STANDARD PRODUCTION AGREEMENT

commercial **producers** council

THIS AGREEMENT IS DATED: .....

BETWEEN (CALLED "PRODUCTION COMPANY")

NAME: .....

SHORT NAME: PRODUCTION COMPANY

Company ABN / ACN .....

of [Address] .....

AND (CALLED "COMPANY")

NAME: .....

SHORT NAME: COMPANY

Company ABN / ACN .....

of [Address] .....

WHEREAS:-

A The Production Company is an Australian business providing production services (the "Services") to the television, film and advertising industries;

B The Company wishes to appoint Production Company to produce the Commercial/s detailed under this Agreement, subject to the terms and conditions of this Agreement.

NOW IT IS HEREBY AGREED as follows:-

1. This Agreement means the following (each as amended from time to time in accordance with this Agreement) in order of priority:

   (a) the terms or clauses of this Agreement;
   (b) its schedules, annexures or attachments; and
   (c) any other documents generated in accordance with this Agreement and/or incorporated by reference.

2. In consideration of the payments and undertakings detailed under this Agreement, and subject to the terms and conditions of this Agreement, the Company agrees to pay the Production Company the Agreed Quote and the Production Company agrees to fulfil the Responsibilities in relation to the Commercial/s.

3. The Company agrees and acknowledges that it has read, accepted and understood the Standard Production Terms and Conditions incorporated into this Agreement as Annexure Two and available at www.communicationscouncil.org.au

EXECUTED as an AGREEMENT:

Signed for and on behalf of the **PRODUCTION COMPANY:**

.....
Signature

.....
Name (print)

....
Position Date

Signed for and on behalf of the **COMPANY:**

.....
Signature

.....
Name (print)

....
Position Date

ANNEXURES - STANDARD PRODUCTION AGREEMENT

- Document 1: Standard Production Agreement
- Annexure 1: Commercial/s Details and Definitions
- Annexure 2: Standard Production Terms & Conditions
- Annexure 3: Specifications & Responsibilities Checklist
- Annexure 4: Overage Form

ANNEXURE ONE: COMMERCIAL/S DETAILS AND DEFINITIONS

(1) Commercial/s

Company: .....

Company Job No: .....

Production Company Reference: .....

Advertiser: .....

Product: .....

Title: .....

Deliverables: .....

(2) Agreed Quote

The total agreed quote payable to the Production Company for its acceptance of the Responsibilities to produce the Commercial/s shall be:

(i) the budgeted cost of the Responsibilities, equalling [.....] as further detailed under the Budget detailed in point 6 below; and
(ii) the Production Company's fee of [.....] (the "**Production Fee**"); and

(iii) the Director and Producer's fee of [.....] (the "**Creative Fee**");

amounting to a total agreed quote of currency and rate [.....] plus GST [.....].

NOTE: Please be sure the attached Budget makes it clear the currency & rates the Production Company's services have been quoted at, and the party who will bear the risk of any fluctuations.

(3) Payment Terms

NOTE: Please be sure the attached Budget makes it clear the currency & rates the Production Company's services have been quoted at, and the party who will bear the risk of any fluctuations.

☐ **OPTION 1:** Payment of the Agreed Quote shall be made by the Company in the following instalments:
- **One Third:** due upon execution of this Agreement;
- **One Third:** due on receipt of the Production Company's invoice, payment received no later than two (2) days before the first day of principal photography for the Commercial/s;
- **One Third:** due 30 days after the approval of the offline edit as per attached schedule.

☐ **OPTION 2:** Payment of the Agreed Quote shall be made by the Company in the following instalments:
- **Fifty Percent (50%):** due upon execution of this Agreement;
- **Twenty Five Percent (25%):** due on receipt of the Production Company's invoice, payment received no later than two (2) days before the first day of principal photography for the Commercial/s; and
- **Twenty Five Percent (25%):** due on reicept of the Production Company's invoice payable no later than thirty (30) days after the approval of offline edit as per attached schedule.

☐ **OPTION 3:** Negotiated payment terms as agreed between the Production Company and the Company.

(4) Delivery Dates (if applicable)

First Deliverable: .....

Delivery Date: ..... From: .....

Second Deliverable: .....

Delivery Date: ..... From: .....

Third Deliverable: .....

Delivery Date: ..... From: .....

(5) Completion Date

Date: .....

Definition of completion date: .....

NOTE: Date to be determined by the Production Company when one of the following is delivered to the agency, thereby completing the Production Company's services - rushes, agency approved edit OR final masters.

(6) Responsibilities

The Production Company will produce the Commercial/s (as constituted by the Materials) for use in the approved Territory and Media in accordance with the following requirements (subject to any mutually agreed revisions):

- The attached Pitch Document (Director's Treatment) dated [.....]:
- The attached Budget and Job Specification (Schedule) dated [.....] (the "Budget"):

Refer Annexure Three attached.

(7) Key Production Company Personnel

The Production Company shall procure and provide the services of the following key personnel for the production of the Commercial/s:

- Director: .....
- Production Company Producer: .....
- Other: .....

(8) Key Company Personnel

- Company Authorised Representative: .....
- Other: .....

(9) Media & Term (pertaining to talent/music if applicable)

Confirm approved Media:

☐ Pay Television ☐ Free-to-Air Television ☐ All Media ☐ Online and Ancillary Usage ☐ Theatrical

☐ Other (specify): .....

Confirm Term: .....

(10) Territory (pertaining to talent/music if applicable)

The Materials are limited to use in the following territories (Please provide list below):

.....

.....

(11) Materials (i.e. props, wardrobe,etc)

The Materials are limited to use in the following territories (Please provide list below):

All Materials to be delivered to the Company are detailed in section number [.....] of the [Budget].
NOTE: Materials requiring approval by the Company shall be specifically indicated as requiring such approval in the Budget (the "Approval Materials")

(12) Insurances

All Insurances required by the Company are detailed in section number [.....] of the Job Specification section of the Budget. NOTE: Refer to checklist for percentages.

(13) Special Conditions

Detail amendments to CPC Standard Term & Conditions required per job or attach separately.

.....

.....

A note about payment terms

Since 2012 the Australian Government has maintained a policy of paying interest on late payment to small businesses. The Procurement 30 Day Payment Policy for Small Business states that contracts for procurements with a value of up to A$1 million (GST inclusive) from a small business must also provide that, if full payment is not made by the agency within 30 days of receipt of a correctly rendered invoice (or the shorter period specified in the contract), the agency must pay simple interest on the unpaid amount ('contract amount')'.

A note about copyright and intellectual property

In essence, copyright protects creativity. The traditional advertising model sees clients paying production companies, on a work for hire basis, for the right to use the copyright works they create on a project by project basis, therefore any basic copyright laws are passed onto the client.

We suggest CPC members clearly stipulate at the quoting and bidding stage what they consider is subject to copyright protection, eg: Director's treatments, Technology commissions, Creative and product innovation, Programme platforms and formats.

We also recommend members seek guidance from industry legal specialists, DVM Law, for specific copyright and IP advice.

ANNEXURE TWO: STANDARD PRODUCTION TERMS AND CONDITIONS

1. Delivery and Payment

a) In consideration for the Production Company's services under this Agreement, the Company agrees to pay the Production Company the Agreed Quote in accordance with the Payment Terms, defined as either:

i. OPTION 1:
Payment of the Agreed Quote shall be made by the Company in the following instalments:
- One Third: due upon execution of this Agreement;
- One Third: due on receipt of the Production Company's invoice, payment received no later than two (2) days before the first day of principal photography for the Commercial/s;
- One Third: due 30 days after the approval of the offline edit as per attached schedule.

ii. OPTION 2:
Payment of the Agreed Quote shall be made by the Company in the following instalments:
- Fifty Percent (50%): due upon execution of this Agreement;
- Twenty Five Percent (25%): due on receipt of the Production Company's invoice, payment received no later than two (2) days before the first day of principal photography for the Commercial/s; and
- Twenty Five Percent (25%): due on receipt of the Production Company's invoice payable no later than thirty (30) days after the approval of offline edit as per attached schedule.

iii. OPTION 3:
Negotiated payment terms as agreed between the Production Company and the Company.

b) The Production Company agrees that it will perform the Responsibilities and produce the Materials and the Commercial/s in accordance with best practice industry standards.

2. Approvals

a) The Production Company shall submit the Approval Materials as soon as possible and the Company shall approve or detail their required amendments to the Approval Materials as soon as possible having regard for the need of the Production Company to proceed to prepare the Materials in accordance with the Delivery Dates or to change the item in advance of the shoot
b) Both parties acknowledge and agree that time shall be of the essence in relation to the submission and approval of the Approval Materials, and that they shall employ their best efforts to perform their obligations in relation to the Approval Materials.
c) The Company representative should be available to approve Approval Materials as per an agreed schedule.

3. Attendance of Company Representative on Shoot

a) The Company shall provide the Company Authorised Representative, who will attend the shooting and/or recording and/or post--production of the Commercial/s at agreed times for consultation and approvals as may be necessary relating to the content of the Commercial/s.
b) If the Company Authorised Representative is unable to attend the shoot at any stage the decision of the Production Company in all such matters will be determinative and final.

4. Safekeeping of Negative/Videotape/Digital Assets

a) The Production Company shall be responsible for the safekeeping of any negative, videotape, digital assets during production of the Commercial/s and during their laboratory processing and at all other times up to the point at which the Materials are delivered to the Company.
b) The Production Company shall not be responsible for the security of the Materials or any other items in any other circumstances.
c) The Company is responsible for insuring the negative, videotape/digital assets and any other Materials (including that which remains in the possession of the Production Company) after the final Delivery Date or the Completion Date (whichever date occurs first).

5. Legal and Technical Requirements

a) The Company shall be responsible for ensuring that the Commercial/s and the Materials comply with any legal or regulatory requirements relating to content and post-- production.
b) The Production Company shall ensure the Materials comply with the technical requirements and standards in force in Australia at the date of signing of the Agreement.

6. Permits and Visas

a) Unless otherwise agreed in writing, the Production Company shall be responsible for obtaining all relevant permits, licences or other official authorisations relating to the shoot, including any necessary visas or work permits in respect of personnel engaged by the Production Company (but excluding any talent or personnel engaged by the Company).
b) The Production Company will not be responsible for delays, difficulties or inability to obtain visas or work permits for talent or personnel engaged by the Company.

7. Copyright and Other Rights

a) Ownership of the Materials and all related property produced under this Agreement shall remain vested in the Production Company until it has received payment of the entire Agreed Quote.
b) Upon receipt by the Production Company of the total Agreed Quote and any extra charges incurred as a result of an agreed revision to the Responsibilities, the Production Company shall assign to the Company all of its copyright in the Materials and the Commercial/s for use as agreed in Annexure One.
c) Where the Production Company expressly commissions any material from a third party for use in the Commercial/s or uses any existing material which has been created by the Production Company or such third party for the Commercial/s, the Production Company undertakes to obtain either an assignment to the Company of such copyright as may exist in such materials or, if an assignment is not feasible, or cannot be negotiated on reasonable terms, a licence on terms to be approved by the Company, and at the cost of the Company, to use the materials in the Commercial/s.
d) The Production Company undertakes, wherever possible and practicable, to procure and pass on to the Company moral rights consents or waivers in a form to be approved by the Company, from the director and all other persons materially engaged in the creation or

production of the Commercial/s or any part thereof by the Production Company.

e) The Company and the Production Company will ensure, wherever possible and practicable, that appropriate permissions are obtained in respect of any copyright or trademarked material supplied by the Company or the Production Company, as the case may be, for inclusion in the Commercial/s. The party supplying such material being responsible for its clearance.

f) f) Where the Production Company agrees to be responsible for the engagement of actors, other performers or models, the Production Company undertakes to obtain where possible, all necessary consents from such parties on terms to be approved by the Company.

8. Amendment Requests

If the Company (including where such request occurs for or on behalf of any third party) asks for the production schedule, Budget or scope of work to be altered:

a) the parties will use their best endeavours to agree new dates and relevant deliverables, and the Company will be responsible for any reasonable and unavoidable increases in the Agreed Quote or costs arising as a result;

b) if any of the additional costs cannot be agreed, the dispute resolution procedure detailed under Clause 15 shall apply;

c) any amounts which are not in dispute shall be paid in full by the Company in accordance with the Payment Dates detailed under this Agreement.

9. Cancellation & Postponement by Company

a) If the Production Company has developed and submitted its treatment and the Company then cancels or postpones the project beyond 30 days, a fee of $5,000 will be paid to the Production Company by way of compensation unless otherwise negotiated prior to submission.

b) If the Company cancels or postpones production of the Commercial/s in circumstances where the Production Company has committed no material breach of the agreement, the Company must in all cases reimburse the Production Company for all direct costs and the total Creative Fee plus the proportions of the Production Fee as provided in clause 9(b) below.

c) For the avoidance of doubt, the proportion of the Production Fee payable under this clause depends on the notice period and the type of production but is always additional to the direct costs so that where:

   i. the Company gives the Production Company 15 or more business days' notice of cancellation or postponement of a production, the Company must pay 25% of the Production Fee;

   ii. the Company gives the Production Company less than 15 but more than 10 business days' notice of cancellation or postponement of a production the Company must pay 50% of the Production Fee;

   iii. the Company gives the Production Company 10 or less business days' notice of cancellation or postponement of a production the Company must pay 100% of the Production Fee;

   For the purposes of this clause, 'business day' means any day Monday to Friday, excluding public holidays.

d) Notwithstanding the above, in all cases of postponement of a production the Company will use its best endeavours to limit the time period of any such postponement and upon the postponement ceasing, the parties will negotiate new terms and fees for the production taking into account the length of postponement, any payments made under this clause, and the financial impact of the postponement on the parties.

10. Contingency & Weather Days & Force Majeure:

The Company agrees that if a production is suspended, frustrated or delayed by bad weather conditions, a contingency beyond the control of the Production Company, or by some other force majeure event which would include, but are not limited to, storms, tempests, earthquakes, wars, floods, injury, illness or non--appearance of key talent, delay or failure of delivery of goods or services to be supplied by the Company, whether on--camera product, vehicles or otherwise it must, in such circumstances, and in addition to all other agreed or stipulated payments, pay the Production Company the costs and fees specified by Producer in advance or supplied to the Company on request.

11. Termination

a) The Company may terminate this Agreement by fourteen (14) days written notice to the Production Company if the Production Company commits any material breach of this Agreement, and fails to remedy that breach within 14 days of receiving written notice identifying the breach.

b) Either party may terminate this Agreement forthwith by written notice to the other if that other party (being a company) passes a resolution for winding up (otherwise than for the purposes of a solvent amalgamation or reconstruction) or a court makes an order to that effect or (being a partnership or other unincorporated association) is dissolved or (being a natural person) dies, or if either party becomes or is declared insolvent or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors or has a liquidator, receiver, administrator, administrative receiver, manager, trustee or similar officer appointed over any of its assets or ceases or threatens to cease to carry on business.

c) In the event of termination by the Company under this clause the Company shall be entitled, without prejudice to any other rights it may have, to continue and/or complete the production and shall in addition be entitled on demand to immediate delivery of the Materials to complete the production and/or to transmit the Commercial/s subject to the Production Company receiving payment for any fees and/or direct costs legitimately incurred or spent by it towards production of the Commercial/s in accordance with the Budget and the Payment Terms.

12. Indemnity

a) Should a party incur any loss or liability, costs (including external legal costs) or damages as a result of the other party breaching this Agreement the offending party shall indemnify the non--offending party in relation to such damage.

b) Each party's liability under this clause shall be limited to the Production Fee (together with the cost of any extra work required by the Company and carried out by the Production Company) paid under this agreement and no party shall have any liability for consequential loss, airtime costs, loss of business profits or other pecuniary losses.

13. Insurance

Each party agrees to insure itself effectively, and to provide on request evidence that such insurances are in effect, for all actions, claims, losses and demands which may arise out of or in respect of the performance, non--performance or breach by a party of its obligations under this Agreement as agreed between the parties including, but not limited to:

a) the non--appearance or inability to complete the scheduled performance of any artist or key personnel;
b) the non--appearance, inadequacy or unusability of any materials or production facilities provided by a party to the other;
c) loss of or damage to any property as a result of the actions, recklessness or negligence of a party or its representatives;
d) the death or bodily injury to artists and other persons caused by or arising out of the negligence or recklessness of a party or their representatives;
e) risks to the Materials, Commercials or other related material whilst being worked on or transported by third parties;
f) any responsibility a party may have for providing Employer's Liability insurance, Worker's Compensation insurance or superannuation to its personnel; and
g) the loss sustained due to the interruption, postponement, cancellation or abandonment of the production which arises out of any matter for which the party is responsible.

14. Entire Agreement

This Agreement is the entire agreement between the parties relating to the subject matter of this Agreement and supersedes all previous communications, agreements and other arrangements (other than those expressly attached to or incorporated into this Agreement by reference). No variation or assignment of this Agreement shall be effective unless it is in writing and signed by both parties.

15. Disputes Procedure

The parties agree that:--

a) For the purposes of this Agreement, 'CPCDP shall mean the Commercial Producers Council Dispute Policy'; and
b) in the event of either party to this Agreement having a claim, complaint or grievance (the 'complaint') against the other party, the claimant shall comply with the CPCDP in force at the time of dispute before taking any other action, the provisions of which the parties hereby agree to submit and comply; and
c) if the parties agree to mediation:--
    i. the mediation shall be administered by mediators recommended in accordance with the CPCDP;
    ii. the mediator shall be a person nominated from their register of CPCDP accredited mediators; and
    iii. the parties and their representatives shall comply with all procedures and time limits identified by the CPCDP or the mediator.

16. Confidential Information

a) The parties acknowledge a duty to not during or after the termination or completion of this Agreement to disclose without the other's prior written permission any confidential information either concerning the other's business, or that of the advertiser, its business plans, customers or associated companies or any other relevant information about the Commercial/s disclosed as a result of this Agreement.
b) In particular during and after the production the Production Company acknowledges its responsibility to treat in confidence all the marketing and sales information and statistics relating to the advertiser's business.
c) Both parties shall impose obligations in terms equivalent to those above on its own personnel. For purposes of clarification all information involved in the production of the Materials is of a confidential nature and may only be discussed outside of the production/standard production procedures with the express written permission of the Company Authorised Representative.

17. Late Payments

The Company acknowledges that any payment of the Agreed Quote later than the times required under the Payment Terms shall attract an interest rate of 2% p/a above the current interest rate set by the Reserve Bank of Australia, with interest to be calculated daily.

18. No Waiver

Failure of any party to exercise or enforce its rights under this Agreement shall not constitute a waiver of those rights unless expressly agreed in writing between the parties.

19. Enforceability

If one or more of the provisions of this Agreement are found to unenforceable, it shall not affect the enforceability of the other provisions, and the impacted provision shall only be read down to the extent necessary to give effect to the purposes of this Agreement.

20. Governing Law

This Agreement shall be governed by the laws of the State of New South Wales, Australia and the parties hereby submit to the non--exclusive jurisdiction of the Courts in that State.

ANNEXURE THREE: TVC PRODUCTION SPECIFICATIONS & RESPONSIBILITIES CHECKLIST

Agency: .....

Client: .....

Title: .....

Responsibility Of:	AGENCY	PROD. COMPANY	NOTES
CREW			
Shooting Crew			
Stunts & Safety			
Product Specialist			
Makeup/Hair/Styling			
CAST & CASTING			
Casting			
Cast Fees			
Cast payroll service			
Child Employment Cleara			
PRE PRODUCTION			
Shooting Storyboards			
Office & couriers			
Pre-production Crew			
LOCATIONS			
Location Fees			
Logistics/Traffic Mgmt			
Council Permits/Fees			
Studio			
ART DEPARTMENT			
Animals/Handler/Vet			
Wardrobe/Costumes			
Props/Dressing/Set			
Home Economist			
EQUIPMENT			
Camera/Lighting/Grip			
Sound			
Aerial/Underwater			
FILM STOCK/PROCESSING			
Film Stock - 16/35mm film			
Processing			
Digital - SD / HD			
Stock Footage			
PRODUCT			
Pack Mockups			
Product Supply			
Car logistics, prep & ins.			
POST PRODUCTION			
Editing Costs			
Avid/FCP Hire Costs			
Rushes Transfer			
Negcutting			
Colour Grade			
Online Compile			
Visual Effects			
Supers/Logo Design			

Responsibility Of:	AGENCY	PROD. COMPANY	NOTES
Animation			
Sound Mix/Effects/Restripe			
V/O Record			
V/O & Audio Talent			
Music			
FreeTV - CAD Approval			
Release Dubs			
Orig. Neg/Dig Data Storage			
Agency Mpegs/Cassettes			
TRAVEL			
Crew Travel			
Crew Hire Cars/Parking			
Agency/Client Travel			
Talent Travel			
Travel Insurance - crew/cast/agency/client			
INSURANCES & SUNDRIES			
Negative Insurance			
Public Liability Insurance			
Cast (Non-Appear) Insurance			
Key Person Insurance			
Client Supplied Location/ Props Insurance			
Agency costs due to Re-shoots			
Client costs due to Re-shoots			
Weather Contingency			
Crew Workers Comp			
Cast Workers Comp			
Agency/Client Workers Comp			
OTHER			
Foreign Exchange variations (see notes)			

ANNEXURE FOUR: OVERAGE FORM

Production Title:	.....	Production #:	.....
Producer:	.....	Commercial:	.....
Agency:	.....	Date:	.....
Agency Producer:	.....	Overage:	.....

Date	Description of Overages	Total

Sub Total	
Production Fee (@20%)	
Insurance (@2.5%)	
TOTAL	
GST (@10%)	
GRAND TOTAL (Aust $)	

SIGNED:

.....

Producer / Prod. Company

APPROVED:

.....

Agency Producer / Agency Name