

THE DIRECTORS JOINT INDUSTRY FORUM

2005

**DIRECTORS' CONTRACT
GUIDELINES**
Television

For the use of Directors, Agents, Contracting
Departments, Producers and Lawyers in the
engagement of Directors in British Television

1. **Introduction**

- 1.1 Broadcasters and producers have accepted that a fair contractual relationship between themselves and the Director will lead to better outcomes for both parties.
- 1.2 These Guidelines, first published in 2002 and revised in 2004, set out what has been jointly agreed between employers, directors and agents as the recommended best practice in a number of key contractual areas.
- 1.3 The Guidelines should be consulted along with the two 'Codes of Practice on Professional And Artistic Status' (Fiction and Non Fiction), which have also been published by the Joint Industry Forum.
- 1.4 Reference to all these documents before the contract is drawn up, accompanied by full and frank discussion of as many aspects of the production as possible, will assist in the creation of agreed terms which clearly reflect the intention of the parties.
- 1.5 The Joint Industry Forum will be responsible for reviewing the application of these Guidelines and agreeing any further developments or amendments.
- 1.6 The parties will continue to discuss certain points not dealt with here, such as moral rights where agreement is yet to be reached.

2. **Contract Formats**

- 2.1 All Directors' contracts should henceforth be consistent with the agreed Directors Forum Contract Guidelines and the Codes of Practice for Fiction and Non-Fiction Programmes.
- 2.2 Contracts should be as brief as possible and use standard industry wide phrasing for ease of comprehension.
- 2.3 The wording of a Director's contract should not be adversarial, and any references relating to the acceptance of instructions during the production process should be clear and courteous.
- 2.4 The following 'Standard Contracts' are recommended for use and are compliant with these Guidelines:
 - BBC Freelance Director Standard Terms dated 1st March 2005
 - PACT Model Form Producer's, Director's and Loan Out Contracts 2005
 - TAC Directors' Contract, March 2005.
- 2.5 Where so called 'standard contracts' are used, any variations from the standard form must be clearly indicated, discussed and agreed by all parties.

3. **Development, Rights**

- 3.1 Where preparatory work is required of a Director without commitment by the employer to a full contract (e.g. where a project requires a Director's input but is not yet 'green lit'), the use of a simple Development Contract is recommended. Alternatively, appropriate development terms should be incorporated in the Director's long-form contract.
- 3.2 If the Director is to be offered first refusal to direct the project this will be clearly stated as a provision in the Development Contract, or in the development terms.
- 3.3 Any commitment to the Director to direct a project under discussion must be confirmed in writing by a person entitled to do so.
- 3.4 There must be complete clarity about the copyright status of the Director's contribution at the development stage.
- 3.5 Prior to entering into a contract it is the responsibility of Directors to ensure that they are capable of warranting that they can make a full assignment of copyright in the programme to the broadcaster/producer and can supply evidence to this effect.
- 3.6 The broadcasters/producers have entered into an agreement with the Directors and Producers' Rights Society (1992) Limited ("DPRS") effective from 1st July 2001 (Directors' Rights Agreement) under which the broadcasters/producers have agreed to pay to the DPRS certain monies which the DPRS has accepted responsibility for distributing to its members as payment for secondary uses. All contracts should contain a reference to this Agreement and to the fact that there is no additional entitlement to any other payment for secondary uses.

4. **Payment, The Deal Memo**

- 4.1 Directors' contracts should be issued in advance of the start of work, signed and returned promptly in accordance with the instructions given, and payments made on time in accordance with the provisions of the contract.
- 4.2 Directors should always be paid for all work they perform under an engagement with the broadcaster/producer. Delay in issuing a long-form contract must not delay payment.
- 4.3 In cases where a long-form contract will not be available for signature until after the Director's engagement is due to commence, a 'Deal Memo' should be issued prior to the start of the engagement.
- 4.4 The Deal Memo should, as a minimum, specify the following:
 - Type and title of the programme
 - Nature and duration of the term, with Stop Date (see 6.4 and 6.5 below)
 - Assignment of copyright
 - The position relating to moral rights
 - Remuneration and expenses
 - Whether the Director is engaged as 'Principal' or as 'Sole' Director.All of these items should appear in the long-form contract.

5. **Code Related Clauses**

- 5.1 The Fiction and Non Fiction Codes of Practice include a number of issues which should be the subject of discussions between the Director and the Producer and/or Executive Producer and may need to be reflected in the contract itself. For example, a Director should be informed about the identity of any co-producers or any agreements with co-producers which may affect the content or conduct of the production.
- 5.2 Every contract should specify a Single Nominated Producer to represent the producer/broadcaster and all production partners. Any change of Single Nominated Producer should be notified to the Director as soon as possible.
- 5.3 Contracts should also specify the name of a senior person within the management of the engaging company to whom the Director may appeal in confidence should disagreements or misunderstandings arise during the project.
- 5.4 Any possible limitations to a Director's normal terms of engagement, including for example the Director's right to shoot retakes and to be consulted on second unit shooting, the right to view rushes, provision of an office, transport to the shoot, etc., should be clearly stated in the Director's contract.
- 5.5 Directors should be informed in advance of any third party commitments that might inhibit their ability to do their job in the normal way (e.g. regarding late script changes.)

6. **Duration (Term) of Contract**

- 6.1 The duration and nature of the availability required of the Director throughout a project, including all post-production, should be agreed as far as possible at the outset and clearly reflected in the terms of the contract and/or Deal Memo.
- 6.2 Availability should be defined in terms of 'Exclusive' and 'Non Exclusive' periods. 'Non Exclusive' periods may be further defined in terms of 'First Call' and 'Second Call' or any other wording.
- 6.3 Whenever a Director is called upon to undertake a dual or multiple role, the duration of the contract should be appropriate to the overall amount of work required.
- 6.4 The producers/broadcasters recognise that freelance directors have the right to accept engagements subsequent to their particular contract term.
- 6.5 Directors and agents may request the inclusion of a Stop Date in the Director's contract.

- 6.6 Absence of a Stop Date in a contract will not be used by the producers/ broadcasters as an excuse for:
- unrealistic scheduling.
 - failure to make decisions in a timely fashion.
 - not paying directors for working beyond the initial term of their engagement.
- 6.7 Any situation involving overruns will be dealt with fairly, and any loss of work or income by a Director will be addressed through individual negotiation. In particular the Director will not be expected or required to work on unpaid.
- 6.8. Prior to entering into a contract for one project which will or might run simultaneously with another pre-existing contract, the Director should fully disclose the nature of any potentially conflicting commitments to the broadcaster/producer.

7. **Budget and Schedule**

- 7.1 Early discussion of the feasibility of production and post production schedules, and in some cases the relevant elements of the budget is essential before a contract is signed, with the Director being given the opportunity to raise any concerns.
- 7.2 The extent, if any, to which a Director is accountable for budgetary control should be a matter of specific discussion and agreement. The Director should not be required to work within a budget with which the Director is not familiar.
- 7.3 Where a Director is contractually required to sign a warranty of working within the final production budget, the Director should have proper access to the budget and appropriate input into spending decisions.

8. **Working Hours, Rest Days, Annual Leave**

- 8.1 Directors may not be required to work hours that are injurious to their or others' health or safety.
- 8.2 Provisions for rest days and holidays should be in accordance with the principles of the Working Time Regulations. These currently require one rest day for every week of work, (one day in seven, or two consecutive days in fourteen), and four weeks paid holiday (annual leave) per year pro rata. Rest days may not be used as holiday days.
- 8.3 The number of rest days and holiday days, and if possible the dates, should be agreed at the outset of an engagement and included in the contract and Deal Memo (if applicable).
- 8.4 Every effort should be made by both sides for the Director to take rest days and holiday days at appropriate, agreed times within the period of the contract. Periods of agreed holiday must be observed but during them directors will be kept informed of exceptional operational developments.

- 8.5 Any agreed rest days or holidays which remain untaken during the contract period must be paid pro rata in addition to any prior agreed total fee.
- 8.6 The agreed default pro rata Daily Rate for directors is 1/5th of the weekly rate though variations may be mutually negotiated.
- 8.7 Contracts must specify whether, in relation to Bank Holidays, directors will be expected to work and/or be paid.

9. **Suspension, Termination, Breach of Contract**

- 9.1 Suspension is an issue best dealt with on a practical as opposed to a contractual basis. There should not therefore normally need to be a suspension clause in Directors' contracts. Force majeure is the only exception to this.
- 9.2 Any potential loss of work/income by a Director due to suspension should be addressed through individual negotiation.
- 9.3 If a Director has been engaged unconditionally on a project which has been 'green-lit' and if the producer subsequently wishes to terminate the Director's contract then (subject always to 9.7 below) the Director will be entitled to receive the full payment due under the contract except where termination is a result of the Director being in breach of contract or where there is an event of force majeure.
- 9.4 A Director may, subject to the terms of the individual contract, be deemed to be in breach if for example the director is absent from work for a period of [number] working days in total, or during the period of the contract commits an act of dishonesty or gross misconduct or an act which in the reasonable opinion of the producer has a material adverse effect on the transmission or exploitation of any programme made under the contract, or if the Director becomes bankrupt, or is convicted of any criminal offence other than a driving offence not carrying a custodial sentence.
- 9.5 Individual contracts should include a provision whereby a director who is in breach of contract is entitled within a specified time to remedy the breach (if remediable) without it becoming grounds for termination.
- 9.6 If the contract is terminated under provisions referred to in 9.4 the Director shall be paid only up to the last day worked.
- 9.7 Where termination arises and payment under the contract is being discussed, the normal duty to mitigate loss will be taken into account, e.g. any reasonable offer of an alternative engagement.
- 9.8 Any breach of contract clauses must be fair and genuine. Artistic differences are not a breach of contract or a valid reason for termination without compensation.

- 9.9 Major creative or editorial disagreements between a Director and a Producer or any other principal contributor to a programme should be referred to the senior person within management specified in clause 5.3, who will make every effort to resolve the problem with the parties concerned.
- 9.10 Where resolution does not occur and it is decided by the senior person within management that the needs of the production would be best served by the termination of the Director's contract, then the Director shall be entitled to the outstanding balance of the fee in full.

10. **Credits and Publicity**

- 10.1 The Director will be credited on each programme for which the Director is engaged. A Director should normally be granted a credit in prime position, either last in an opening credit sequence or first or last in a concluding credit sequence. Any proposed variation of these guidelines (e.g. where the Director has only directed a segment; or, where the producer or executive producer proposes to be credited last; or as a consequence of the broadcasters own credit guidelines) must be made clear in contract negotiations.
- 10.2 If the Director has undertaken a dual or multiple role (e.g. as writer or narrator), the Director has the right to an additional credit, subject to the broadcasters' credit guidelines.
- 10.3 The Director should retain the ability to require the broadcaster/producer not to display their credit. Any potential difficulties in giving effect to this should be made clear by the engaging company in contract negotiations.
- 10.4 If the Director's engagement is terminated before completion of the contract, the Director shall be entitled to require the removal of their credit from the programme. If the Director has filmed or recorded no more than 25% of the programme then the producer shall be entitled to remove the Director's credit from the programme.
- 10.5 Directors shall supply biographical materials on request, to be used for publicity purposes.
- 10.6 Broadcasters/producers should ensure that press and publicity representatives are provided with information about the Director for use in press packs, press releases and for screenings. The Director's contribution must be recognised wherever mention is made of the producer, production company or broadcaster.

11. **Re-Editing**

- 11.1 Where re-editing is required by the original commissioning broadcaster the producer shall invite the Director to supervise the edit or, if not available, to give guidance on how it should be carried out.

12. **Expenses**

- 12.1 Expenses guidelines operated by the engaging company should provide for directors to be reimbursed for expenses actually, wholly and necessarily incurred, including those associated with travelling and living away from base. A director or agent shall not be precluded from raising other expenses issues in contract negotiations, including the issue of living away from home.
- 12.2 Expenses claims accompanied by receipts must be submitted by the Director and settled by the company within a reasonable period.
- 12.3 Where reference is made in the Deal Memo and/or contract to a company's Expenses Guidelines, these should be supplied to the Director at the time, or information given on how to consult them.
- 12.4 If expenses provisions are to be varied from the above general principles, alternative ways of meeting expenses should be identified and agreed in the contractual discussions and included in the contract.

13. **Compliance Issues**

- 13.1 The broadcaster has the final say on compliance issues relating to any programme, and a Director shall comply with any instructions from a broadcaster or producer on such matters. Any failure to comply with a compliance-related instruction shall be regarded as a material breach of contract by the Director.
- 13.2 If requested by a producer, a Director shall co-operate in any compliance-related investigation, including any initiated by OFCOM or other regulatory or statutory body, without further payment, and whether the Director remains under contract to the producer or not.

14. **Indemnity**

- 14.1 The Director would normally be required to indemnify a broadcaster or producer against a liability arising from any breach by the Director of their warranties made. The broadcaster/producer would normally be required to indemnify a Director against a liability arising from materials supplied by the broadcaster/producer to the Director.
- 14.2 The Director should not be obliged to indemnify a broadcaster or producer against any so-called "threatened breach".

PARTIES TO THE ALL INDUSTRY DIRECTORS' FORUM

Directors' Representative Organisations

Broadcasting, Entertainment, Cinematograph and Theatre Union (BECTU)
Directors' and Producers' Rights Society (1992) Limited (DPRS)
The Directors Guild of Great Britain (DGGB)
The Personal Managers' Association (PMA)

Broadcasters/Producers

The British Broadcasting Corporation (BBC)
British Sky Broadcasting Limited (BSkyB)
Channel Four Television Corporation (C4)
Channel 5 Broadcasting Limited (Five)
ITV Network Limited (ITV)
Producers' Alliance for Cinema and Television (PACT)
Sianel Pedwar Cymru (S4C)
Teledwyr Annibynnol Cymru (TAC)

MEMBERS OF THE 2004-5 GUIDELINE REVISIONS WORKING GROUP

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