to any other project. You no longer own those rights.

The **Writer's Services Agreement** (see below 8) effectively wraps up what writing services you will provide to the producer and what compensation you will receive for that work.

This is nearly always included in the Option/Assignment of Rights document as an **exhibit** which comes into force at the same time as the Option is exercised and the rights pass to the producer.

When the **option period** (and renewal if taken up) **runs out**, then the original material is again in the writer's control.

If the rights have been assigned but the film is not made after an agreed period (usually 3-7 years) the project goes into **turnaround** (see below 10).

WE DON'T NEED AN AGREEMENT, DO WE?

Although two parties may start out in good faith, in an adventurous spirit, and be firm friends, strains *inevitably* arise once a project becomes interesting to a third party (e.g. a studio or established film production company) and/or some form of funding becomes available.

If little progress is made by one or other party there can be a great deal of frustration. If the project is successful and no written agreement exists, the parties may even end up in court.

Projects often take years to get off the ground and in that time people change, circumstances change, and friendships may become strained. What if one party drops out of the project, or even dies? Who will own the rights?

When both parties are working on spec, legal fees can seem very high. To minimise both friction and costs be clear and honest about what both sides want from the agreement. Be creative in your thinking: there are generally good reasons why contracts take certain forms, but they are not immutable. Once you have established your needs you can efficiently draft a legal agreement with a lawyer.

10. WRITER AGREEMENTS

The Writers' Guild advises strongly that whenever a screenwriter and producer or director decide to work together, a **writer's services agreement** or **writer for hire agreement** should be used.

Any writer agreement should cover these areas:

Parties to the agreement: i.e. the writer and producer/production company. Also includes what rights the producer may have to pass on or assign the agreement to a third party

DEFINITIONS

Laying out the terms used in the agreement (see below 11). It is essential that both parties are clear about what work is being asked for and what the intention is: for instance, if the outline is a selling document or an internal document. By defining the terms used you can avoid misunderstanding and frustration later.

WRITER SERVICES

What the writer is going to do, when the work will be delivered, what cut-offs there are in the process (after first or second draft revisions for instance). It should also detail how long the producer has to respond to the work at each stage. Usually specific dates or periods are given for the early stages with later stages to be mutually agreed.

REPLACING THE WRITER

The issue of **cut off** and changing writer mid-project is a thorny one for all parties. These are the Guild's recommendations:

The terms and conditions for replacement should reflect the writer's original contribution to the project.

A draft and a full set of revisions should be the absolute minimum allowed any writer before cut off. This gives the writer a chance to respond and act on notes received.

Furthermore, in the case of an original work being funded by such bodies as BBC Films, Film Four, UK Film Council or companies funded in any way by them the Guild recommends that the original writer must be given *at least* the guarantee of a second draft and polish. This is the most direct contribution to new talent and writer-training these government-subsidised companies can make.

In some cases the writer of an original screenplay may prefer a film not to be made, than to be made without his/her involvement. In this case a Joint Venture Agreement (see below 12) may be more appropriate than a conventional Option/Assignment of Rights.

REMUNERATION

When and how much the writer will get paid.

The contract should clearly set out the different stages for payment – on signature or commencement, on delivery of treatment, first draft, Principal Photography etc.

Some payments may be tied as a percentage to the budget (typically 3%), or directly to the producer and or director fees. It is important to understand what your percentage is tied to as, for instance, “net budget” may exclude many significant costs.

There is likely to be a floor and ceiling for percentage linked payments – no lower than x or higher than y.

There may be a studio bonus if the project is set up with one of the major studios.

There should also be provision for any travel, research or other expense the writer has to undertake in the writing of the film.

RIGHTS

See 8 and 9 above. At the very least the producer will need the rights to make a film but often all rights are demanded: “throughout the universe, in perpetuity” in return for payment.

If the writer is simply being hired to write a commission this is the norm. The producer pays for and owns the work. This is a buy-out. However, the writer can still secure turnaround in their screenplay, if the film is not made.

If the writer is the originator of the project whether as a script, novel, play or in another form, they should consider carefully what rights they need to surrender and what they may reasonably reserve.

Copyright law is enshrined in the Copyright, Designs and Patents Act 1988 (often cited in contracts as the 1988 Act or simply the Act).

Moral rights or “droit moral” is a concept from European Law and it is customary for screenwriters in the UK to waive their moral right to authorship “irrevocably and unconditionally.” Since moral rights include the right to object to amendment the producer will also require the express right to change the writer’s work. The circumstances of such changes should be made clear in the contract.

In the area of “creative rights”, the Guild recommends that writers ask for meaningful consultation in production, especially on choice of director, casting and editing.

The contract may also cover the right of the producer or other party to use the writer’s name, agreed biography and image for publicity purposes.

WARRANTIES

The contract sets out what the writer warrants or guarantees, to the best of their knowledge, such as that they are the author of the work they are undertaking and that there are no conflicting claims on it.

There are usually clauses to say that the writer agrees not to make any defamatory remarks about the film or anyone connected with it.

If the writer is undertaking a work based on real people and events they should take careful note of any warranties they may be asked to sign regarding libel, defamation or errors and omissions.

REVERSION OR TURNAROUND

The contract should set out what happens if the script is not made into a film. It is usual for the work to be available to revert to the writer after an agreed period, with clauses setting out the reimbursement of the producer, for development costs plus interest, on first day of principal photography of its subsequent production. If the work is not original the underlying rights will also need to be secured, as before.

CREDIT

The agreement should set out what credit the writer will get on the film and in all publicity. It should also set out what credit the writer will get if other writers contribute to the project. If the writer is the originator of the story he or she should get “Written by” or, if they share or do not get the eventual screenplay credit, “Story by”.

Credits should be covered by the Screenwriting Credit Agreement. Arbitration, in the case of disputed credits, should be specified to be undertaken by the Writers' Guild for films contracted in this country (see below 13).

SCREENINGS AND DVDS

The contract should give the writer the opportunity to see the rough cut of the film and give notes. The writer should also be sent tickets for the premiere of the film and two DVDs when available.

11. DEFINITIONS

One of the crucial parts of any agreement is the section in which all the terms are defined. Many of these are uncontroversial, e.g. the work, the film, the writer, but others such as final approved budget and net profits can prove more awkward.

Other definitions which are of huge importance to writers and producers are sometimes not contained in the main body of an agreement but may be set out in a schedule to the agreement. If, for instance, a writer is hired to write a treatment with a cut off before script stage it is essential that both parties understand what they mean by a treatment – is it a few pages outlining the story or a detailed scene by scene account of what the script will be? How much research or other work will be required to produce the treatment? Payments and expectations should be appropriate and clear on both sides.

The following definitions are examples of those in common use at present but there are few fixed definitions and adjustments should be made to suit the project in hand. It cannot be emphasised enough how important it is for this area of a contract to be unambiguous.

BUSINESS TERMS

FINAL APPROVED BUDGET: the final estimated cash cost of production of the Film approved by the principal financiers of the Film. Be aware that exclusions may be substantial, including: any overhead charged by a third party financier, completion guarantee fees, deferred payments, legal fees, audit fees, finance costs (being interest, commitment and finders' fees etc), contingency and all payments to the Writer.

NET PROFITS: notoriously difficult to define and sometimes considered to be a mirage of creative accounting, net profits are intended to incentivise the creative team without losing the financiers too much back end (return on the film). At the very least the definition accorded to the Writer should be no less favourable than that accorded to any other Net Profit participant (sometimes known as favoured nations).

PRODUCER'S SHARE OF NET PROFITS: those Net Profits payable to and actually received and retained by the Producer

WRITING TERMS

These are definitions in common use in the UK but there are variations in use from one company to another and certainly from one country to another. However defined, it is essential that both parties understand the same thing from these terms – for instance how long a treatment is required.

LOGLINE: The story distilled to 1-4 lines. Used by production companies

THE OUTLINE is a presentational document which briefly describes and defines the parameters of the script – genre, plot, setting, main characters and potential audience. It is normally 2-5 pages long and serves to evoke interest in developing the script.

AN INTERNAL OUTLINE is similar but its purpose is to succinctly explore and /or explain the story.

SYNOPSIS: One to two pages, the Synopsis is about PLOT; it is a “dry” document, not a selling document – whereas an outline is about story and theme.

THE TREATMENT is a complete prose plan of the script, anything from about 6 to 30 pages in length. The treatment gives a clear sense of how the story would be treated cinematically. It is written in the present tense, includes all action but little, if any, dialogue.

THE FIRST DRAFT is the writer's first attempt at writing the film, incorporating all dialogue, essential description, transitions and scene changes, and forms the basis of subsequent revisions and drafts.

FIRST DRAFT REVISIONS are any additions or deletions and revised scenes that have been singled out for modification by responses to the First Draft. These revisions will incorporate any agreed changes but may also reflect the writer's own second thoughts.

A SECOND DRAFT is a fully rounded and revised version of the script incorporating all revisions in such a way that they are absorbed smoothly into the overall story.

THE POLISH is a slightly modified (or polished) version of a draft undertaken after feedback received from the producers etc but not amounting to as much work as a completely new draft.

A STEP OUTLINE (also known as a beat treatment) is a breakdown of the script or story into a succession of scenes, each summed up in a few lines. It is often used by script editors to view scene juxtaposition, the development of story and character, pacing and the location of turning points and climaxes

TAGLINE: The one-line poster version of the story: for instance, "In space, no one can hear you scream."

AN ALTERNATIVE APPROACH

Apart from the traditional routes described above, the Guild feels there is a pressing need for a different form of contract which encourages producers, directors and writers to work together to realise their ideas, especially, though not exclusively, when funding is tight or non-existent.

The Guild suggests that a joint venture agreement is a novel and positive approach to some of the perennial problems of low budget development.

This agreement is likely to work best in situations where the two parties are contributing and gaining more or less equally: e.g. writer and producer or director at the same experience level; new writer or writer/director with original script + experienced producer; experienced writer + producer or director with idea or property but limited resources.

Given the responsibility on all the parties and the necessity for clarity, good legal advice is essential in drafting the agreement.

12. JOINT VENTURE AGREEMENT

A joint venture is a contractual agreement joining together two or more parties for the purpose of a particular endeavour. All parties agree to share in the profits and risks of the venture. It is widely used in business, from small companies joining forces for a particular project to the sideways expansion of multi-nationals. A joint venture does not have company, partnership or tax-paying status.

A joint venture agreement to develop a script directly places the writer in the heart of the project as an equal rather than being a hired hand, however well respected or generously remunerated. The writer is not giving up rights at the outset but investing them in the joint venture.

The joint venture does not necessarily replace the option or assignment but may postpone the need for either of these.

It may be especially suitable where traditional roles do not fit: the writer is also a producer or director, the producer is the co-creator of the story. The shared risk and reward are crucial. The parties may, for instance, decide they would rather not make the film than not make it together.

(For further detail see Appendix One below)

13. SCREEN CREDIT ARBITRATION

If there are successive writers on a film the producers prepare draft credits, reflecting what they believe is the balance of work represented in the final shooting script. The draft credits must be sent to all the writers or their representatives and they have two weeks to raise any objections.

If one or more writers object to the credits and the parties cannot agree on a mutually acceptable solution then the producers request an arbitration, administered by the Guild of the territory where the writers were contracted.

If a writer is not a member and wishes to utilise the Arbitration process they must join the Guild or its affiliates. The producer contributes to the cost of the arbitration.

The Guild appoints three experienced and established screenwriter members as arbitrators. The company supplies three sets of all the relevant papers (draft scripts, covering statements, etc).

The writers and production company are not informed who the arbitrators are. The arbitrators are given a Guide for Arbitrators which outlines how an arbitration is conducted. The arbitrators decide which writers (up to 3 writers or teams of writers) have contributed most to the final shooting script. There is no consideration of the quality of the work or for any work undertaken but not represented in the final script.

Credit Arbitration is one of the most important services offered by the Guild. In the first place, it relieves producers of the embarrassment of deciding who, among several writers they may have worked with, deserves what credit. In the second place, it is a most difficult and complex task and the judgement may have significant consequences for someone else's career. It is therefore a function that only writers themselves are properly qualified to perform.

The arbitrators come to independent written conclusions within an agreed time frame which are submitted to the Guild. If there is any difference of opinion between the arbitrators they may meet to discuss their verdict. The arbitration judgement is then delivered to the Guild which passes the result on to the production company.

The Guide for Arbitrators is published on the Guild's website (tbc)

14. OTHER DISPUTES

Marriages based on true love can still end in divorce. One of the many reasons why a contract is advisable even between good friends and partners is to minimise the pain if it goes wrong: the film-maker's pre-nup.

If, in spite of clear contractual terms you and your former collaborator cannot agree a settlement: if for instance the writer cannot get paid or the producer has paid out for a script which has not materialised, then there are some possible courses of redress. However see Working Together (above 5) first to avoid such stress and misery.

If the contract is made under the WGGB/PACT Agreement you can use the Disputes procedure outlined in clauses 18-24 of the Agreement. A standing committee of PACT and WGGB officials and members will look into the dispute. If they cannot agree then an independent arbitrator can be brought in to make a binding settlement.

Pending the completion of the procedure, no stoppage of work shall take place or be authorised. Furthermore, the procedure does not affect or restrict the rights of the producer or writer to apply to the Courts for equitable relief.

However, it is at present likely that your dispute is not covered by this agreement. In this case, and if you have done your utmost to settle matters between yourselves, you can, if you are a Guild member, appeal to the Guild for help, including legal advice, or go to the county court – often known as the “small claims” Court (see Contacts 15)

A ‘small claim’ (for claims up to £5,000) is relatively simple and inexpensive. Above £5,000 it gets more complicated and more expensive. It is likely that if you lose you will be ordered to pay the winning party's legal costs.

Disputes over intellectual property rights are heard in the High Court. A High Court claim is extremely expensive to run and unsuccessful parties can be left with vast legal bills to pay.

It is always better to settle disagreements out of Court if possible. A comprehensive contract dealing with as many eventualities as can be foreseen is your greatest ally here.

15. CONTACTS

WRITERS' GUILD OF GREAT BRITAIN

www.writersguild.org.uk/public/index.html

PACT PRODUCERS' ORGANISATION

www.pact.co.uk/

PMA (AGENTS ORGANISATION)

www.thepma.com/web/w/www_1_en.aspx

NPA

www.npa.org.uk/

UK FILM COUNCIL

www.ukfilmcouncil.org.uk/

REGIONAL SCREEN AGENCIES

www.skillset.org/film/knowledge/links/article_2495_1.asp

SCOTTISH SCREEN

www.scottishscreen.com/

FILM AGENCY FOR WALES

www.filmagencywales.com/

SKILLSET – CO-ORDINATES INDUSTRY TRAINING

www.skillset.org/film

COUNTY COURT (SMALL CLAIMS COURT)

www.hmcourts-service.gov.uk/infoabout/claims/index.htm

16. THANKS

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17. DISCLAIMER

The information and materials contained in these guidelines are intended as a general guide only. Nothing in these pages constitutes specific advice and the WGGB does not accept any responsibility for any loss which may arise from reliance on such information.

No guarantee is given as to the accuracy and/or completeness of the information contained in these pages and the WGGB does not warrant that these guidelines or their contents or the website on which they appear or any hypertext links are virus free or uncontaminated.

The WGGB advises that you should, where appropriate, always seek expert professional advice from the WGGB, or an agent belonging to the Personal Manager's Association, or a solicitor.

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APPENDIX 1

JOINT VENTURE AGREEMENT

Below is a summary of the terms of agreement for a Joint Venture. Joint Venture Agreement templates for small businesses are widely available and may be adapted as the basis of your contract. The Guild strongly advises that you should use a lawyer or agent to draft a joint venture agreement, which should not be entered into lightly.

THE OBJECTIVE

This will set out what the venture is about in a succinct way. To make a film in a particular genre based on particular material for a certain budget aimed at such and such a market, etc. Legally: “Definition of the Project”

WHAT EACH PARTY BRINGS TO THE PROJECT

For the writer this is relatively simple, he or she brings their script and/or expertise. For a producer it may be a number of things, including their creative contribution, contacts, money, etc. Be specific and comprehensive.

“Relationship of Parties”

HOW TO PROGRESS

This will set out what each party intends to do in furtherance of the objective. Crucially, there will be a commitment to spending time on the project. The more clearly this is detailed the less room for misunderstanding and the more successful the project is likely to be.

It is essential for both parties to be realistic about their availability. There should also be review dates to assess progress and the continued commitment of both parties.

Later steps will probably include commitments to enter suitable assignments, etc

“Phases of the Project”

“Commitments of the Parties”

WHO GETS/GIVES WHAT

Itemises what the parties will give – and receive if the project is successful. For the writer this will include an agreement to assign his or her rights in the script at a specific stage (e.g. when financing is arranged). The parties will also give and receive guarantees or assurances (legally “Warranties”). This will often include assurances on confidentiality and fidelity – not to disclose the project or work against the interests of the project.

This should deal specifically with payment for the steps already agreed, for instance writing a first draft, and more generally with later steps: a share of gross profits, a fee or salary, etc.

“Exploitation of the Project”

“Warranties”

“Agreement on Assignment and Licensing”

“Rights Conferred on the Parties “

GETTING OUT OF THE DEAL

This covers what happens if the venture is unsuccessful. Crucial here are the deadlines or other limits and the aftermath: the writer’s retention of all his or her material, etc. “Termination”.