

Key provisions for a Director Services Agreement

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When a film production team gets to the stage where they are developing a Director Services Agreement ('DSA'), the show really has the green light and things are starting to get really busy! There will be little time to close the legal contracts necessary for getting the show made. To help, we have prepared a summary of the key provisions to include in DSAs.

The following are the top provisions to be incorporated, and strongly negotiated, in a DSA.

1. Background

It is often helpful to include a brief overview of who the parties are (i.e. whether the producer is an independent producer or a production company, and the position and experience of the director), the parties' relationship and whether they have experience working with each other (if any) and some basic details about the content being produced (i.e. film, series, music video etc).

2. Duties of producer

It is important to accurately and clearly identify the rights and obligations of each party, and ensure any changes or additions to such rights and obligations are required to be recorded in writing. Do not shy away from setting out your obligations, and instead including only those required to be undertaken by the other party. Remember a well written agreement mitigates the likelihood of a dispute, and having each parties' obligations clearly documented means there is less likelihood of delays and disputes in the future. Some key obligations of the producer/production company are as follows:

- hiring, onboarding and releasing contractors and employees;
- compliance with all legislative and regulatory requirements, including those relating to industrial relations and occupational health and safety; and
- who is responsible for the payment of all taxes and deductions required by the law in respect of its employees and contractors.

3. Duties of director

Some specific duties of directors that should be outlined in the DSA include:

- that the production is produced in compliance with the budget and the timelines and instructions set by the production company from time to time;
- that the production be based entirely on the screenplay agreed between the parties, as amended from time to time, and any deviations from that screenplay must be approved in writing by the production

company in advance of filming or, if filmed without planning (and this can only be done as long as the original scripted scene from the screenplay is also shot), shown to the production company within 24 hours of filming;

- that the production be of the duration required and agreed upon;
- that the production be delivered on or before the delivery date; and
- that the production be able to qualify for the classification requirements of the relevant jurisdiction where the production is released.

4. Creative control

It is important to determine and set out who is responsible for the creative aspects of the production. This is usually the director, right? Yes, but how is creative control defined? Should we say that the producer is responsible for all the 'behind the scenes' technical, logistical and operational aspects of the film, whereas the director is responsible for everything that appears onscreen? Where does this overlap? It is important to spell this out.

5. Budget and funding

Tracking money movement and expenditure should be a priority. Budget should be clearly defined, as should who has ultimate control of the budget. Does the producer hold the money pot, and dish out as the director requests, or is it split 50/50? Is money provided upfront or on a reimbursement basis? Who deals with ad hoc budgetary movements?

6. Intellectual property rights

A correctly drafted intellectual property clause will make or break future distribution. Parties must consider who will own the intellectual property and who will receive a licence. Usually, a joint intellectual property model is unadvisable because it would require both parties to agree prior to any exploitation of the content. This creates frustration and gridlock, and could be used as a leverage against the other party in the event of a dispute. There have been many nightmare cases where a piece of work was never exploited because of a gridlock dispute between two parties. Also, it is important to cover not only the intellectual property rights in not only the finished product, but also all materials that were used to create the finished product, and all derivatives of such finished product.

Also, ensure all material owned by third parties is adequately assigned or licensed.

7. Mutual warranties/indemnities

We suggest warranties are included so that contribution to the production will not cause the production to be actionable for breach of copyright or passing off nor will the production be defamatory of any person. Compliance with relevant content laws are very important, as breaching these rules could have major consequences. Furthermore, culturally, privacy is very important in the Middle East, so it important to ensure the film does not invade the privacy of any person or breach the confidence of any person.

8. Options - for producer/director

A DSA may include a provision which states that if any full length feature film or series is developed from the production into a derivative work, whether by the parties themselves or in conjunction with third parties, the parties agree that the producer has the exclusive option to be the production company that is appointed to produce the derivative work. The director may also request the same right.

9. Credits

Credits are perhaps one of the most heavily negotiated aspects of any DSA. The entertainment industry is notoriously reputation driven, and the attention span of the average individual no longer allows them to troll through the end credits with a magnifying glass – unless their favourite uncle is featuring! Positioning and ordering of credits must be negotiated and documented in writing.

10. Confidentiality

Parties must ensure they do not discuss the project or contents of the agreement with anyone outside the engagement – no spoilers!

11. Publicity

In smaller deals, both the producer and director may share responsibility in the marketing and promotion of the film. Otherwise, it is just one, or a third party is hired. This will need to be documented.

12. Liability

A party's financial exposure should be capped, with all applicable exclusions (e.g. for intellectual property infringement) recorded.

13. Termination

In the usual course, parties should be able to terminate a contract for material breach, and in some cases, for convenience (with minimum notice requirements). In a DSA, it is important to document how money will be refunded in the event of a party triggering its termination right. In case things go badly wrong, and the producer has handed over the entire budget to the director in advance, the contract needs to clearly set out the director's obligation to give this money back immediately on notice. Parties should also consider whether termination is allowed for force majeure events such as events occurring as a result of a pandemic. If so, in what circumstances will the director or producer be able to take over and run with the

production?

Conclusion

There are many important elements to getting a production off the ground, but all of them need to be negotiated and recorded in writing in order to prevent disputes and disagreements down the track. By ticking the boxes summarised above, a savvy production team will be well on its way to being able to comfortably and calmly sit back and watch the show.

For more information on how we can help, please contact [Martin Hayward \(m.hayward@tamimi.com\)](mailto:m.hayward@tamimi.com) or [Charlotte Sutcliffe \(c.sutcliffe@tamimi.com\)](mailto:c.sutcliffe@tamimi.com).