

# STANDARD COMMERCIAL PRODUCTION AGREEMENT

Date \_\_\_\_\_

Job # / P.O. # \_\_\_\_\_

**Client** (also referred to as "Advertiser") \_\_\_\_\_ **Product** \_\_\_\_\_

Address \_\_\_\_\_ City/State/Zip \_\_\_\_\_

**Agency** \_\_\_\_\_ **Agency Job #** \_\_\_\_\_

Address \_\_\_\_\_ City/State/Zip \_\_\_\_\_

**Production Company** (also referred to as "Producer") \_\_\_\_\_

Address \_\_\_\_\_ City/State/Zip \_\_\_\_\_

Producer hereby agrees to produce and deliver to the signer of this contract ("Contracting Client") the production of the below-referenced commercial(s) ("Specified Commercial(s)"), subject to and in accordance with all terms, conditions, and specifications set forth herein.

## A. COMMERCIAL IDENTIFICATION

	Commercial Title/Length	VIDEO					5	Commercial Title/Length	VIDEO				
		16mm	35mm	STUDIO	LOCATION	SOUND			16mm	35mm	STUDIO	LOCATION	SOUND
1							5						
2							6						
3							7						
4							8						

## B. DESIGNATED PERSONNEL

Producer shall assign the following people to the Specified Commercial(s):

Agency/Client shall assign the following Authorized Representative(s) during the production of the Specified Commercial(s).

Director \_\_\_\_\_

Name/Title \_\_\_\_\_

Executive Producer \_\_\_\_\_

Name/Title \_\_\_\_\_

## C. PRODUCTION REQUIREMENTS

Production Company and Agency/Client responsibilities for furnishing elements and materials are detailed in attached bid estimate and/or Addendum A *Production Specifications and Estimate Form*.

## D. TERMS OF PAYMENT

<b>Contract Price</b>	\$ _____
<input type="checkbox"/> <b>Firm Bid</b>	<input type="checkbox"/> <b>Cost Plus Fixed Fee</b>

Contingency Day	\$ _____
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Due upon signing of contract	%	\$ _____
Due upon approval of photography	%	\$ _____
Due upon completion and delivery of all elements and materials supplied by production company	%	\$ _____

## E. EDITORIAL

Cost \$ \_\_\_\_\_

Facility \_\_\_\_\_

Editor \_\_\_\_\_

Address \_\_\_\_\_

City/State/Zip \_\_\_\_\_

Choose one of the options listed below:

- 1. **Editorial Subcontract-No Assignment of Payment**  
Cost of Editorial is included in contract price and Producer will subcontract Editor for services rendered under the terms of this Agreement. This option requires execution of the *Termination of Insurance Coverage/Initiate Insurance Obligation of Editorial Company Rider*, which is included as Addendum B of this Agreement.
- 2. **Editorial Subcontract-With Assignment of Payment**  
Cost of Editorial is included in contract price. Producer will subcontract Editor, and Producer directs Contracting Client to pay Editor directly for services rendered under the terms of this Agreement. This option requires execution of the *Direct Payment Rider/Risk of Loss Rider*, which is included as Addendum C to this Agreement.
- 3. **No Editorial**  
Contracting Client agrees Editorial is not part of this contract. This option requires execution of the *Termination of Insurance Coverage/Initiate Insurance Obligation of Editorial Company Rider*, which is included as Addendum B of this Agreement.
- 4. **Editorial Performed by Production Company and included in contract price.**

## F. SIGNATURES

Please indicate your agreement hereto by signing in the space provided below. See back hereof for additional terms and conditions.

Contracting Client \_\_\_\_\_

Production Company \_\_\_\_\_

Name/Title \_\_\_\_\_

Name/Title \_\_\_\_\_

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

## 1. QUALITY

It is the essence of this Agreement that all completed commercials and services supplied by Producer shall be of the highest applicable production standards.

Producer agrees that the Film(s) and or Tape(s) shall be of first class quality, artistically produced with direction, photography, sound, art, animation, synchronization and other physical and aesthetic content of a technical quality equal to current standards for sound motion pictures of similar character and purpose and will conform with all network technical requirements. All pertinent photography shall be within the television safety margin of the motion picture frame size so as to be visible to the television viewer. The quality of the completed Film(s) and/or Tape(s) is of the essence of this Agreement.

## 2. AGENCY/CLIENT RELATIONSHIP

All rights, benefits, privileges and properties under this Agreement are vested in and are for the benefit of the Advertiser or its Agency acting in its behalf. All obligations, liabilities and duties of an Advertiser represented by an Agency under this Agreement are the joint and several obligations of Agency and Advertiser. Without reducing the joint and several obligations, liabilities and duties of the Advertiser and its Agency under this Agreement and without requiring the production company to first invoke or exhaust any remedies against one before proceeding against the other, the Contracting Client assumes primary responsibility for discharging such obligations, liabilities and duties.

## 3. FURNISHING MATERIALS, SERVICES, & RELEASES

A. Agency/Client: Agency/Client shall supply scripts, storyboards, product props, production notes, music, celebrity talent, creative guidance/supervision, and related clearances, unless otherwise noted in the Production Specifications and Estimate Form, Addendum A. If Producer is responsible for Editorial subcontract pursuant to Section E., Editorial, Agency/Client will supply Post Producer (either directly or through Producer where applicable), a Post Production Specification Sheet containing all requirements to be met by Post Producer and delivery instructions. Agency/Client will supply track or musical composition(s) unless otherwise specified.

B. Producer: Producer shall supply everything required for complete production and delivery of the commercial(s) pursuant to the requirements of Addendum A. This includes but is not limited to commercial elements, dailies, sync dailies, finished commercials, production and directorial personnel, photographic and/or electronic recording, as specified, sound facilities as appropriate, materials, set, and/or location facilities, props, set dressing, set design and construction, animation, wardrobe, screening facilities, and appropriate delivery of materials as specified in Addendum A or by direction of Authorized Representative.

Producer shall deliver to Contracting Client consents, waivers or releases from all talent and all persons or entities who have rendered services to Producer in connection with the Specified Commercial(s) to the extent permissible by applicable union or guild agreements. Producer shall supply everything else required for the delivery of the Specified Commercial(s) unless exceptions are so noted in Addendum A.

## 4. CHANGES IN SPECIFICATIONS

If at any time, Agency/Client desires to make any changes or variations from the script(s) or storyboard(s) in the Specified Commercial(s) or from any material or work in progress, and such changes result in additional costs to Producer, Producer agrees to notify the Contracting Client of the amount before any such additional costs are incurred and Producer shall proceed only after receiving approval (written or oral) from Authorized Representative, approval which will be binding to the terms of this Agreement. Reimbursement for such additional costs shall be payable in accordance with the terms of this Agreement for final payment.

## 5. OWNERSHIP

Except as otherwise provided herein, all rights, title and interest in and to the commercial(s) which are the subject of this Agreement, including all copyrights therein as well as in and to all the exposed negatives, positives, out-takes and clips shall be the property of the Contracting Client.

## 6. SECURITY/CONFIDENTIALITY

Producer understands that some information for said commercial(s) may be of a confidential and/or sensitive nature. Producer agrees, at Contracting Client's written request, to require, within reason, those engaged for the production to sign appropriate agreements not to discuss or disclose information about the product or the Specified Commercial(s) except as such disclosure may be necessary for Producer to produce commercial(s) in the usual and customary manner under this Agreement.

## 7. INDEPENDENT CONTRACTOR

It is understood that Producer's status under this Agreement is that of an independent contractor and that all persons engaged by Producer in performing its obligations shall not be deemed employees of Contracting Client. Producer shall make whatever payments may be due such persons and will comply with all governmental regulations. Producer shall indemnify and hold harmless Contracting Client against claims resulting from Producer's failure to comply with provisions of this Paragraph.

## 8. AUDIT RIGHTS/DEFINITIONS

A. Contracting Client shall have the right to audit Producer's Cost Plus Bid productions. Contracting Client agrees that audits shall occur no later than one year after the date hereof. Contracting Client shall not have any right to audit Producer's Firm Bid productions.

B. In a Cost Plus Bid production, Producer shall estimate the cost of all elements of a production based on the specifications provided by Contracting Client. A fixed fee is added to the total of the costs of all the elements, which total becomes the contract price. The Producer executes the actual production in accordance with the specifications, the objective being to bring the Specified Commercial(s) in on budget. Overages must be communicated and approved in advance by Authorized Representative, whenever possible. The actual costs of each Specified Commercial(s) are accumulated and reported on the bid form, reflecting both overages and underages. At the conclusion of the job, the Producer does a cost-accounting on the job, and the Contracting Client is billed the actual direct costs plus the predetermined fixed fee.

C. In a Firm Bid production, Producer shall submit a bid identifying direct costs, production fee, and director's fee. Once the bid has been accepted, it becomes the contract price for the job.

## 9. PRODUCER WARRANTIES

Producer represents and warrants:

A. That Producer has full right to enter into this Agreement and to perform its obligations hereunder and will comply with all applicable Federal, State and Local Laws, ordinances and regulations and with all applicable union agreements to which Producer is a signatory.

B. That upon delivery to Contracting Client of Specified Commercial(s), all union production payroll and any musician union fees, for individuals contracted by Producer, (e.g. IATSE, DGA, Teamsters) shall have been paid in accordance with the union contracts to which the Producer is a signatory, if any.

C. That Producer shall maintain accurate time records of shooting, meals, overtime and travel times to enable Contracting Client or signatory to make the appropriate session fee talent payments (as provided in Paragraph 10 below). No talent payments (SAG, AFTRA, AF of M) of any nature are to be made by Producer for Contracting Client's account unless otherwise specified in writing, or included on the original bid, as an accommodation to the Contracting Client.

D. That Producer will use reasonable efforts to obtain all licenses, consents and rights necessary and incident to the performance, reproduction and exhibition by television of each of the Specified Commercial(s) with respect to materials, elements and services provided by Producer.

E. That all performances, appearances and services rendered in connection with each Specified Commercial(s) for which Producer is responsible for payment, will be fully paid by the Producer and all rights, licenses, releases and contracts therefor will be obtained by Producer on behalf of Contracting Client.

## 10. CLIENT WARRANTIES

Contracting Client represents and warrants:

A. That Contracting Client will pay for all session fees for SAG, AFTRA, and AF of M on-camera or off-camera performances, and will discharge all obligations imposed upon employers under any federal, state or local laws for worker's compensation, unemployment compensation insurance, social security tax, state disability tax, payroll taxes and residual payments. Contracting Client is the contracting party (employer) for said talent. In addition, all talent union contracting forms (e.g. "Exhibit A's") and the filing thereof with various union offices, in connection with such talent, is the direct responsibility of the Contracting Client.

B. The representations and warranties made by Producer in Paragraph 9 above shall not apply to any material supplied by Contracting Client (e.g. scripts, storyboards, artwork, product or voice and music tracks, or any other material which is the basis for the Specified Commercial(s)) with respect to which Contracting Client makes the same representations and warranties to Producer that Producer has made to Contracting Client in Paragraph 9 above.

## 11. DELIVERY OF MATERIALS

Delivery of the Specified Commercial(s) shall mean delivery by Producer of dailies, negatives, positive prints, video tapes, sound tracks "as recorded," and such other material as specified herein to the editorial facility designated by Contracting Client, at which time Producer shall be released from any further liability, pursuant to Section E., Editorial.

## 12. PAYMENT

Contracting Client understands that the specified terms and dates of payment under this Agreement are based upon timely cash payments. If Contracting Client chooses to defer paying any amount beyond the date on which it is due, Contracting Client may be charged at the Producer's discretion, as additional consideration, an amount equal to the current prime rate +2% (as charged by Producer's bank from time to time) on unpaid amounts until paid, compounded monthly. Ownership of the commercial does not transfer until full payment is made to Producer.

## 13. INDEMNIFICATION

Producer agrees to indemnify, defend, and hold harmless Contracting Client and its officers, employees, agents and licensees from and against any and all claims, actions, damages, liabilities and expenses, arising out of the breach of any obligation, warranty or representation of Producer in this Agreement.

Contracting Client agrees to indemnify, defend, and hold harmless Producer and its officers, employees, agents and licensees from and against any and all claims, actions, damages, liabilities and expenses, arising out of the breach of any obligation, warranty or representation of Contracting Client in this Agreement.

## 14. TAX LIABILITY

Any sales tax, use tax, or other tax payable on production and delivery of Specified Commercial(s) to Contracting Client(s) (other than sales tax arising from Producer's purchases of materials or supplies in connection with the production) shall be the responsibility of Contracting Client who shall pay, defend and hold harmless Producer from payment of any such taxes.

## 15. ASSIGNMENT

This Agreement may not be assigned by either party without the written consent of the other.

## 16. INSURANCE COVERAGE

A. If Producer is responsible to provide production insurance for said commercial(s), the following coverage shall apply:

(1) Producer shall obtain, pay for and maintain during the term hereof:

(a) Workers Compensation and Employers Liability for Producer's employee(s) at the site and time of production.

(b) Commercial General Liability in an amount not less than \$1,000,000 combined single limit for bodily injury and property damage at the site and time of production. Producer shall add the Agency/Client as an "additional insured" on Producer's Commercial General Liability policy, but only with respects to actions/operations of the Producer and/or Producer's personnel.

(c) Film Production Package Policy consisting of Negative Film and Videotape and/or Production Media; Faulty Stock and/or Media Perils, Camera and Processing; Props, Sets and Wardrobe; Extra Expense; Miscellaneous Equipment; Third Party Property Damage; Monies and Securities; and Office Contents. The Negative Film and Videotape limit shall be sufficient to replace the elements paid for by the Producer

during the original shoot against covered causes of loss. The Props, Sets and Wardrobe and Miscellaneous Equipment limits shall be sufficient to replace any damaged property. If the Agency/Client desires for the Producer to insure types of losses not listed above and/or production costs items originally paid for by the Agency/Client such request must be made in writing prior to the commencement of production, and Client shall reimburse Producer for any additional premiums arising from the request for such additional insurance.

- (d) Automobile Insurance covering vehicle(s) owned, borrowed and/or rented by the Producer during the course of production. Such coverage shall be in an amount not less than \$1,000,000 for bodily injury and/or property damage and provide comprehensive and collision coverage.
- (e) Umbrella Liability in an amount not less than \$4,000,000 combined single limit for bodily injury and/or property damage.
- (f) Errors and Omissions Liability in an amount not less than \$1,000,000 for claims arising from a single occurrence and \$3,000,000 for all claims in the aggregate. If coverage is purchased on a claims made basis there shall be a three year reporting provision.
- (g) Group Travel Accident covering union requirements.
- (2) Producer shall at the written request of Agency/Client provide copies of Certificates of Insurance evidencing compliance with required insurance coverage as specified in 16.A(1)a-g.
- (3) Agency/Client shall obtain, pay for and maintain Professional Liability (Errors and Omissions Liability) insurance covering all intellectual property right infringement(s) arising from any and all uses of the elements.
- (4) Both Producer and Agency/Client each agree to promptly give the other party written notice of any claim.
- (5) If any additional insurance is necessitated by a production in addition to the coverage outlined in 16.A(1)a-g, special coverage needs to be obtained on a job by job basis at Agency/Client expense. Agency/Client hereby acknowledges that unless requested by Agency/Client in writing, Producer is only providing insurance coverage as outlined in 16.A(1)a-g.
- B. If Agency/Client is providing production insurance for said commercial(s), Producer will be notified in writing prior to signing this Agreement.
- (1) Agency/Client will obtain and maintain insurance coverage as outlined in Paragraphs 16.A(1)b-g with respect to Agency/Client job(s) at no cost to Producer and name Producer and Director as a "named insured" on said policies prior to the commencement of preproduction. All Agency/Client supplied insurance will be deemed to be the primary coverage and issued on a non-contributory basis. Agency/Client Umbrella Liability limit will be \$19,000,000.
- (2) Agency/Client will provide a supply of Certificates of Insurance and/or have Certificates of Insurance issued on behalf of the Producer.
- (3) Agency/Client will be responsible for any additional insurance premiums resulting from the need to purchase special coverage not provided by the coverage enumerated in 16.A(1)a-g and any and all deductibles associated with Agency/Client insurance program.
- (4) Agency/Client shall obtain, pay for and maintain Professional Liability (Errors and Omissions Liability) insurance covering all intellectual property right infringement(s) arising from script and content provided by the Agency/Client.
- (5) Both Producer and Agency/Client each agree to promptly give the other party written notice of any claim.
- (6) Agency/Client will indemnify, defend and hold harmless Producer and Director for any and all claims, demands, actions including defense costs and attorneys fees for claims arising from the commercial(s) and the failure of the Agency/Client insurance program to be as broad as the Producer's coverage.

## 17. CONTINGENCY AND WEATHER DAYS

- A. A contingency day is any day where a scheduled film or tape shooting has been prevented from occurring due to circumstances beyond the control of the production company.
- B. These circumstances may include but should not be limited to:
- (1) Weather conditions (rain, fog, sleet, hail, or any adverse condition that is not consistent with the prescribed shooting conditions desired by the Contracting Client).
- (2) Injury, illness, or absence of client-supplied elements (e.g. key talent, color correct products).
- (3) "Force majeure" (meaning but not limited to, earthquake, riot, fire, flood, volcanic eruption, acts of war, strikes, labor unrests, civil authority, terrorism, and acts of God).
- (4) "Client Insured Re-Shoots" (any additional days for a job insured by the Agency/Client, who is therefore authorizing the expenditure). The Contracting Client should be provided with a contingency day cost which should be approved prior to proceeding with that shoot day.
- C. The Production Company recognizes its obligation to minimize contingency day liabilities and will apply accepted industry cancellation practices.
- D. The Production Company will quote the maximum exposure figure (a "not to exceed" figure) as a contingency day cost. This will be a cost per day figure. However, this figure does not include the cost of premiums for crew or suppliers (i.e., should the contingency day fall on weekends, holidays or premium days based on consecutive employment).

## 18. CANCELLATION AND POSTPONEMENT

A cancellation or postponement is defined as a rescheduling of the production to a later specific date caused or directed by Agency/Client or a total cancellation of the project.

If the Production Company blocks out a specific period of time with the agreement that it represents a firm commitment from the Contracting Client, then the Production Company makes no further efforts to sell the time. If the job is canceled or postponed within the Guideline time frame, it is unlikely that this time can be re-booked. It should be understood that this time represents the Production Company's only source of income.

- A. If notice of cancellation/postponement is given to the Producer ONE TO TEN WORKING DAYS prior to the commencement of the shoot, the Contracting-Client will be liable to the Production Company for:
- (1) All out-of-pocket costs.
- (2) Full director's fee as bid.
- (3) Full production fee on the job as bid.
- B. If notice of cancellation/postponement is given ELEVEN TO FIFTEEN WORKING DAYS prior to the commencement of the shoot, the Contracting-Client will be liable to the Production Company for:
- (1) All out-of-pocket costs.
- (2) Not less than 50% of director's fee as bid.
- (3) Not less than 50% of production fee on the job as bid.
- C. If notice of cancellation/postponement is given MORE THAN FIFTEEN WORKING DAYS prior to the commencement of the shoot, the Contracting-Client will be liable to the Production Company for:
- (1) All out-of-pocket costs.
- (2) Not less than 25% of the director's fee as bid.
- (3) Not less than 25% of the production fee on the job as bid.

## Cancellation and Postponement: Digital Production

- A. If notice of cancellation/postponement is given MORE THAN HALFWAY THROUGH the production schedule of the job, that is between the award or start date and the final delivery date, the Contracting Client will be liable to the Production Company for the full cost of the job as a bid.
- B. If notice of cancellation/postponement is given IN THE SECOND QUARTER of the production schedule of the job, that is between the award or start date and the final delivery date, the Contracting Client will be liable to the Production Company for:
- (1) All out of pocket costs, including the expense of all staff and free-lance labor attached to the project. This expense will include full payment through the original completion date if that labor is not re-booked by the company, or, in the case of the free-lance labor, not able to re-book itself on another project.
- (2) Full creative fees as bid.
- (3) Full production fee on the job as bid.
- C. If notice of cancellation/postponement is given IN THE FIRST QUARTER of the production schedule of the job, that is between the award or start date and the final delivery date, the Contracting Client will be liable to the Production Company for:
- (1) All out of pocket costs, including the expense of all staff and free-lance labor attached to the project. This expense will include full payment through the original completion date if that labor is not re-booked by the company, or, in the case of the free-lance labor, not able to re-book itself on another project.
- (2) Not less than 50% of creative fees as bid.
- (3) Not less than 50% of the production fee on the job as bid.

## 19. PUBLICITY GUIDELINES

Until notified in writing by Contracting Client, Production Company and Director each have a revocable license to use finished commercial(s) for promotional purposes.

## 20. DISPUTE RESOLUTION

If a dispute arises from or relates to this Agreement or the breach thereof, the parties agree first to try in good faith to settle the dispute by mediation under the Commercial Mediation Rules of the American Arbitration Association, before resorting to arbitration. If the dispute is not settled by mediation, the parties agree to submit the dispute to the American Arbitration Association for binding non appealable arbitration, in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect unless the parties mutually agree otherwise. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The award may be limited to a statement that one party pay the other a sum of money. The arbitrator(s) do not exceed their powers by committing an error of law or legal reasoning. All demands for mediation or arbitration shall be in writing and made by actual delivery or by certified or registered mail, return receipt requested, with a copy to the Association. The list of mediators or arbitrators proposed by the Association shall consist of those persons who are experienced in Client, Agency and Producer affairs and need not be attorneys. The arbitration shall be in the City of the Production Company as indicated on Page 1 of this Agreement. The prevailing party in the arbitration proceedings shall be entitled to attorney's fees and costs in connection with the arbitration proceedings and any legal action taken to enforce the award of arbitration.

## 21. ENTIRE AGREEMENT AND MODIFICATION

This Agreement and any Addenda attached hereto shall constitute the entire agreement between Producer and Contracting Client. Any amendment hereto must be in writing and signed by each party.

## 22. CAPTIONS

The captions are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Agreement or of any provision hereof.

## 23. NO WAIVER

Failure of any party to this Agreement to exercise any rights shall not constitute a waiver of those rights.

## 24. ENFORCEABILITY

If one or more of the provisions of this Agreement shall be held unenforceable, it shall not affect the enforceability of the other provisions.

## 25. EQUAL OPPORTUNITY

In connection with its performance hereunder, Producer agrees not to discriminate against any employee or applicant because of race, religion, sexual orientation, color, sex, national origin, age, disability, or any other factor protected by federal, state or local law.

## 26. APPLICABLE LAW

This Agreement shall be interpreted and governed by the local laws of the jurisdiction where the Production Company office authorizing this Agreement is located as set forth on Page 1 of this Agreement.