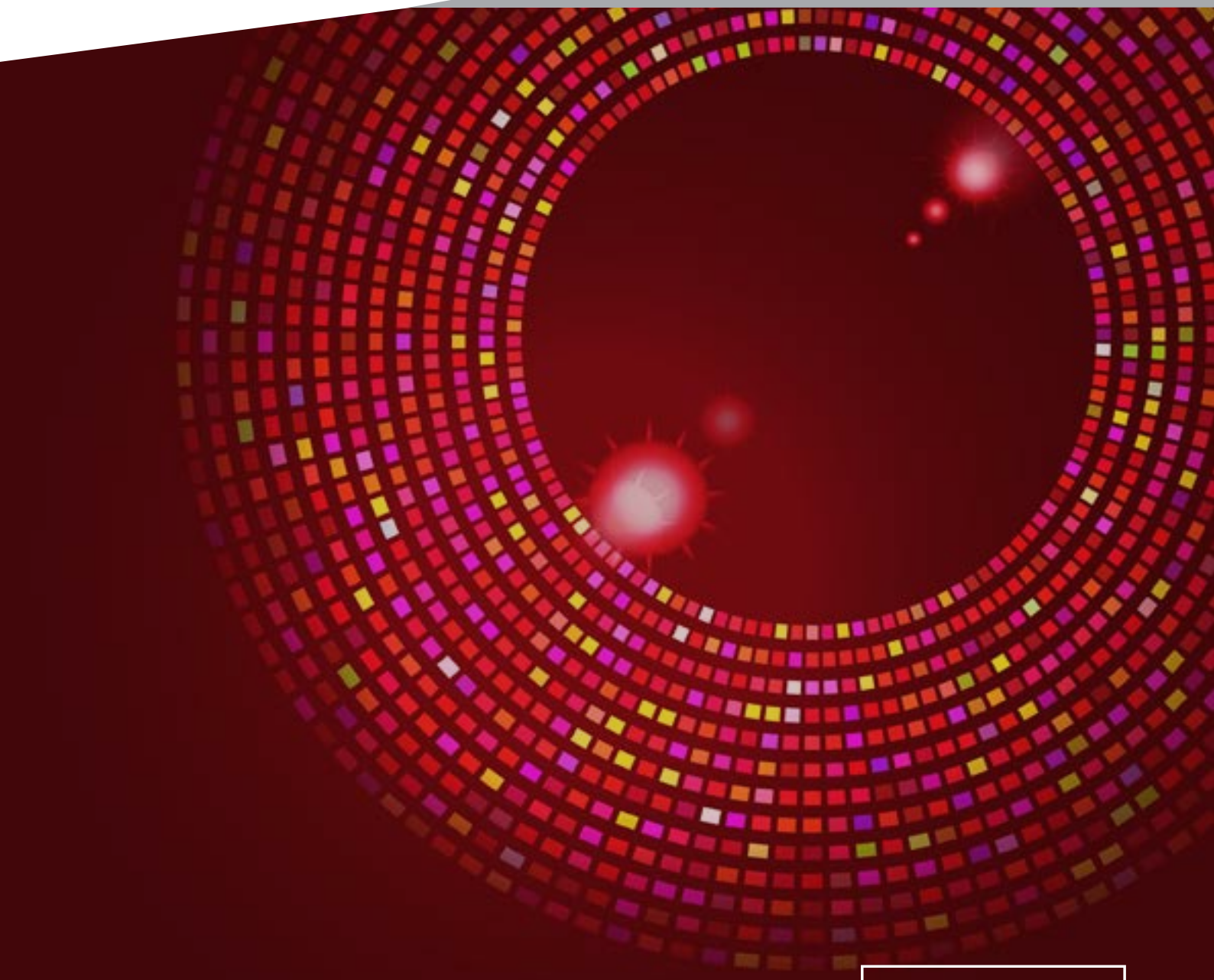
commercial production industry guidelines

Best practice recommendations developed by The Commercial Producers Council



commercial **producers** council

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note from CPC co-chairs

Karen Bryson
CPC Co-Chair
Executive Producer, FINCH

Lucas Jenner
CPC Co-Chair
Executive Producer, Rabbit

In 2011 The Commercial Producers Council was formed with the aim of standardising business practices, developing industry positions on issues, supporting members and partnering The Communications Council to champion creativity across all facets of commercial production.

CPC members continue to deliver an increasingly rich and diverse range of expertise across commercial and post production, editing, music, animation and technology advancements, amongst others.

Whether applied to film, video and/or digital, the advertising industry also depends on our members for exclusive access to world-class directors, state-of-the-art equipment, sophisticated thinking and innovative, bespoke products and services for groundbreaking technical and production needs.

While our original objectives remain true to this day, a rapidly evolving landscape for commercial production companies also requires that we articulate our position and recommend guidelines for what's new, update best practice recommendations for what's evolved, and reinforce what remains unchanged.

The CPC acts as one voice in serving and supporting our community and aiming to create the best possible business environment for our members to operate in. This manual is another way we can support both our members and partners in realising that ambition.

We look forward to working closely with you again in the coming year.

Karen Bryson & Lucas Jenner

our members

AIRBAG

BEAUTIFUL PICTURES

CURIOUS

EXIT

goodoil

IN THE THICKET

PHOTOPLAY

REVOLVER
WILL O'ROURKE

scoundrel

SWEETSHOP

THE EDITORS

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our mission

The CPC represents the interests of commercial production companies operating within the marketing communications industry in Australia. It acts as a unifying force for its members by:

- addressing issues of importance to the industry
- championing best practice principles and behaviours
- providing systems and processes to assist members in delivering excellence in the pursuit of world-class commercial creativity
- promoting the economic value and benefits of commercial production to the business community

member benefits

Industry Consultation and Resolution

The CPC encourages members to become actively involved in quarterly committee meetings so that issues of greatest importance remain our focus and priority. In parallel, the CPC provides ongoing assistance for issues management and resolution for members.

Access to Guidance Services and Resources

The CPC provides members with access to a suite of standardised industry templates for an extensive range of production-related negotiations and protocols.

Assistance with regulatory and legal issues is also provided by phone or email via The Communications Council.

Discounted Legal Services

CPC members are entitled to an initial 15 minute telephone consultation and advice free of charge from industry specialists, DVM Law. They also benefit from a discounted hourly rate for legal services thereafter.

Discounts for Industry Events and Award Entries

CPC members are entitled to significantly discounted rates for AWARD Award entries and gala event ticketing. Each year CPC members benefit from more than $20,000 in savings across award entries and events.

Exclusive Mentoring Programme

CPC members are invited to join the Commercial & Content Mentorship Programme in partnership with Screen Australia (Brilliant Careers: Gender Matters initiative) and the Australian Directors Guild. Now in its second year, the programme aims to address gender imbalance at the early stages of young directors' careers.

In its first year, eight directors were mentored, two of whom were subsequently offered formal representation by their mentoring company.

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resources and guidelines

- quoting and bidding
- standard production agreement
- confidentiality agreement
- visa applications
- road safety

quoting and bidding

These quoting and bidding guidelines reinforce general best practice and highlight issues and considerations for the mutual benefit of all parties; production companies, agencies and advertisers alike.

In addition, with the emergence of in-house production facilities, specific quoting and bidding practices have been included to ensure that CPC members adopt common standards and that all parties operate in the spirit of sustainable business partnerships.

This section has been produced in consultation with industry specialists, DVM Law.

quoting and bidding

General guidelines

Typically, an agency works as the agent for an advertiser-client and therefore acts on behalf of another party. This is helpful to bear in mind because it means there is usually another participant in the discussion: one who may not be “in the room” but who has the ultimate say. Agencies are typically required to have full transparency with their clients about dealings on their behalf and simply put, disclosure is helpful to all parties. It helps provide the most informative, efficient and effective process.

Questions to ask from the outset

It is advised that members ask the right questions from the get-go to ensure they are well informed. There are certain basic areas of information which you should be knowledgeable about from the first approach to quote or bid:

1. Has the proposed job or assignment been cleared by the client?
2. Is the job proposed only to one bidder or to several?
3. Is there full bidding transparency?
4. Are the payment terms guaranteed by the agency or are they hedged by a ‘sequential liability’ or ‘sequential payment’ clause?
5. What guidelines or particulars govern the contract?

Other considerations

- Can you be given an idea of what the client-advertiser is looking to spend?
- If the agency can provide a rough estimate, is it an ‘all-in budget’? ie. including production, edit, talent, VFX, music and finish, or is the estimate just for production?
- It’s recommended that you read the scripts at the outset, even before roughing out numbers or engaging your director and team in a meeting or call. Based on experience and the director’s style, you may well have an idea of the cost range and be able to compare it to the budget estimate disclosed by the agency.
- If the project is not realistic based on the anticipated budget, you may not wish to spend time developing an approach that will most likely not be feasible.

In-house production guidelines

It is becoming increasingly common globally for agencies to have in-house production facilities which, in certain situations, will be competing with CPC members for a job.

It is reasonable for CPC members to understand when they are competing with in-house production facilities and that there be transparency to the terms under which they are competing.

Agencies should disclose their interests to the client along with external production service suppliers, prior to bidding, and establish a process to deal with conflicts. This should be reflected in the Production Agreement.

It is advised that members ask the following questions of the agencies before submitting a bid. It should be noted that agencies are under no obligation to reveal all the details of a bidding process.

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quoting and bidding

Recommended process

1. At the outset of bidding, producers should ask the agency to disclose how many parties are bidding and who they are bidding against.
2. If an agency's in-house production arm is one of the bidding prospects, the producer should ask how they will ensure the integrity and independence of the bidding process.
3. Once this information is disclosed, it should be at the discretion of CPC members to determine, on a case-by-case basis, whether they wish to proceed with bidding against in-house production companies.

Recommended Bidding Statement

The CPC recommends that its members utilise common language regarding the validity of bids when submitting to an agency in bid letters, emails, or the comments section of the bid. The following bidding statement is recommended for inclusion in all relevant documentation.

[Production Company] submits this bid with the understanding that the Agency's solicitation of this and other bids in connection with this project is in compliance with all applicable laws. Unless notified otherwise in writing by the Agency prior to bid submission, [Production Company] submits this bid with the understanding that to ensure a fair and non-conflicted bidding process, The Agency discloses the inclusion of any entity in the bidding pool, directly or indirectly, which is a parent, subsidiary, division, affiliate or sibling of the Agency, to both [Production Company] and the Advertiser.

NB: These recommended best practices do not represent CPC policy. Each member must make its own decisions about how to conduct its business. In addition, they are not intended as legal advice with respect to any particular set of circumstances and members are encouraged to consult with industry specialists, DVM Law, for advice in connection with any specific business context or transaction.

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standard production agreement

The Standard Production Agreement provides a framework for agencies and production companies to uphold best practice principles across payment terms, delivery and special conditions, amongst others.

While each project operates within different parameters, standardising the process clarifies responsibilities and creates better efficiencies. The SPA does not negate the need for negotiation, but should act as a guide for all parties.

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

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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

Download complete form

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Annexure 1

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.

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Annexure 1

(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: .....

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Annexure 1

(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.

Download complete form

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Annexure 2

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

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Annexure 2

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 $3,500 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.

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Annexure 2

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.

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Annexure 3

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			

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Annexure 3

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)			

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Annexure 4

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

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confidentiality agreement

The Mutual Confidentiality Deed provides a framework for agencies and production companies to uphold best practice principles. It defines what constitutes confidential information and intellectual property rights, amongst others.

The agreement does not remove the need for adaptation where specific or atypical confidentiality issues may arise, but should act as a guide for all parties.

confidentiality agreement

MUTUAL CONFIDENTIALITY DEED

DATED: ..... CAMPAIGN: .....

PARTIES

NAME: .....

SHORT NAME: AGENCY

NOTICES TO: .....

Address/Mail: .....

Email: .....

NAME: .....

SHORT NAME: PRODUCER

NOTICES TO: .....

Address/Mail: .....

Email: .....

(CALLED "THE PARTIES")

1 CONFIDENTIALITY

1.1 In this Deed, Confidential Information means:

1.1.1 the information and materials in any written briefs or materials attached to this Deed or provided by one Party to the other Party in connection with the purpose in Clause 1.2 below;

1.1.2 data, business models, business plans, concepts, ideas, materials, research, plans, marketing and digital strategies, logic and process flowcharts, diagrammatic representations of any aspect of a product or service, functional specifications, screen layouts and mock-ups, formal code and other programming, databases or software programs, trade secrets, patents, copyright materials, trade marks, designs, domain names, know-how, business ideas, business methods, discoveries, inventions, licences, marketing information, databases, pricing and financial information, client lists, information about clients and potential clients including details of suppliers, contracts and negotiations with clients and partners and potential clients and potential partners, arising out of or relating directly or indirectly and in any manner to the Campaign stated above;

1.1.3 information which is indicated as confidential or information which, by its nature and/or due to the circumstances of its disclosure, would appear to a reasonable person to be confidential; and

1.1.4 all Intellectual Property Rights contained or subsisting in any written briefs or materials attached to this Deed or any other materials provided by one Party to the other Party in connection with the purpose in Clause 1.2 below.

1.2 The Agency and the Producer each acknowledge and agree that the Confidential Information is crucial to each other's goodwill and the Agency and the Producer will each require access to each other's Confidential Information for the pu pose of discussing potential commercial co-operation between the Agency and the Producer in relation to the Campaign.

2 THIRD PARTIES

2.1 No Confidential Information is to be disclosed to any third party except with the prior written consent of the Agency or the Producer. Such consent may be withheld in the Agency's or the Producer's absolute discretion.

3 COVENANTS

3.1 The Agency and the Producer agree and COVENANT with each other as follows:

3.1.1 to at all times hold Confidential Information which may come into its possession in full and complete confidence;
3.1.2 to take all reasonable and necessary steps to restrict access to the Confidential Information;
3.1.3 to notify any of its employees or agents of the obligations imposed by this Deed and instruct them that the confidentiality requirements of this Deed are required to be similarly observed by them and procure such observance;

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3.1.4 not to copy, publish or circulate (or authorise or permit anyone else to copy, publish or circulate) any Confidential Information disclosed or communicated to any other person or entity without exception;

3.1.5 upon request by the Agency or the Producer and at the cost of the other Party return all Confidential Information to the Agency or the Producer (as the case may be) which is capable of being returned and which is the property of the Agency or the Producer and made available to the other Party for the purposes contemplated by this Deed;

3.1.6 indemnify and keep indemnified each other against all claims, proceedings, costs, expenses, loss, damage or damages that a Party may sustain or incur as a result of or in connection with, whether directly or indirectly, any breach by the other Party of the terms of this Deed; and

3.1.7 upon request by the Agency or the Producer and at the other Party's cost, delete or destroy theAgency's or the Producer's Confidential Information which is incapable of being returned.

3.2 Confidential Information which:

3.2.1 enters the public domain, other than through a breach of this Deed;

3.2.2 is required by law to be disclosed; or

3.2.3 is already lawfully known to or independently developed by the Agency or the Producer without any access to the Confidential Information, shall no longer be treated as Confidential Information.

3.3 The Agency and the Producer acknowledge and agree that a presumption of confidence exists in relation to all of the Agency's and the Producer's information.

3.4 The onus on proving the requirements set out under clause 3.2 rests with the Party asserting application of the clause.

4 ACKNOWLEGEMENT

4.1 The Agency and the Producer acknowledge that a breach of this Deed will cause significant loss and damage to the other Party and acknowledges that damages may not provide an adequate remedy to the Agency or the Producer (as the case may be) and the Agency or the Producer shall be entitled to apply to any court for injunctive relief restraining the other Party from committing any breach or threatened breach of this Deed without showing or providing proof of any actual damage. Such rights and remedies will be cumulative and in addition to any other rights or remedies which the Agency or the Producer may be entitled to.

5 LAW

5.1 The law governing this Deed is the law in New South Wales and the Parties irrevocably submit to the jurisdiction of any of its competent courts or tribunals and to the jurisdiction of the Federal Court of Australia, sitting in New South Wales.

6 INTELLECTUAL PROPERTY RIGHTS

6.1 In this Deed, Intellectual Property Rights means all present or future intellectual property rights of whatever nature anywhere in the world including, but not limited to, rights in respect of or in connection with copyright, inventions (including patents), trade marks, service marks, trade names, domain names, designs, any rights in silicon chip topography, confidential information, trade secrets and know-how and similar industrial, commercial and intellectual property rights, whether or not registered or registrable, and includes the right to apply for the registration of such rights, and whether existing in Australia or otherwise.

6.2 All right, title and interest in all Intellectual Property Rights in the Confidential Information of a Party will remain or be vested in that Party. Nothing in this Deed will be taken to constitute a transfer, assignment or grant of any ownership rights in the Confidential Information by one Party to the other Party.

EXECUTED BY THE PARTIES AS A DEED:

Executed by the **AGENCY** in accordance with Section 127 of the *Corporations Act 2001*	**Executed** by the **PRODUCER** in accordance with Section 127 of the *Corporations Act 2001*
.....	.....
Signature of Director	Signature of Director
.....	.....
Name of Director (print)	Name of Director (print)
.....	.....
Signature of Director/Company Secretary	Signature of Director/Company Secretary
.....	.....
Name of Director/Company Secretary (print)	Name of Director/Company Secretary (print)

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visa applications

In late 2016, new Visa subclasses were introduced, allowing applicants to enter Australia for temporary work or for a specified activity. All overseas screen directors seeking to work in Australia are required to apply for a Subclass 408 Temporary Activity Visa (Entertainment Visa).

The following provides guidance on Visa applications for international directors along with a checklist of the documentation required for a comprehensive lodgement.

visa applications

Needless to say, it is important that all directors are brought into the country on the correct visa. This can be actioned directly with the Department of Home Affairs' electronic application system or with the assistance of a migration agent.

How to apply for Subclass 408 Temporary Activity Visa (Entertainment Visa) with an Immigration Officer.

Documents to provide:

- Applications must be lodged online.
- Director's CV.
- Copy of the director's passport.
- Applicants must meet health and character requirements.
- Flight details; entering and departing the country.
- Insurance documentation; medical and travel insurance.
- Schedule of the director's movements during his/her stay.
- Deal memos with local companies including post houses and casting agents.
- A full list of local crew to be employed as part of the job.
- Letter of Support from the production company which includes job details and the case as to why the director is the right choice for the job. List entry and exit dates, details of the contribution the assignment will make to the local tourism economy, including hotels, restaurants and transport. Highlight the benefit of employing other production businesses if the director is not granted entry.
- Scripts.
- Director's treatment.
- Questionnaire - provided by Immigration Officer regarding personal history and past visa applications.

For further up-to-date information regarding processing times and documentation, visit www.homeaffairs.gov.au/Trav/Visa-1/408-

All material should be sent to the Department of Home Affairs. The process usually takes 24 hours for a case manager to be appointed for assessment. Providing there are no character issues, visas tend to be turned around within five to ten days.

Proof of consultation with the most relevant union (currently the ADG for directors and MEAA for talent and crew) must be shown, however legislation does not require that a consultation fee is owed.

Unions have five days to respond. It's important to note that even if unions provide an objection, it is ultimately the Department of Home Affairs ruling irrespective of whether the union has objected or not.

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road safety

The planning, co-ordination of licensing of road occupancies in the Sydney region is the responsibility of the Road Occupancy Unit at the Transport Management Centre. For regions outside Sydney, Roads and Maritime Services (RMS) manages the process. In the case of Melbourne, roadways in Victoria are either managed by VicRoads or local councils.

A Road Occupancy Licence (ROL) is required for filming activities that possibly involve land and/or road closures and/or filming from an adjacent vehicle. Filming may also be considered a special event.

road safety

Sydney/NSW

In 2016 the CPC and Crew representatives met with The Roads Maritime Services (RMS) authorities, the processing body for all Road Occupancy Licenses (ROL), to discuss concerns raised by members regarding the assessment and processing of filming requests. This included a meeting with the Minister and a rolling block demo thereafter.

As a consequence it was agreed that mobile filming on the Sydney Harbour Bridge and Motorways occurring between 5am - 9am, would not be subjected to a 20 day assessment period. Requests for filming during this time are now only subject to 10 day assessment periods. There is ongoing dialogue to possibly extend this 10 day period to other periods, eg. night shoots.

Filming on the road

Guidelines when considering filming on the Sydney Motor Network owned by RMS

Approved Rolling Block periods for 10 working days application:

Day times Saturday - Sunday 03:00-09:00
Night times Sunday - Wednesday 22:00-04:00
Night time Thursday - 23:00 - 04:00

NB: A 20 business day application process is still required for other types of filming or shoots outside the 5am-9am, Sat/Sun period for the Sydney Harbour Bridge, Cahill Expressway, ANZAC Bridge and Motorway network.

Applications should be made in the name of the production company only. Each production company should have an active account on the OPLINC system with RMS.

The system allows for a company name to be listed along with the ABN; one company

to one ABN. This can be (and may have already been setup) via the Location Manager.

The same account must be used for future ROL applications. Avoid ROL's being in the name of the Traffic Management Company as insurances do not match up.

It is prudent that all official permits are in the name of the production company.

Visit mysydneycbd.com for updated information on road closures due to current works in progress.

Melbourne/VIC

The fastest ways to distinguish whether roadways are council managed or controlled by VicRoads is to either ring a local licensed Traffic Management Company, or to look at Melways: VicRoads are green, red or black. Local council roads are brown, orange or grey.

On-paper requirements apply by both VicRoads and City of Melbourne for minimum turnarounds. They refer to date of Application. At that point you need to know the specific road section you want to film on, the date(s) and time(s). Location managers can give production companies some flexibility here by applying for a full day.
That said, caution should be exercised with blanket applications if specific times are not known. i.e.

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road safety

some roadways are available weekdays outside peak hours, but putting a full day on the application because the specific shoot time is not yet known, may result in the application being rejected.

Local council is to be informed of filming on VicRoads Roads in their Municipality, but permission comes from VicRoads.

Public roadways are defined as roads accessible to the public. Private roadways are defined as roadways entirely contained within private property, where public access is restricted and/or controlled.

Application lead times

City of Melbourne/most councils (excluding Boroondara): **10 business days** minimum.
VicRoads: **10 business days** from date of application to shoot day.
Stop/hold or footpath filming: **7 business days** from date of application to shoot day.
Full Closure: **10 business days** from date of application to shoot day.

NB: Some rural councils may require more than 10 days, depending on scale.

Application requirements

There's no standard application form, but they will require Traffic Management Plans, MOA's (Memorandum of Authority, provided by Traffic Management Companies) and Public Liability insurance, and may require (in addition): Casa Certifications/Insurances for Drone Use, Resident Notification Fliers, Mud Maps, Photos of Camera Mounts, Vehicle Registrations, and Contact details for drivers.

- **Citylink Freeway** (including Batman Ave, Bolte Bridge, and Sound Tunnel): Managed privately. A "Work order" form is required to film on Citylink Roadways. This is completed and submitted by VICPOL on a production company's behalf. Filming is typically only allowed with use of Rolling Blockade. Stationary/Private Traffic management has been approved, but usually only between 10pm and 5am. Current construction/upgrades on these roadways may affect their availability until early 2019.
- **Eastlink:** Transurban maintain and permit the Eastlink Freeway. They have an online portal/application process, which requires registry/induction by a Locations Manager or production company representative. They require all the same paperwork VicRoads do. Applications must be submitted 7x working days before the shoot.
- **Low-Loader/Tracking/Rigs/etc:** Any time a Low-Loader or Tracking Vehicle is used on a public road (even under full lock down), a VICPOL resource request (application) is required. It's possible VicRoads/VICPOL may deem the police unnecessary under a full closure, but the application must still be submitted for them to assess. If using a Low-Loader/Tracking Vehicle, and the roadway is only under Stop/Hold control, VICPOL members are definitely required. Exterior camera mounts on vehicles travelling on public roads require either a Private Traffic Management Lockdown (closure or stop/hold) or Police Rolling Blockade (often both). The requirements are determined by specific roadway, length of road section, and public interaction in that area. For Rolling Block, private traffic management is not required, unless the rolling blockade is breaking road rules (eg. running lights/travelling in the wrong direction etc). Private roadways only require as much control/supervision as is deemed necessary by the location owner.

Contact

vicroadsfilming@roads.vic.gov.au
Please contact The Communications Council for Road Safety requirements for other capital cities and regions across Australia.

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mentoring programme

inaugural commercial and content mentoring programme

34 applicants, 8 mentorees selected, 7 member mentors 6 months mentoring, 2 mentorees offered permanent representation

Our commitment to diversity

In the past year the CPC has partnered with the Australian Directors Guild (ADG) to offer commercial and content directing mentorships to female directors in its quest to drive diversity across commercial creativity, which the CPC considers critical to the development of distinctive, relevant and compelling ideas for business.

Funded by Screen Australia's Gender Matters: Brilliant Careers initiative, the Commercial & Content Directing Mentorship pairs emerging female directors with commercial production companies to gain an insight into life as a director in the commercial and advertising industry.

At its core, Gender Matters is an unashamed express lane for women in an industry where just 16% of directors of Australian feature films between 1970 and 2014 were female.

Seven of the CPC's members participated in the inaugural programme; FINCH, Rabbit, Photoplay Films, Revolver, Curious Films (all NSW), The Otto Empire (VIC) and Beautiful Pictures (WA).

Applicants were required to have an elementary level of skill and experience as a director, providing a two-minute show reel, a piece-to-camera pitch and a reference from a screen industry practitioner.

In March this year, award-winning director Gillian Armstrong was on hand to announce each of the recipients for the programmes' first year:

- Arielle Thomas – The Otto Empire (VIC)
- Bree Billington – Beautiful Pictures (WA)
- Cassie de Colling – The Otto Empire (VIC)
- Kate Halpin - Goodoil Films (NSW)
- Laura Kurataya – Curious Films (NSW)
- Lou Quill – Photoplay (NSW)
- Natalie van den Dungen – Rabbit (NSW)
- Sinead McDevitt – FINCH (NSW)

The CPC is delighted that two of its young directors have subsequently been offered formal representation by their mentoring production company as a consequence of the 2017 programme.

For the second year running the CPC is partnering with the ADG to mentor female directors looking to take the next step in their commercial directing careers.

Production companies participating in the program in 2018 are FINCH, Goodoil, Photoplay, Scoundrel (all NSW), The Otto Empire, The Sweet Shop (both VIC) , Beautiful Films (WA) and Taxi Films (QLD)

The CPC is committed to its investment in diversity and looks forward to seeing more young female directs receive representation every year.

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thank you

We'd like to thank our members, agency partners and DVM Law for the contribution in developing these guidelines.

We would also like to take this opportunity to thank our members for their continued support and generous contribution of time as mentors, committee members, speakers, tutors and award judges.

CONTACT

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