

***GUIDELINES***  
**FOR USING**  
**THE NEW ZEALAND WRITERS GUILD MODEL**  
**CONTRACTS**

**NEW ZEALAND WRITERS GUILD INC**

**and**

**SCREEN PRODUCTION AND DEVELOPMENT ASSOCIATION  
OF NEW ZEALAND**

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# INTRODUCTION

## OVERVIEW

This booklet is intended as an informative guide to the New Zealand Writers Guild (NZWG) model contracts that have been negotiated between the NZWG and the Screen Producers and Directors Association (SPADA). These model agreements include an Option Agreement, a Purchase Agreement and a Screenwriters Agreement.

The intention behind the model agreements is to provide a starting point from which agreements between Writers and Producers can be negotiated. As with all contracts, modifications will need to be made so as to reflect individual circumstances and the outcome of the arrangements negotiated by the parties.

As a guide, this booklet should be read in conjunction with the respective model agreements themselves. If you have any general queries with respect to any parts of these model agreements then you should address these to the NZWG or to SPADA to see if they can assist you. More pertinently, if those queries concern matters of a legal or a sensitive commercial nature you should address them to your legal adviser.

When using these model agreements, the following things should be remembered:

- ◆ they have been prepared from the perspective they will be employed for use in a feature film project (they could however be adapted to cover other formats such as short film, telemovies or single television drama);
- ◆ they are intended as an informative starting point from where arrangements between the parties can be negotiated and agreed;
- ◆ both parties should always seek independent legal advice before negotiating and finalising such agreements;
- ◆ neither the NZWG nor SPADA will accept any liability or costs which a party may allege they have suffered through the use of these agreements.

## THE DEVELOPMENT PROCESS

Script development can occur in many different ways but from a contractual perspective there are three main stages.

### THE OPTION

A Writer comes up with an original idea. They may choose to write this up into any format they desire which could include a story outline, an extended treatment, a script or even a short story or novel etc.

The expression of the idea is known as 'the underlying work'. The Writer may choose to take this underlying work to a Producer. If the Producer likes the underlying work and

wishes to be involved in developing it further then they may wish to 'option' the underlying work (using an Option Agreement).

An option essentially 'reserves' to the Producer certain rights with respect to the underlying work. What it doesn't involve at this initial stage is a transfer to the Producer of the copyright in the underlying work. Rather, it allows the Producer to develop the underlying work further, usually for the purpose of obtaining production funding. If desired at a later stage the Producer may choose to exercise the option to acquire those rights they require to produce and promote a film based on the underlying work. The actual purchase of such rights will be by way of a Purchase Agreement.

#### THE PURCHASE

If the Producer chooses to exercise the option then the next step is to acquire the rights they require in order to produce and promote a film based on the underlying work. This is done by way of a Purchase Agreement.

It is strongly suggested that at the time the Option Agreement is negotiated a draft copy of a standard Purchase Agreement is attached so that at the outset there can be no confusion by either party as to what rights the Producer will be seeking to acquire and on what terms.

#### COMMISSIONING THE WORK

If the Producer would rather that the Writer develops their underlying work further then the Producer may commission the Writer to do so by using a Screenwriters Agreement. The essence of this agreement is that the Writer will provide certain writing services to the Producer in return for the payment of an agreed fee.

#### DEFINITIONS

As contracts have their own peculiar language it is often helpful to have a general understanding as to what some of the terms used mean. Accordingly, throughout the booklet you will find some brief explanations as to what some of these terms mean. For a more detailed explanation of these we suggest that you contact your legal advisor.

## FURTHER INFORMATION ON THE AGREEMENTS

Any general questions that writers or producers have regarding these agreements may be directed to the NZWG or SPADA and more pertinently to your legal advisor if those queries concern matters of a legal or a sensitive commercial nature.

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# OPTION AGREEMENT

## INTRODUCTION

In short, the Option Agreement secures to the Producer the right to develop the Writer's underlying work further and at a later stage the ability to acquire from the Writer certain rights in this underlying work. The actual purchase of the rights the Producer requires is by way of a Purchase Agreement.

At the stage of entering into an Option Agreement, the Writer's primary concerns should be with regard to the duration of the option (i.e. how long does the option period last?), the fee to be paid for the option, and to the implications for the Writer in having the option exercised.

The Producer's primary concern will be to ensure that they have a clear and unencumbered arrangement with the Writer so as to allow them to develop the underlying work further and so seek funding for the proposed project.

The copyright in the underlying work that the Producer requires to produce and promote a film based on this underlying work will not transfer to the Producer until such time as the Producer has exercised the option (as provided for in Clause 4 of the agreement) and the parties have executed the Purchase Agreement. All rights, however, to the material that the Producer develops from the underlying work during the option period will lie solely with the Producer.

## CLAUSE 2 - GRANT OF OPTION

### Clause 2.1.

By entering into an Option Agreement, the Writer is essentially agreeing that in consideration for an agreed payment they will:

- grant the Producer an exclusive 'option' to reserve the right to purchase certain rights in the underlying work later down the track; and
- grant the Producer the right during the option period to use the underlying work and, if necessary, to develop it further so as to secure development and production funding.

The fee agreed at the outset to secure the option to the Writer's underlying work is described as the 'Initial Fee'.

The amount of the Initial Fee is dependent on a number of variables including the Writer's status, the type of underlying work that is being optioned, the period it is being optioned for and what the Producer can actually afford.

### Clause 2.2

This clause provides that the Producer is permitted to develop the underlying work for the purpose they require, which is seeking funding for the proposed project.

### Clause 2.3

This clause provides that if the Producer wishes to engage the Writer to carry out the development work then this arrangement will be covered by a separate contractual arrangement between the parties.

### Clause 2.4

This clause provides that if the option is not exercised by the Producer within the agreed period then the Producer agrees to destroy all but one copy of the revised work.

The rights to this revised work lie with the Producer as it represents work developed and commissioned by them. However, despite owning such rights in the revised work there is not a great deal that the Producer can do with it outside the option period without the Writer's consent. The reason for this is that the Writer continues to hold the copyright in the underlying work from which the revised work is based.

There may well be occasions (as provided for in the Purchase Agreement) where the Producer agrees on certain terms to assign the rights in the revised work to the Writer.

## CLAUSE 3 - DURATION OF OPTION

### Clauses 3.1 - 3.5

The original option lasts for the duration of the Initial Period (set out in Schedule C). The Producer has an automatic right to renew the option at the end of this specified Initial Period upon payment of an agreed Renewal Fee (as provided for in Schedule E). Beyond this agreed Renewal Period (set out in Schedule F) provision has also been made for an additional extended period (Clause 3.5) provided, of course, that both parties can agree as to the terms.

#### What the Writer Should Know

Careful thought should be given to the length of both the Initial and Renewal Periods. The complete period of time the Writer options their work for is entirely negotiable but it needs to be long enough to allow the Producer to secure funding or financing. Some ideas only have a limited shelf life and granting a long option period may not be in to the Writer's interests in the long run. A lengthy option or continual renewing of option could potentially leave their project inactive and undeveloped for years. This might not necessarily be a concern, if, for example the Writer's work is a published book that the Writer has no burning desire to see turned into a film. But the Writer may feel differently if their work is a treasured but unproduced screenplay. The NZWG recommends a minimum Initial Period of at least one year. Two years is a commonly accepted initial option period in the industry. The Renewal Period often corresponds with the agreed Initial Period.

#### What the Producer Should Know

The Initial and Renewal Periods should be carefully considered in light of the often-lengthy period of time it takes to secure production funding. It is often a good idea to ensure that at the outset of discussions the Writer has a clear appreciation of what the expected funding timeframes may be.

A Renewal Fee need not always be negotiated. In particular, if the prospects for financing are looking very promising and the Producer has clearly expended considerable effort during the development process (the costs of which are often borne by them) then the Writer may agree to a short extension without the requirement for a further payment.

#### CLAUSE 4 - EXERCISE OF OPTION

The exercise of the option initiates the commencement of the actual purchase from the Writer of certain rights in the underlying work. This clause clearly sets out the steps the Producer must follow in order to exercise the option and then purchase the rights required.

#### What the Writer Should Know

As exercising the option then leads to the next step of the Producer actually acquiring the rights it is very important to also read over and carefully consider the contents of the Purchase Agreement.

#### What the Producer Should Know

Ensure that the rights specified in the Purchase Agreement represent the rights which you need to acquire from the Writer. Revisiting the issue of having to acquire additional rights at a later stage could potentially lead to greater costs than initially budgeted for.

#### CLAUSE 5 - EXPIRY OF OPTION

This clause provides that in the event that the option expires then all the rights acquired by the Producer in respect of the underlying work revert back to the Writer without cost.

#### Clause 5.1.4

This allows the Writer to request the rights to any additional development work they did on the project. If the Writer was paid for that work it technically belongs to the Producer but they may be happy to reassign the rights to the Writer at no cost or a cost to be agreed between the parties as they would no longer have any use for it. This something to be agreed on between the two parties.



## CLAUSE 6 - WARRANTIES

### *What is a Warranty?*

A 'warranty' is similar in effect to an 'undertaking'. It's an acknowledgement of responsibility.

### Clause 6.1 and Clause 6.3

The Writer makes various undertakings concerning the underlying work. These are commonly the types of undertakings that a Producer is then asked to provide to other third parties. These undertakings include : that the work is original, that it is not subject to litigation and that it is not defamatory.

### *What is Defamation?*

Defamation is a branch of the law that protects a person's reputation against unjustifiable attack.

Careful consideration should be given to the types of the undertakings required by the Producer. If there is any doubt whatsoever in the Writer's mind as to the legitimacy of the Writer's ownership in the underlying work or to any other of the undertakings required then the Writer should advise the Producer of these at the outset.

If it subsequently eventuates that the undertakings provided by the Writer are not in fact correct and that because of this the Producer suffers any loss then according to Clause 6.3, the Producer can seek recovery from the Writer for any losses that the Producer may incur.

### What the Writer Should Know

Published authors or playwrights should check any previous contracts with publishers and any previous rightsholder to ensure that they not in breach of Clause 6.1.4 and are not attempting to grant rights in the underlying work that may already have been granted elsewhere.

### What the Producer Should Know

The 'chain of title', or underlying rights is the most important matter to get right at this stage. All funders and finance sources will require a guarantee that the Producer's rights to the underlying work are unencumbered. It is fundamental that this area is watertight at the outset rather than encountering potentially insurmountable and expensive difficulties later. Always seek legal advice should you have any queries whatsoever.

## CLAUSE 7 - CONFIDENTIALITY

This clause deals with the important issue of confidentiality between the parties.

### Clause 7.3

Stipulates that unauthorised use of the work by the Producer (ie. distributing or disclosing the work not covered by the definition of 'Purpose') will constitute a breach of agreement.

#### What The Writer Should Know

These clauses are really just an indicator of fair industry practice. Writers should be safe in knowledge that their work is being kept confidential just as Producers should be safe in the knowledge that their business dealings are kept private.

## CLAUSE 8 - ASSIGNMENT OF RIGHTS BY THE PRODUCER

These clauses deal with the possible situation of the Producer assigning their rights in the Option Agreement to a nominated third party.

### Clause 8.1

Stipulates that the Producer can't assign the option without first offering the Writer the opportunity to buy it back.

#### What the Writer Should Know

The NZWG thinks this is a fair and reasonable way to treat the creator of the underlying work. In many instances the Writer may not want to buy back the option but giving the Writer that choice is important.

#### What the Producer Should Know

SPADA doesn't believe that this clause is mandatory in all cases but understands that the Writer may wish to have the choice.

### Clause 8.2

If the Writer doesn't want to buy back the option on their underlying work then the Producer is free to assign it elsewhere provided that they consult with the Writer as to whom they're proposing to assign it to. However, the Producer is not bound by this consultation.

#### What the Writer Should Know

If the Writer feels strongly about their work potentially being produced by a third party that they never intended to collaborate with, they should request that Clause 8.2 is changed to require the Producer to obtain the Writer's consent before assigning the work.

### Clause 8.3

This clause releases the Producer from the agreement but protects the Writer's interests. It states that once the Producer assigns the option to a third party then the Producer is no longer bound by the obligations of this agreement if, and only if, the third party has agreed to observe and fulfil the conditions of the agreement (i.e. the new Producer must abide by the terms of the original agreement). If such an acknowledgement is not secured by the Producer then the Producer will remain liable for their obligations under the agreement.

## SCHEDULES

The fees and duration of the option are the main areas for negotiation in this contract. These details need to be specified in the appropriate places provided. They cover:

### Schedule A

The forms under which the development process may be taken.

### Schedule B

Initial Fee - The fee the Writer is paid on signing the agreement.

#### What the Writer Should Know

Writers are occasionally asked to grant an option without payment but this is not advisable. If the Writer is working with a Producer who cannot afford an option fee at the outset the Writer may wish to use a Limited Option Agreement (available from the NZWG office) a short-term agreement that allows the Producer to seek initial funding in order to further the project. However, a Limited Option Agreement should in no way be used as a replacement for the actual Option Agreement.

### Schedule C

Initial Period - How long the option lasts.

### Schedule D

A description of the project.

### Schedule E

Renewal Fee - What fee the Writer will receive should the Producer wish to renew the option.

### Schedule F

Renewal Period - How long the Renewal Period lasts for.

#### What The Writer and Producer Should Know

The Initial Fee and the Renewal Fee are generally a similar amount of money if the Initial Period and the Renewal Period are of equivalent length.

# **PURCHASE AGREEMENT**

## INTRODUCTION

The Purchase Agreement outlines the terms and conditions of the agreement reached between the parties with respect to the purchase of and assignment from the Writer to the Producer of the sole and exclusive rights to produce and exploit certain rights in the Writer's underlying work.

## CLAUSE 2 - GRANT OF RIGHTS

These clauses provide that in consideration for an agreed payment (see Clause 3) the Writer assigns to the Producer certain specified rights (set out in Schedule F) in the underlying work. Any other rights not specified as being assigned to the Producer remain with the Writer.

### Clause 2.1

This clause states that in return for payment of the fee, the Writer assigns to the Producer certain specified rights in the underlying work.

#### *What is an Assignment of Rights?*

In essence, an assignment represents a transfer to another of a right or interest in a specified subject matter. This is in contrast to a licence where the owner still retains the right or interest but simply grants authority to another person or persons (as the case may be) to carry out certain acts for an often finite period of time.

### Clause 2.2

This clause provides for the Writer retaining certain identified rights in their underlying work (defined as 'Other Rights' in Schedule D). It may be that the Producer does not require these Other Rights in order to produce and exploit the film. However, some Producers may require the Writer to also sell them these rights. This is a matter to be negotiated between the parties.

#### What the Writer and Producer Should Know

Careful consideration should be given by both parties at the outset of negotiations with regard what rights the Producer needs to acquire in order to produce and exploit the film and to what rights the Writer wishes to retain. These are matters best left to commercial negotiation between the parties.

## CLAUSE 3 - PAYMENT

### Clause 3.1

This clause provides for the payment of a fee (Purchase Fee) to the Writer in consideration for the rights they will be assigning to the Producer.

### Clause 3.2

This clause states that the Writer is entitled to retain the right that allows them to receive income from collection agencies or societies which collect usage fees from broadcasters and other institutions.

#### What the Writer Should Know

The income from such agencies and societies is rarely huge but certainly worth pursuing as New Zealand writers don't usually receive residuals for the re-use of their work. The fees collected are likely to increase in the future as audio-visual works are used in new mediums. Without this clause the collected Writer's levy will either go to the Producer or stay inaccessible with the international collection agency.

New Zealand writers currently have access to two collection schemes Screenrights (which collects a levy from New Zealand educational institutions and AWGACS (the Australian Writers Guild Authorship Collecting Society Ltd) which collects a broadcasting levy from several international organisations based on Writer's credit.

The music collection agency APRA has already established precedent in New Zealand by successfully collecting a usage levy for the contribution musicians and composers make to a work and NZWG believes Writers should also receive their portion of the monies collected.

#### What the Producer Should Know

This clause will not prevent the exploitation of the film by the Producer. Rather, the collection of such copying levies represents an additional revenue stream to the Producer. Accordingly, careful consideration should be given to whether the Producer chooses to remove themselves from an entitlement to receive either a share or the entirety of such a collected levy.

## CLAUSE 4 - PERIOD OF RIGHTS

### Clause 4.2

This clause provides that in the event that the Producer (or assignee of the Producer) advises the Writer that they no longer intend to proceed with production of the film then the Writer may request (at no cost to them) a return of all the rights they assigned to the Producer.

### Clause 4.3

This clause provides that in the event that the Producer has been unable to commence production of the film within the permitted timeframe then the Writer may request (at no cost to them) a return of all the rights they assigned to the Producer. However, the Writer may agree to extend the duration of the contract on terms to be negotiated with the Producer (eg. an extension of time in exchange for the payment of another fee).

## CLAUSE 9 - ASSIGNMENT OF RIGHTS BY PRODUCER

These clauses deal with the possible situation of the Producer assigning the rights acquired from the Writer to a nominated third party.

### Clause 9.1

Stipulates that the Producer can't assign the rights without first offering the Writer the opportunity to buy them back.

#### What the Writer Should Know

The NZWG thinks this is a fair and reasonable way to treat the creator of the underlying work. In many instances the Writer may not want to buy back the rights but giving the Writer that choice is important.

#### What the Producer Should Know

SPADA doesn't believe that this clause is mandatory in all cases but understands that the Writer may wish to have the choice.

### Clause 9.2

If the Writer doesn't want to buy back the rights to their work then the Producer is free to assign it elsewhere provided that before doing so they first consult with the Writer as to whom they're proposing to assign the rights. However, the Producer is not bound by this consultation.

#### What The Writer Should Know

If the Writer feels strongly about their work potentially being produced by a third party that they never intended to collaborate with, they should request that Clause 9.2 is changed to require the Producer to obtain the Writer's consent before assigning the work. For Writers and Producers with a good working relationship this will not be an issue.

### Clause 9.3

This clause releases the Producer from the agreement but protects the Writer's interests. It states that once the Producer assigns the rights to a third party then the Producer is no longer bound by the obligations of this agreement if, and only if, the third party has agreed to observe and fulfil the conditions of the agreement (i.e. the new Producer must abide by the terms of the original agreement). If such acknowledgement is not secured by the Producer then the Producer will remain liable for their obligations under the agreement.

### Clause 9.5

This clause precludes the Writer from being able to assign their contractual obligations (i.e. the Writer is bound by their undertakings made in the agreement and cannot transfer the burden of these undertakings to a third party).

## CLAUSE 11 - INDEMNITY

These clauses provide that each party indemnifies (protects) the other against any liability that one of the parties may incur as a result of a breach by the other of one or more of their undertakings provided in the agreement.

### What the Writer and Producer Should Know

Both parties should carefully consider the type of warranties they are being asked to provide under this agreement. If there are any doubts whatsoever then they should not hesitate in seeking appropriate advice.

### Clause 11.3

This stipulates that the Producer will protect the Writer from any loss or damage arising from material the Producer themselves included in the work.

### What the Writer Should Know

If the Producer asked the Writer to include something in the work and that material is the subject of, for example, a defamation case, then the Producer and not the Writer is liable.

## CLAUSE 12 - FINANCIAL INFORMATION

These clauses deal with the requested disclosure to the Writer of certain financial information and records concerning the film.

### What the Writer Should Know

Firstly, the Writer's fee should reflect an agreed upon percentage of the film's total budget. However the film's budget can shift significantly between initial funding and final budget which is why the Writer should be aware of the final budget.

Secondly, if the Writer has negotiated a percentage share of gross receipts, net receipts or other additional rights as part of their payment they should be granted access to the appropriate financial statements. These clauses do not allow the Writer unlimited access to the Producer's private business dealings, only those which apply to the Writer.

### What the Producer Should Know

The issue of what the Writer is entitled to receive as their Purchase Fee (Schedule E) is a matter best left to commercial negotiation between the parties.

The issue of the Writer having access, however, to financial information should be carefully considered as SPADA believes that allowing a Writer access to such information should only ever be at the absolute discretion of the Producer (and is not generally done). Also, allowing the Writer to have access to, amongst other things, documents such as co-production, funding and distribution agreements

would more than likely breach the confidentiality undertakings found in all these agreements.

#### What The Writer and Producer Should Know

If the Writer does not have any percentage shares then the Writer does not need to have access to financial information. It is possible that the parties may be able to reach a compromise as to what financial information can be disclosed and what can't. The NZWG or SPADA could reach a conclusive agreement on this matter so they have left the issue open to negotiation between the parties.

### CLAUSE 13 - ACCESS TO FILM

These clauses deal with the Writer's involvement in the ongoing production of the film.

#### What the Writer Should Know

The NZWG contends that the Writer, as a key creative in the filmmaking process, has a right to be present on set at read-throughs and rehearsals. Further, many Producers understand the benefits a production can gain from involvement of the Writer right throughout the filmmaking process. According to this agreement, before attending however, the Writer must obtain the prior consent of the Producer to do so and treat anything they see or hear confidentially.

#### What the Producer Should Know

The Producer must retain the final say over all stages of production. Some Producers may be entirely relaxed with the involvement of the Writer during several stages; others may not, particularly if there are issues relating to other production participants. Attendance of the Writer is entirely at the discretion of the Producer and will be often influenced by the strength of the relationship with the Writer.

### CLAUSE 14 - CREDIT

#### Clause 14.1

This clause gives the Writer the right to remove their name from the credits of the film or use a pseudonym.

#### What the Writer Should Know

The right of a Writer to remove their name from a project that has moved significantly from the original script is a creative right that the Guild believes is sacrosanct. Naturally, most Writers prefer to take a credit than not, but the right not to do so is in the NZWG's view undeniable. Further, this clause acts as a replacement for the Writer's moral right to remove their name from a work, should that moral right be waived.

#### What the Producer Should Know



The mandatory inclusion of this clause is not supported by SPADA. Producers need to weigh up the extent to which the Writer's name has been influential in attracting finance for the project, or the extent to which the Writer's name might assist with publicity for the project, and then consider whether the inclusion of such a clause might adversely affect the prospects of fully exploiting the film. If the Producer agrees to the inclusion of this clause, then the loss of participation by the Writer in any rights exploitation might be considered as a trade off.

#### Clause 14.2

Provides that the Producer will ensure the Writer is credited in accordance with the details outlined in Schedule B and is entitled to use the Writer's name and details in promotional material.

##### What the Writer Should Know

Schedule B outlines the basic credits the Writer can be given and is in line with credit practices found in most other countries. Being credited for work is important for obvious reasons but also because: (a) it may determine the Writer's ability to claim an entitlement to collect international copying levies; and (b) if the type of credit is not recognised internationally the Writer may not be eligible for international awards such as the Oscars.

#### Clause 14.3

Provides that the Writer's credit should be as prominent as the Producer's or Director's.

##### What the Writer Should Know

The NZWG believes that the Writer's contribution as a key creative in the project should be unequivocally recognised as equal to that of the Producer or Director.

##### What the Producer Should Know

The Producer needs to think about whether they might have different plans for crediting and negotiate accordingly. In most cases this issue is rarely problematic.

#### Clause 14.4

This clause ensures that the Writer's credit is included on all promotional material.

##### What the Writer Should Know

The NZWG believes the Writer should always be promoted and credited to the same extent as other key creatives on the project.

##### What the Producer Should Know

Producers need to be mindful of the type of project the agreement is designed for. Inclusion of the Writer's credit is common on print material but is sometimes an issue for film trailers (for example where the Producer might not be credited either).

#### Clause 14.6

This clause deals with the situation when more than one writer has worked on the project and there is a dispute at completion of the script about what type of credit each individual

writer deserves. The clause requires writers to use the NZWG's Credit Arbitration Service. This service is free to NZWG members and is the only specific credit arbitration service of this type available for writers in this country.

*What is the NZWG Credit Arbitration Service?*

The NZWG Credit Arbitration Service is based mainly on the similar service run by the Writers Guild of America. The guiding principle of the service is that writing credits should be a true and accurate statement of authorship. In the event that a writer requests a credit arbitration then the following procedure will be followed:

First, an attempt is made at mediation in an effort to reach agreement. Second, if agreement cannot be reached then an arbitration is carried out by an Arbitration Committee which consists of three members chosen by lot from a list of experienced writers. The Arbitration Committee do not meet as a group, but work separately and anonymously. Each member reviews the statements, scripts, story material and notes provided by the writers and makes a determination as to the appropriate credit.

The majority decision of the Committee is accepted as final and cannot be reviewed. However, it is possible to request a review of the arbitration on the grounds of procedure.

*What the Producer Should Know*

This is a specific process for disputes between writers. Producers may negotiate out of this arrangement if they choose but, in general, the service appears to have worked well in the past.

Clause 14.7

This clause provides that if the Writer has an additional function on the project then the parties should enter into a separate agreement regarding that additional role. Each role should be clearly separated in terms of remuneration and credit. However, some Writer-Directors may, of course, prefer a 'Written and Directed By' credit.

CLAUSE 15 - MORAL RIGHTS

These provisions determine that the Writer asserts their moral rights in the work but in the case of contractual obligations on the Producer, the Writer agrees to automatically waive them.

### What Are Moral Rights?

Moral Rights are the Writer's creative rights - the right to be identified, or not identified, as the author and the right to freedom from derogatory treatment of the work which would be prejudicial to the Writer's honour or reputation. Moral Rights should not be confused with copyright - moral rights are a separate and personal right. Moral Rights cannot be assigned to another person but they may be waived. A waiver is essentially a promise not to enforce a particular right.

### What the Writer Should Know

There are many producers, financiers, distributors and others who, due to conditions of financing or distribution, require a waiver of moral rights. Because of this it is important that the Writer ensures that they retain the credit provisions in the contract (see Clause 14) which allow them to be identified as the author or not if the work moves substantially from the Writer's original vision.

### What the Producer Should Know

Most financiers, co production partners and distributors will require a moral rights waiver.

## CLAUSE 17 - WARRANTIES

### What is a Warranty?

A 'warranty' is similar in effect to an 'undertaking'. It's an acknowledgement of responsibility.

### Clauses 17.1 and 17.2

The Writer makes various warranties concerning the underlying work. These are commonly the types of undertakings that a Producer is then asked to provide to other third parties. These undertakings include : that the work is original, that it is not subject to litigation and that it is not defamatory.

### What is Defamation?

Defamation is a branch of the law that protects a person's reputation against unjustifiable attack.

Careful consideration should be given to the types of the undertakings required by the Producer. If there is any doubt whatsoever in the Writer's mind as to the legitimacy of the Writer's ownership in the underlying work or to any other of the undertakings required then the time to advise the Producer of these is at the outset.

### What the Writer Should Know

Published authors or playwrights should check any previous contracts with publishers and any previous rightsholder to ensure that they not in breach of Clause 17.1.4 and are not attempting to grant rights in the underlying work that may already have be granted elsewhere.

### What the Producer Should Know

The 'chain of title', or underlying rights is the most important matter to get right at this stage. All funders and finance sources will require a guarantee that the Producer's rights to the underlying work are unencumbered. It is fundamental that this area is watertight at the outset rather than encountering potentially insurmountable and expensive difficulties later. Always seek legal advice should you have any queries whatsoever.

## CLAUSE 18 - DISPUTE RESOLUTION

These clauses relate to disputes other than credit or termination of contract disputes. The parties must first try to negotiate any disagreement between themselves. If this is unsuccessful they then attempt to resolve the dispute with a mediator who will try to get the parties to reach agreement. If still unsuccessful, the problem is submitted to an arbiter who will make a ruling. The decision of the arbiter is binding.

Notwithstanding this procedure, credit disputes are handled by the Credit Arbitration Service of the NZWG (see Clause 14.6).

## SCHEDULES

### Schedule B

This clause concerns credit and should be read in conjunction with Clause 14.

### Schedule C

This clause defines Net Receipts and should be read in conjunction with Schedule E (if that part of it with respect to Net Receipts is agreed).

### What The Producer Should Know

If the Writer is not entitled to a share of such receipts then there is no need for this definition to remain.

### Schedule D

This clause defines the Other Rights and should be read in conjunction with Clause 2.

### Schedule E

Refers to the payment the Writer receives for assigning their rights. This payment is entirely negotiable in terms of amount and timing. It is sometimes common for a writer to defer part of this payment until the first day of principal photography of the film.

This Schedule also makes provision for the Writer to be paid in part with a percentage of the Gross or Net Receipts, a percentage of merchandising rights or, in fact, any other means that they wish to negotiate.

### What are Merchandising Rights?

These rights give the owner the exclusive right to licence, manufacture, distribute, sell or otherwise exploit in any manner and medium articles of merchandise based on or depicting the characters appearing in the film.

### What the Writer Should Know

**Gross Receipts** - Writers in New Zealand rarely secure a percentage of Gross Receipts in a film but it is not unheard of and may be agreed upon in exchange for a smaller fee up front. It should be noted that Writers are often asked to subsidise the filmmaking process by taking a smaller fee in order to get the project underway. If this is the case the Writer should certainly be sharing in a project's profits either from the Gross or Net Receipts.

**Net Receipts** - It is far more common for Writers to receive a share of the Net Receipts. However, because Net Receipts are the profits from the project after all the expenses have been paid it is rarely, if ever, a large amount of money.

**Merchandising Rights** - This Schedule allows the Writer and Producer the leeway to negotiate a percentage of the merchandising rights being sold. This should be read in conjunction with Schedule F. The Writer should pay particular attention to this right if they are being employed to write or create a children's or family feature or an animated feature.

### What the Producer Should Know

The automatic inclusion of the Purchase Fee in this form is not recommended by SPADA. SPADA believes producers have the right to negotiate payment options and rights to suit the project. Such arrangements are best left for commercial negotiation between the parties and should always be considered on a case-by-case basis. It is in this area, in particular, that flexibility is essential to take into account the financing options and other requirements on the Producer.

### Schedule F

This specifies the rights which the Producer has bought and should be read in conjunction with Clause 2. If it is agreed between the parties that the Writer is to receive a percentage of the merchandising rights then this amount should be noted, as should the exclusion of any particular countries

### Schedule G

Specifies the duration of the agreement and, as referred to in Clause 4.3, also provides for an extension to this duration if agreed by the Writer.

# SCREENWRITERS AGREEMENT

## INTRODUCTION

The Screenwriters Agreement is effectively a writer-for-hire contract. This agreement should be used where a Producer wishes the Writer to prepare a script. If the Writer of the script is also the creator of the underlying work then the Screenwriters Agreement should be read in conjunction with the Purchase Agreement.

## CLAUSE 2 - ENGAGEMENT

### Clause 2.1

This clause provides that in return for the Producer hiring the Writer to prepare the script the Writer grants to the Producer certain specified rights as are outlined in Schedule E.

#### *What is a Grant of Rights?*

A grant of rights is the transfer to another of all of that transferring party's interest in a specified subject matter. This is in contrast to a licence where the owner still retains the right or interest but simply grants authority to another person or persons (as the case may be) to carry out certain acts with respect to the work for an often identified period of time.

## CLAUSE 4 - STAGES

These clauses are designed to assist both parties determine the stages most commonly used in script development and to identify those which the Writer is being paid to write. The Writers and Producer may decide to include additional stages in their process.

### Clause 4.3

States that the Author will provide one 'polish' of each draft of the work at no additional fee. The definition of a polish covers minor improvements to details in the script, primarily dialogue, yet does not include changes in structure, removal or addition of characters, alterations of plot or significant reworking of dialogue. Normally a polish should not involve changes to more than 15% of the script. Any more than that this may constitute an additional draft.

#### What The Writer Should Know

Often smaller script changes are necessary to move the writing process along. This clause is designed to allow as much flexibility as possible in the process between the Writer and Producer but should not result in the Writer to be asked to write unpaid drafts.

#### Clause 4.5

This clause provides that the Producer has the right to reject any draft of the script if it has not been prepared in accordance with the Producer's directions or stated requirements. If this is the case then the Producer has the right to expect (at no additional cost to them) a rewrite of the script in line with their directions and stated requirements.

##### What the Writer and Producer Should Know

It is reasonable for a Producer to expect rewrites to be carried out in accordance with notes given. However, this clause is not carte blanche for endless rewrites - a Producer should provide clear guidelines for rewrites and abide by the terms and payment conditions of the contract.

#### Clause 4.7

This clause provides for an additional fee to be paid to the Writer in circumstances where the Producer requires a re-write of the final draft of the script necessitated by changes in such things as the budget, locations, characters etc.

##### What the Writer Should Know

The fee for this work will vary on the amount of rewriting required.

#### Clause 4.8

If the Writer is unable to perform their job due to sickness then after 3 continuous days sick they must provide the Producer with a medical certificate. In the event that the Writer is incapacitated for four weeks or more then the Producer may have the ability to terminate the agreement at any time.

##### What the Producer Should Know

The period of four weeks is inserted as a guide only and may be increased or decreased depending on what is agreed between the parties at the outset and the needs of the production. Incapacitation of the Writer for any specified period of time has the ability to disrupt the production schedule.

#### Clause 4.9

This clause provides that the Producer is under no requirement to proceed from one stage to the next. If the Producer advises the Writer that they don't wish them to continue to the next stage then the obligation on the Producer is to pay the Writer only to the end of the stage they have completed.

### CLAUSE 5 - PAYMENT

##### What the Producer Should Know

The payment structure outlined in Clause 5.1 is relatively standard. However SPADA does not agree with Clauses 5.1.1 through to 5.4 as a mandatory requirement. In many cases, the payment will be negotiated as a specific sum. As payment arrangements are project specific, SPADA believes that all producers have the right to negotiate what the Writer will receive on a project by project basis.

## CLAUSE 6 - FINANCIAL INFORMATION

These clauses deal with the requested disclosure to the Writer of certain financial information and records concerning the film.

### What the Writer Should Know

Firstly, the Writer's fee should reflect an agreed upon percentage of the film's total budget. However the film's budget can shift significantly between initial funding and final budget which is why the Writer should be aware of the final budget.

Secondly, if the Writer has negotiated a percentage share of gross receipts, net receipts or other additional rights as part of their payment they should be granted access to the appropriate financial statements. These clauses do not allow the Writer unlimited access to the Producer's private business dealings, only those which apply to the Writer.

### What the Producer Should Know

The issue of what the Writer is entitled to receive as their fee is a matter best left to commercial negotiation between the parties.

The issue of the Writer having access however to financial information should be carefully considered as SPADA believes that allowing a Writer access to such information should only ever be at the absolute discretion of the Producer (and is not generally done). Also, allowing the Writer to have access to, amongst other things, documents such as co-production, funding and distribution agreements would more than likely breach the confidentiality undertakings found in all these agreements.

### What The Writer and Producer Should Know

If the Writer does not have any percentage shares then the Writer does not need to have access to financial information. It is possible that the parties may be able to reach a compromise as to what financial information can be disclosed and what can't. The NZWG or SPADA could reach a conclusive agreement on this matter so they have left the issue open to negotiation between the parties.

## CLAUSE 7 - INDEPENDENT CONTRACTOR

This clause provides that as the Writer is engaged by the Producer as an independent contractor then the Writer is not an employee or dependent contractor of the Producer.



## CLAUSE 8 - CREDIT

### Clause 8.1

This clause provides that the Producer will ensure the Writer is credited in accordance with the details outlined in this clause and is entitled to use the Writer's name and details in promotional material.

#### What the Writer Should Know

This clause outlines the basic credits the Writer can be given and is in line with credit practices found in most other countries. Being credited for work is important for obvious reasons but also because: (a) it may determine the Writer's ability to claim an entitlement to collect international copying levies; and (b) if the type of credit is not recognised internationally the Writer may not be eligible for international awards such as the Oscars.

### Clause 8.2

Provides that the Writer's credit should be as prominent as the Producer's or Director's.

#### What the Writer Should Know

The NZWG believes that the Writer's contribution as a key creative in the project should be unequivocally recognised as equal to that of the Producer or Director.

#### What the Producer Should Know

The Producer needs to think about whether they might have different plans for crediting and negotiate accordingly. In most cases this issue is rarely problematic.

### Clause 8.3

This clause ensures that the Writer's credit is included on all promotional material.

#### What the Writer Should Know

The NZWG believes the Writer should always be promoted and credited to the same extent as other key creatives on the project.

#### What the Producer Should Know

Producers need to be mindful of the type of project the agreement is designed for. Inclusion of the Writer's credit is common on print material but is sometimes an issue for film trailers, for example (where the Producer might not be credited either).

### Clause 8.4

This clause gives the Writer the right to remove their name from the credits of the film or use a pseudonym.

#### What the Writer Should Know

The right of a Writer to remove their name from a project that has moved significantly from the original script is a creative right that the Guild believes is sacrosanct. Naturally, most Writers prefer to take a credit than not, but the right not to do so is in the NZWG's view undeniable. Further, this clause acts as a replacement for the Writer's moral right to remove their name from a work, should that moral right be waived.

#### What the Producer Should Know

The mandatory inclusion of this clause is not supported by SPADA. Producers need to weigh up the extent to which the Writer's name has been influential in attracting finance for the project, or the extent to which the Writer's name might assist with publicity for the project, and consider whether the inclusion of such a clause might adversely affect the prospects for fully exploiting the film. If the Producer agrees to this clause, the loss of participation by the Writer in any rights exploitation might be considered as a trade off.

#### Clause 8.5

This clause deals with the situation when more than one Writer has worked on the project and there is a dispute at completion of the script about what type of credit each individual Writer deserves. The clause requires writers to use the NZWG's Credit Arbitration Service. This service is free to NZWG members and is the only specific credit arbitration of this type available for writers in this country.

#### *What is the NZWG Credit Arbitration Service?*

The NZWG Credit Arbitration Service is based mainly on the similar service run by the Writers Guild of America. The guiding principle of the service is that writing credits should be a true and accurate statement of authorship. In the event that a writer requests a credit arbitration then the following procedure will be followed:

First, an attempt is made at mediation in an effort to reach agreement.

Second, if agreement cannot be reached then an arbitration is carried out by an Arbitration Committee which consists of three members chosen by lot from a list of experienced writers. The Arbitration Committee do not meet as a group, but work separately and anonymously. Each member reviews the statements, scripts, story material and notes provided by the writers and makes a determination as to the appropriate credit.

The majority decision of the Committee is accepted as final and cannot be reviewed. However, it is possible to request a review of the arbitration on the grounds of procedure.

#### What the Producer Should Know

This is a specific process for disputes between writers. Producers may negotiate out of this arrangement if they choose but, in general, it appears that the service has worked well in the past.

## CLAUSE 10 - OWNERSHIP OF COPYRIGHT

These clauses outline the straightforward exchange of copyright between Writer and Producer.

### Clause 10.1

Provides that copyright in the commissioned work (i.e. ownership of the work) remains with the Writer until payment of the agreed fee. Payment of this fee effectively activates the transfer of the copyright to the Producer.

### Clause 10.5

This clause states that the Writer is entitled to retain the right that allows them to receive income from collection agencies or societies which collect usage fees from broadcasters and other institutions.

#### What the Writer Should Know

The income from such agencies and societies is rarely huge but certainly worth pursuing as New Zealand writers don't usually receive residuals for the re-use of their work. The fees collected are likely to increase in the future as audio-visual works are used in new mediums. Without this clause the collected Writer's levy will either go to the Producer or stay inaccessible with the international collection agency.

New Zealand writers currently have access to two collection schemes Screenrights (which collects a levy from New Zealand educational institutions and AWGACS (the Australian Writers Guild Authorship Collecting Society Ltd) which collects a broadcasting levy from several international organisations based on Writer's credit.

The music collection agency APRA has already established precedent in New Zealand by successfully collecting a usage levy for the contribution musicians and composers make to a work and NZWG believes Writers should also receive their portion of the monies collected.

#### What the Producer Should Know

This clause will not prevent the exploitation of the film by the Producer. Rather, the collection of such copying levies represents an additional revenue stream to the Producer. Accordingly, careful consideration should be given to whether the Producer chooses to remove themselves from an entitlement to receive either a share or the entirety of such a collected levy.

## CLAUSE 11 - OTHER INVOLVEMENT OF AUTHOR

### Clause 11.1

This clause provides that if the Writer has an additional function on the project then the parties should enter into a separate agreement regarding this additional role. Each role

should be clearly separated in terms of remuneration and credit. Writer/Directors may of course prefer a 'Written and Directed By' credit.

## CLAUSE 12 - INVOLVEMENT OF OTHER WRITERS

### Clause 12.1

This clause provides that the Producer will notify and consult with the Writer before appointing another writer to collaborate with them. This is a consultation only and the Producer is not bound by the Writer's opinion.

### Clause 12.2

If more than one Writer is involved in the project then all parties will discuss and agree on the 'percentage contribution' of the Writers. This will be necessary in order to determine what fee is payable to each Writer. The percentage contribution is the amount each Writer has contributed to the final shooting script. The agreed amount should be written in the space provided in Attachment 1 of the Screenwriters Agreement.

If an agreement can't be reached then the percentage will be determined through dispute resolution. Any credit dispute which may arise in this situation would be dealt with by the NZWG Credit Arbitration Service.

## CLAUSE 13 - MORAL RIGHTS

These provisions determine that the Writer asserts their moral rights in the work but in the case of contractual obligations on the Producer, the Writer agrees to automatically waive them.

### *What Are Moral Rights?*

Moral Rights are the Writer's creative rights - the right to be identified, or not identified, as the author and the right to freedom from derogatory treatment of the work which would be prejudicial to the Writer's honour or reputation. Moral Rights should not be confused with copyright - moral rights are a separate and personal right. Moral Rights cannot be assigned to another person but they may be waived. A waiver is essentially a promise not to enforce a particular right.

### What the Writer Should Know

There are many producers, financiers, distributors and others who, due to conditions of financing or distribution, require a waiver of moral rights. Because of this it is important that the Writer ensures that they retain the credit provisions in the contract (see Clause 14) which allow them to be identified as the author or not if the work moves substantially from the Writer's original vision.

#### What the Producer Should Know

Most financiers, co production partners and distributors will require a moral rights waiver.

### CLAUSE 14 - ACCESS TO FILM

These clauses deal with the Writer's involvement in the ongoing production of the film.

#### What the Writer Should Know

The NZWG contends that the Writer, as a key creative in the filmmaking process, has a right to be present on set at read-throughs and rehearsals. Further, many Producers understand the benefits a production can gain from involvement of the Writer right throughout the filmmaking process. According to this agreement, before attending however, the Writer must obtain the prior consent of the Producer to do so and treat anything they see or hear confidentially.

#### What the Producer Should Know

The Producer must retain the final say over all stages of production. Some Producers may be entirely relaxed with the involvement of the Writer during several stages; others may not, particularly if there are issues relating to other production participants. Attendance of the Writer is entirely at the discretion of the Producer and will be often influenced by the strength of the relationship with the Writer.

### CLAUSE 15 - ASSIGNMENT OF RIGHTS BY PRODUCER

These clauses deal with the possible situation of the Producer assigning the rights in the script to a nominated third party.

#### Clause 15.1

Stipulates that the Producer can't assign the rights in the script without first offering the Writer the opportunity to buy them back.

#### What the Writer Should Know

The NZWG thinks this is a fair and reasonable way to treat the writer of the script. In many instances the Writer may not want to buy back the rights but giving the Writer the opportunity to buy them back is important.

#### What the Producer Should Know

SPADA doesn't believe that this clause is mandatory in all cases but understands that the Writer may wish to have the choice.

### Clause 15.2

If the Writer doesn't want to buy back the rights to the script then the Producer is free to assign it elsewhere provided that before doing so they first consult with the Writer as to whom they proposing to assign the rights to. However, the Producer is not bound by this consultation.

#### What The Writer Should Know

If the Writer feels strongly about their work potentially being produced by a third party that they never intended to collaborate with, they should request that Clause 15.2 is changed to require the Producer to obtain the Writer's consent before assigning the work.

### Clause 15.3

This clause releases the Producer from the agreement but protects the Writer's interests. It states that once the Producer assigns the rights to a third party then the Producer is no longer bound by the obligations of this agreement if, and only if, the third party has agreed to observe and fulfil the conditions of the agreement (i.e. the new Producer must abide by the terms of the original agreement). If such an acknowledgement is not secured by the Producer then the Producer will remain liable for their obligations under the agreement.

### Clause 15.5

This clause precludes the Writer from being able to assign their contractual obligations (i.e. the Writer is bound by their undertakings made in the agreement and cannot transfer the burden of these undertakings to a third party).

## CLAUSE 16 - SUSPENSION

These clauses provide that the Producer may suspend the Writer's services at any time (Clause 16.1). However, if the suspension is to last more than three months then the Writer has the option to terminate the agreement by written notice to the Producer (Clause 16.3).

#### What the Writer and Producer Should Know

While suspension may alter the dates in the agreement (Clause 16.2) a Producer should not use this provision to delay payment for work done. Technically each 'stage' of the agreement is complete after the Writer delivers a draft and is paid for it. Any suspension would take effect after that payment. It is also worth remembering that copyright in each draft only passes from the Writer to the Producer after payment is made.

## CLAUSE 17 - TERMINATION

### Clause 17.1

Stipulates that either party may terminate the agreement if the other party has not held up their side of the bargain. The terminating party must first notify the defaulting party and

give them 15 working days with which to remedy the default. The grounds for termination include such things as breaches of delivery, payment, warranties or confidentiality.

Clause 17.2.1

In the case of termination the Producer may contract another writer to finish the work.

Clause 17.2.2

All rights granted by the Writer (i.e. the rights to all drafts completed and paid for by the Producer) remain with the Producer.

Clause 17.2.3

Each party will remain entitled to pursue any breach of contract as long as the alleged breach occurred during the term of the agreement.

Clause 17.2.4

Providing that the Writer has been paid in full for their work the Writer will upon termination deliver all drafts and written material connected with the project to the Producer.

CLAUSE 18 - REVERSION OF RIGHTS

Clause 18.1

Should they decide, the Writer and Producer may come to an agreement about the buy-back of the rights prior to the pre-production of the film.

What the Writer and Producer Should Know

If the film isn't going to be made, the Writer may wish to regain ownership of the copyright in the scripted work at a price to be agreed between them. The Writer is, of course, under no obligation to buy back the scripted work and the Producer is under no obligation to sell it.

Clause 18.2

This clause provides that if production of the film has not commenced within seven years from the date of the agreement then the rights in the script will revert back to the Writer at no additional cost.

What the Writer Should Know

The Writer may agree to extend the duration of the agreement on terms and payment to be negotiated with the Producer. Whether they wish to do this will depend on individual circumstances. There may be times where the Writer is happy to extend the contract. Conversely, if production has not begun after seven years and the writer doesn't have confidence in the Producer to get the film produced they would wish the contract to end.

### What the Producer Should Know

The Producer should make an accurate assessment of the likely length of time required to secure finance. Almost invariably it is longer than first predicted, especially when seeking investment from foreign entities. Depending on the complexity of the project, the projected difficulty or otherwise in raising finance and the skill of the Writer, the Producer may wish to negotiate a longer (or shorter) term. Keeping the Writer informed of progress is recommended as, if they understand the issues and complexities then the Writer may be more willing to extend the term if this is necessary.

## CLAUSE 19 - WARRANTIES

### *What is a Warranty?*

A 'warranty' is similar in effect to an 'undertaking'. It's an acknowledgement of responsibility.

### Clauses 19.1 and 19.2

The Writer makes various warranties concerning the underlying work. These are commonly the types of undertakings that a Producer is then asked to provide to other third parties. These undertakings include : that the work is original, that it is not subject to litigation and that it is not defamatory.

### *What is Defamation?*

Defamation is a branch of the law that protects a person's reputation against unjustifiable attack.

Careful consideration should be given to the types of the undertakings required by the Producer. If there is any doubt whatsoever in the Writer's mind as to the legitimacy of the Writer's ownership of the scripted work or to any other of the undertakings required then the time to advise the Producer of these is at the outset.

If it eventuates that the undertakings provided by the Writer are not in fact correct and that, as a result, liability is subsequently incurred by the Producer then according to Clause 20.1 the Producer can seek recovery from the Writer for any damages incurred.

### What the Writer Should Know

Published authors or playwrights should check any previous contracts with publishers and any previous rightsholder to ensure that they are not attempting to grant rights in the underlying work that may already have been granted elsewhere.

### What the Producer Should Know

The 'chain of title', or underlying rights is the most important matter to get right. All funders and finance sources will require a guarantee that the Producer's rights to the underlying work are unencumbered. It is fundamental that this area is watertight at the outset rather than encountering potentially insurmountable and expensive



difficulties once the production has commenced (it has happened!). Always seek legal advice should you have any queries whatsoever.

#### CLAUSE 20 - INDEMNITY

These clauses provide that each party indemnifies (protects) the other against any liability that one of the parties may incur as a result of a breach by the other of one or more of their undertakings provided in the agreement.

##### What the Writer and Producer Should Know

Both parties should carefully consider the type of warranties they are being asked to provide under this agreement. If there are any doubts whatsoever then they should not hesitate in seeking appropriate advice.

#### CLAUSE 24 - DISPUTE RESOLUTION

These clauses relate to disputes other than credit and termination of contract disputes. The parties must first try to negotiate any disagreement between themselves. If this is unsuccessful they then attempt to resolve the dispute with a mediator who will try to get the parties to reach agreement. If still unsuccessful the problem is submitted to an arbiter who will make a ruling. The decision of the arbiter is binding.

Notwithstanding this procedure, disputes as to a Writer's credit will continue to be handled by the Credit Arbitration Service of the NZWG (see Clause 8.5).

#### SCHEDULES

##### Schedule B

Relates to the fees and timing of each stage of the writing process. These amounts should be filled in before the contract is signed.

##### What the Producer Should Know

SPADA does not agree to the automatic inclusion of the last two bullet points (percentage of excess and percentage of net receipts). It is best for such matters to be left to commercial negotiation between the parties

##### Schedule D

Defines Net Receipts. This definition only needs to be included in the agreement if the parties agree that the Writer will be entitled to a percentage share of such receipts.

##### What the Writer Should Know

Because Net Receipts are the profits from the project after all the expenses have been paid it is rarely, if ever, a large amount of money.

### Schedule E

This defines the rights the Producer has bought and should be read in conjunction with Clause 2. If the parties agree that the Writer is to receive a percentage of such merchandising rights then this percentage amount should be noted in the appropriate part of this Schedule along with the exclusion of any territories.

#### What the Writer Should Know

This Schedule allows the Writer and Producer the leeway to negotiate a percentage of the merchandising rights being sold. The Writer should pay particular attention to this right if they are being employed to write or create a children's or family feature or an animated feature.

### Schedule F

Defines the deadlines applicable in the agreement.

### Schedule G

Details the percentage of the film's budget that the Writer can expect as total payment. This Schedule should be read in conjunction with Clause 5.2.

#### What the Producer Should Know

SPADA does not agree with the automatic inclusion of this wording. Such payment and rights issues should be considered on a case-by-case basis.