AICP New Media Contracts and Riders
Frequently Asked Questions

Below are answers to many questions that may arise while using the Work for Hire and Licensed Rights Agreements, as well as their riders. While these documents can be used in their current form, they are generic production agreements and do not attempt to address every scenario for every production. The AICP strongly suggests that you consult with your legal counsel as to the suitability of these forms for your business, and with respect to any adaptations or amendments that may be needed for your particular production. If you would like general information from the AICP about these agreements, please contact Denise Gilmartin, AICP's VP of Business Affairs and Non-Traditional Media Issues, at (323) 960-4763 or deniseg@aicp.com.

Please note that the person in your company who reviews and ultimately signs a contract has legally obligated your company to assume certain responsibilities and risks associated with the job. For this reason, it is imperative that a qualified member of your staff review all contracts and consult legal counsel, if necessary.

General Questions

- **What is the difference between the Work for Hire ("WFH") agreement and the Licensed Rights agreement?**

  Under the WFH agreement the Client is deemed the creator of the Work and owns all proceeds of the Producers' services, including footage shot which was not used in the finished work.

  Under the Licensed Rights agreement the Producer retains the rights to the Work and licenses the use of the Work to the Client for a specific period of time, and in defined territories and distribution channels.

- **When is it appropriate to use the WFH agreement and when is it appropriate to use the Licensed Rights agreement?**

  The WFH agreement should be used in circumstances where the Producer is hired to produce the Client's concept, and where the Client will own the Work.

  The Licensed Rights agreement should be used in circumstances where the Producer creates the concept for the Work and wishes to retain the rights to the Work, and/or where the Producer has reduced its fees for producing the Work in exchange for the rights to the Work.

- **Does either the WFH agreement or Licensed Rights agreement take the place of the existing AICP Standard Commercial Production Agreement ("SCPA")?**

  Neither agreement takes the place of the SCPA. The WFH agreement is similar to the SCPA in that the Client owns the Work in both agreements. The SCPA contemplates the finished work airing on television and does not address additional media outlets such as internet, mobile, etc.

- **If I'm doing a traditional television commercial, may I use the WFH agreement in place of the Agency's standard production agreement?**

  Yes, the WFH agreement can be used for a traditional television commercial. The distribution channel that should be checked in Section A is "Broadcast".

- **Do I need to submit an AICP bid-form to my Client with either the WFH agreement or the Licensed Rights agreement?**

  The Standard Terms and Conditions for both the WFH and Licensed Rights agreement refer to a Bid Estimate. While you may wish to utilize the AICP long form to calculate your live action production costs, if any, it is not recommended that such a detailed bid be submitted to the Client. The Bid Estimate should contain the Contract Price or License Fee, whichever is applicable, Professional Fees (e.g. production fees, creative fees, director fees, producer fees, writer fees, etc.), and the Producer's and Client's responsibilities for furnishing elements and materials in connection with the Work including technical requirements and deliverables.

- **Do the current AICP Guidelines apply to either the WFH agreement or the Licensed Rights agreement?**

  Although neither of the agreements refer directly to the AICP Guidelines, some of the AICP Guidelines may be applicable to the WFH and Licensed Rights Agreements. While there are separate AICP Guidelines for live action and digital production, the WFH and Licensed Rights agreements contemplate production that include both live action and digital production, and therefore do not fall under either specific guideline.

- **Is the AICP mandating that its members use these agreements for new media projects?**

  No. These agreements and their riders were created as generic business tools for AICP-member companies to more effectively work in the current media environment. Whether or not to utilize these documents is at the discretion of the principals of each company. As with any contract, for specific advice, please consult your legal counsel.

Work For Hire

Standard Production Agreement ("SPA") - Work For Hire

- **Why is there no line for Agency in the WFH SPA?**

  The Client is the entity contracting the Producer for the project. This may be an Advertising Agency, Advertiser, Marketer, or other entity.

- **Do I need a separate agreement for each Distribution Channel or can I check more than one box?**

  The WFH SPA is designed to be able to check multiple and/or different boxes for each Work Title listed in section A.

- **Which designated personnel should be listed in the agreement?**

  Key employees who have authorization to make binding business decisions on behalf of the Producer and Client should be specified as Designated Personnel. This section is not intended for the designation of creative personnel and should Producer wish to designate such creative personnel they should do so in the Bid Estimate.

- **Why are there no percentage amounts in the Terms of Payment section of the SPA?**

  This agreement contemplates many different types of projects that may extend over long periods of time. Therefore, the payment terms have been left open for the Producer to schedule the timing and amounts of the individual payments. If the timing of the production is similar to a traditional television commercial the AICP recommends using the AICP payment guideline of 75%/25%. (http://www.aicp.com/doingbusiness/guidelines.html)

- **Do I need to check either the Producer or Client box in the insurance section? Why?**

  Yes. If the Producer is supplying the insurance for the production the Producer box should be checked. If the Client is supplying the insurance for the production the Client box should be checked. Different paragraphs of the insurance section in the Standard Terms and Conditions (the, "STC") will apply based on the box checked in the SPA.

- **How does the WFH SPA differ from the AICP Standard Commercial Production Agreement ("SCPA")?**

  The WFH agreement was crafted to not only address film production, but other types of production by a variety of producers (e.g. live action, digital, visual effects, etc.), which may be displayed on multiple platforms (e.g. broadcast television, internet, mobile, etc.).

Licensed Rights

Standard Production Agreement ("SPA") - Licensed Rights

- **Why is there no line for Agency in the Licensed Rights SPA?**

  The Client is the entity contracting the Producer for the project. This may be an Advertising Agency, Advertiser, Marketer, or other entity.

- **Do I need a separate agreement for each Distribution Channel or can I check more than one box?**

  The Licensed Rights SPA is designed to be able to check multiple and/or different boxes for each Work Title listed in section A.

- **Why are there options for Exclusivity, Territory and Term in section A of the Licensed Rights agreement?**

  In the Licensed Rights agreement the Producer is licensing the rights to the Work to the Client. These rights may or may not be limited in the areas of Exclusivity, Territory and Term. See below for details of each area.

- **In the Exclusivity section, in what instances would I check the "exclusive" box vs. the "non-exclusive" box?**

  If the Producer wants to give the Client exclusive use of the Work in the Territory and during the Term, then the "exclusive" box should be checked. If the Producer intends on licensing the Work, or portions thereof, to another party, or the Producer intends to exploit the Work directly itself, then the "non-exclusive" box should be checked.

- **In the Territory section, in what instances would I check the "worldwide" box vs. "other"?**

  If the Producer wants to give the Client the use of the Work throughout the world, then the "worldwide" box should be checked. If the Producer wants to limit the territory in which the Work may be distributed, i.e. North America, then the "other" box should be checked and the Territory defined in the space provided. The license grant may be exclusive as to certain territories and non-exclusive as to others.

- **In the Term section, in what instances would I check "in perpetuity" vs. "other"?**

  If the Producer wants to give the Client the use of the Work forever, then the "in perpetuity" box should be checked. If the Producer wants to limit the Term in which the Work may be distributed, i.e. two years, then the "other" box should be checked and the Term defined in the space provided.

- **There is a space provided in Section B. "Use", what do I insert here?**

  Since the Producer retains the rights to the Work and the Client is only licensing the Work from the Producer for an intended use, the use of the Work should be defined. For example, if the Client's intentions are for Producer to create a short film to be displayed in theaters as an advertisement of its product, then the use may be defined as: "marketing a non-alcoholic beverage to a consumer" and the exploitation by Client would be limited to that use. Therefore, the Client would not have the right to exploit the Work for any other uses such as "entertainment" by displaying the Work in a short film festival.

- **Which Designated Personnel should be listed in the agreement?**

  Key employees who have authorization to make binding business decisions on behalf of the Producer and Client should be specified as Designated Personnel. This section is not intended for the designation of creative personnel and should Producer wish to designate such creative personnel they should do so in the Bid Estimate.

- **Why is there a reference to "License Fee" in the Terms of Payment section instead of "Contract Price"?**

  In this agreement the Producer retains the rights to the Work and licenses the Work to the Client.

- **Why are there no percentage amounts in the Terms of Payment section of the SPA?**

  When licensing rights it is common for the licensing fee to be paid up front in its entirety. However, this agreement contemplates many different types of projects that may extend over long periods of time. Therefore, the payment terms have been left open for the Producer to schedule the timing and amounts of the individual payments. If the timing of the production is similar to a traditional television commercial the AICP recommends using the AICP payment guideline of 75%/25%.
  (http://www.aicp.com/doingbusiness/guidelines.html)

- **In what instance should I check the Talent Payment Rider box?**

  In the Licensed Rights agreement the Producer is responsible for paying talent session fees, while the Client is responsible for all residual talent payments under all applicable talent union agreements. If the Client is to be responsible for paying talent session fees as well, then the Talent Payment Rider should be executed and the Talent Payment Rider box on the SPA should be checked.

- **Do I need to check either the Producer or Client box in the insurance section? Why?**

  Yes. If the Producer is supplying the insurance for the production, the Producer box should be checked. If the Client is supplying the insurance for the production, the Client box should be checked. Different paragraphs of the insurance section in the Standard Terms and Conditions (the, "STC") will apply based on the box checked in the SPA.

Exhibit A - Standard Terms and Conditions (Licensed Rights)

- **Under the Licensed Rights agreement, what does the term "Reserved Rights" mean?**

  Reserved Rights is a term in the agreement defining Producer's rights in and to the Work. Under this agreement the Producer may use the Work for purposes other than Client's use as set forth in the License and described in the SPA.

- **What does the term "License to Producer" mean?**

  License to Producer is a license granted to the Producer by the Client to use the Client Supplied Materials in the Work, i.e. the product.

- **Why is there no "Cancellation/Postponement" clause in the Licensed Rights agreement?**

  A license agreement fundamentally addresses content that has been previously produced and therefore does not contemplate a cancellation situation. If the Producer is producing the Work to be licensed, and a portion of the licensing fee is attributable to the cost of production, the Producer may wish to negotiate additional specific terms in the event of the cancellation of the production.

Talent Payment Rider

- **What is a Talent Payment Rider?**

  The Talent Payment Rider is a document that replaces the language in paragraph 11(a)(ii) of the Licensed Rights agreement with the language in the rider.

- **When do I use the Talent Payment Rider?**

  The Talent Payment Rider should be used in conjunction with the Licensed Rights agreement when the Client is to be responsible for paying talent session fees instead of the Producer.

- **Is it appropriate to use the Talent Payment Rider with both the WFH SPA and the Licensed Rights SPA?**

  No. The Talent Payment Rider is to be used with the Licensed Rights agreement only.

Additional Exploitation Rider

- **What is an Additional Exploitation Rider?**

  The Additional Exploitation Rider is a rider which can be utilized to amend the distribution channels, exclusivity, term and/or territory as outlined in the WFH SPA or Licensed Rights SPA.

- **When do I use the Additional Exploitation Rider?**

  The Additional Exploitation Rider should be used to memorialize the new understanding between the Producer and Client when the Client wishes to exploit the Work in additional distribution channels, territories, etc. other than as stated in the SPA, and should be executed prior to the exploitation of the Work in such new channels.

- **Is it appropriate to use the Additional Exploitation Rider with both the WFH SPA and the Licensed Rights SPA?**

  Yes, you may use the Additional Exploitation Rider with both the WFH and Licensed Rights agreements.

- **Would I ever need more than one Additional Exploitation Rider for one project?**

  You may need to execute more than one Additional Exploitation Rider if you are producing multiple projects under one SPA and you wish to amend the exclusivity, term and/or territory differently for each project.

- **Is an Additional Exploitation Rider necessary if the Client only asks for additional work, but not additional distribution channels?**

  No. The Additional Exploitation Rider is used to amend the SPA for Work previously contracted. Should the Client request additional work, a new SPA should be executed. If the Producer wishes to limit subsequent productions of a derivative of the Work they should execute a Subsequent Production Rider.

Subsequent Production Riders

First Negotiation/Passive Payments Subsequent Productions Frozen

- **What is the difference between the two Subsequent Production Riders?**

The First Negotiation/Passive Payments Rider allows the Client to produce a derivative of the original Work provided that the Producer is given right of first negotiation to produce the subsequent production. If the Producer and Client fail to reach an agreement within 30 days of good faith negotiations then the Client shall have no further obligation to the Producer, however Producer shall be entitled to a passive payment of 2½% of the direct budget of the applicable subsequent production.

In the Subsequent Productions Frozen Rider the Client may not create, develop, produce or exploit any derivatives of the Work including sequels, prequels, remakes or other adaptations of the Work without the written consent of Producer.

- **When should these Subsequent Production Riders be negotiated?**

  The Subsequent Production Riders should be executed concurrently with the SPA.