

Standard Production Services

AGREEMENT

This agreement is dated:

Between:

Company:

(Production Company)

ABN/ACN:

of Address:

(Production Company)

And:

Client:

(Advertiser / Agent / Signatory)

ABN/ACN:

of Address:

(Advertiser / Agent / Signatory)

Whereas:

- A. The Company (Production Company) is an Australian business providing Motion Picture and Video Production Services or Post-Production Services (the "Services") to the motion picture, video content and advertising industries;
- B. The Client (Advertiser / Agency / Authorised Signatory) wishes to commission the Company to produce the Deliverables 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 document;
 - (b) its schedules, annexures or attachments; and
 - (c) any other documents generated in accordance with this document 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 Client agrees to pay the Company the Agreed Fees and the Company agrees to fulfill the Services in relation to the Deliverables.
3. The Client 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 **Company:**

☐ CEO ☐ MD ☐ EP

Print Name

Sign manually or with Digital ID

Date

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

☐ CEO ☐ MD ☐ EP

Print Name

Sign manually or with Digital ID

Date

ANNEXURE ONE: SERVICES AND DELIVERABLES

1 DELIVERABLES

Client (Agency / Signatory):

Client Job No:

Company (Production) Job No:

Advertiser:

Product:

Title:

Deliverables:

2 AGREED FEES

The total agreed Fees payable to the Company for its provision of the Services to produce the Deliverables shall be:

- (i) the budgeted Fees of the Services, equaling [amount] as further detailed under the Budget detailed at point 6 below; and
- (ii) the Production Fee of [amount]; and
- (iii) the Creative Fee of [amount],
- (iv) amounting to a total agreed Fee of [currency and rate] [amount] [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

(Company to tick relevant Option)

- ☐ **OPTION 1:** Payment of the Agreed Fee shall be made by the Client in the following instalments:
 - **Fifty Percent:** due on receipt of the Company's invoice, payment received no later than two (2) Working Days before the first day of the shoot commencement date (first day of principal photography) for the Deliverables; and
 - **Fifty Percent:** due on receipt of the Company's invoice, payable no later than thirty (30) days after the approval of offline edit as per attached Production Schedule.
- ☐ **OPTION 2:** Payment of the Agreed Fee shall be made by the Client in the following instalments:
 - **One Third:** due upon execution of this Agreement;
 - **One Third:** due on receipt of the Company's invoice, payment received no later than two (2) Working Days before the shoot commencement date (first day of principal photography) for the Deliverables; and
 - **One Third:** 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.
- ☐ **OPTION 3:** Payment of the Agreed Fee shall be made by the Client in the following instalments:
 - **Fifty Percent:** due upon execution of this Agreement;
 - **Twenty Five Percent:** due on receipt of the Company's invoice, payment received no later than two (2) Working Days before the shoot commencement date (first day of principal photography) for the Deliverables; and
 - **Twenty Five Percent:** due on receipt of the Company's invoice, payable no later than thirty (30) days after the approval of offline edit as per attached Production Schedule.

OPTION 4: Negotiated payment terms as agreed between Company and Client.

4 DELIVERY DATES

(If applicable)

First Delivery Date:	Deliverable:	
	Form:	
Second Delivery Date:	Deliverable:	
	Form:	
Third Delivery Date:	Deliverable:	
	Form:	

5 COMPLETION DATE

Date:

[definition of completion date]

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

6 SERVICES

The Company will produce the Deliverables (as constituted by the Rushes) 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 Production Schedule dated:
- These documents are attached to this document as Annexure Three.

7 KEY COMPANY PERSONNEL

The Company shall procure and provide the services of the following Key Personnel for the production of the Deliverables:

- Director:
- Production Company Producer:
- [Other]:

8 KEY CLIENT PERSONNEL

- The Client shall procure and provide the services of the following key personnel for the production of the Deliverables:
- Client Authorised Representative:
- Other:

9 MEDIA (MEDIUM)

(pertaining to copyrights including talent, music, voice over, or stills photography if applicable)

Confirm approved media/term:

- ☐ Free-to-Air Television
 ☐ Pay Television
 ☐ Catch Up TV
 ☐ Out of Home / Outdoor Media
☐ Cinema / Theatrical
 ☐ Paid Social / Digital
 Unpaid Web / Social
 Other (please specify)

10 TERRITORY

(pertaining to copyrights including talent, music, voice over, or stills photography if applicable)

The Deliverables are limited to use in the following territories:

List:

11 PERIOD OF USE

(pertaining to copyrights including talent, music, voice over, or stills photography if applicable)

List:

12 RUSHES AND BYPRODUCTS

(see Terms and Conditions, Annexure Two, Clause 1, Definitions, "Rushes" and "Byproducts")

All Rushes and Byproducts to be delivered to the Client are detailed in section [number] of the [Budget].

NOTE: Materials requiring approval by the Client shall be specifically indicated as requiring such approval in the Budget (the "Approval Materials")

13 INSURANCES

All Insurances required by the Client are detailed in section [number] of the Budget.

NOTE: Refer to checklist for percentages

14 SPECIAL CONDITIONS

Detail amendments to CPC Standard Terms & Conditions required per job:

ANNEXURE TWO: STANDARD PRODUCTION TERMS AND CONDITIONS

1. DEFINITIONS

In these Terms and Conditions unless the context clearly indicates otherwise:

Approval Material means any file or display (including documents, correspondence, images, artwork, storyboards, animation, videos, recordings, presentations, or live images) supplied by the Company to the Client for the purpose of Client approval, disapproval, feedback, opinion or revision used in the provision of Services to produce Deliverables.

Artist means professional who creates original works of audio / visual art, content, or Deliverables (or interpret works artistically to transform them into other works) including directors, actors, performers, crew, designers, editors, or visual effects artists.

Authority means a competent or relevant authority including the World Health Organisation, the Australian Government Department of Health (or equivalent State, Territory or overseas Government department), the Chief Health Officer, Australian Border Force, or Federal, State or Territory Police.

Budget means a price estimate or quotation for Services provided by the Company to the Client, and includes a revised Budget arising from Additional Services as referred to in clause 16b).

Business Day means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday and concludes at 5pm on that day in the timezone of the Company's registered business address or filming location (as specified by the Company).

Byproducts means physical objects purchased or made (but not hired or owned by a third party) in the provision of Services including props, wardrobe, sets, puppets, animatronics, models or products. Byproducts are distinct from and exclude Rushes.

Client means, in respect of each Contract, person contracting with the Company and any authorised representative, agent, agency, successor or permitted assignee including the advertiser.

Company means the Production Company as specified in the Standard Production Services Agreement (identified by registered business name and ABN / ACN) including contractors and subcontractors commissioned by the Production Company. The Production Company is an Australian business providing Motion Picture and Video Production Services (ATO Industry Code: 55110) or Post-Production Services (ATO Industry Code: 55140) (the "Services") to the motion picture, video content and advertising industries.

Confirm or Release means from time-to-time the Company will ask the Client to Confirm or Release a booking including crew, studio, location, builds, third-party services or post-production services. Confirmation of a booking makes the Client liable for Overages, fees or penalties (up to 100% of the quoted fee) in the event of relocation, postponement or cancellation of the booking after the time of confirmation (Client Approval). Releasing a booking to avoid future Overages liability may result in bookings including crew, equipment, locations, or facilities being unavailable at no liability to the Company.

Creative Fee means the fee quoted as the 'Creative Fee' in the Standard Production Services Agreement (Annexure One) or Budget including the Director's Fee.

Deliverables means any final product resulting from the provision of the Services by the Company including audio / visual advertising content, commercial content, audio / visual rushes, or other agreed audio / visual content or component thereof. The use of Deliverables are limited to the Services specified in the Standard Production Services Agreement (Annexure One: Clause 6, 9, 10, and 11) and may be further limited by the terms and conditions of Excluded Services. Deliverables have specific technical requirements and specifications; a change in requirements or specification constitutes a change in Deliverables (see Scope).

Event of Force Majeure means any act or event that is not reasonably insurable or beyond the reasonable control of the Company including act of God; inevitable accident; fire; natural disaster; state-of-emergency; lock out, strike or other labour dispute; riot, any insurrection or rebellion or revolution or civil war or usurped power or any action taken by any governmental authority in hindering or combating or defending against regulation or confiscation by order of any government or public authority or risks of contraband or illegal transportation of trade; act or threat of public enemy or terrorism; any hostile or war-like action in time of peace or war, the use or threat of use of any weapon or war employing atomic fission or radioactive force; cyber attack; embargoes or delays in transportation; inability to obtain supplies or raw materials; guidance, advice, enactment, rule, order or act of government or any civil or military authority including public health orders restricting work, congregation, access or movement; illness, no-show, or misadventure effecting talent or key personnel; official days of national mourning; failure or delay of the Services.

Excluded Services means the Company procuring third party rights managed services including Performance / Acting Talent, Voice Over Artists or Music Composition or usage on behalf of the Client for the purpose of the third party's inclusion in the Deliverables, the details of which will be outlined in a separate rights agreement between the Company and the Client.

Exclusions means Services or Deliverables specified as Exclusions or otherwise not explicitly included in the Budget, Pitch or Standard Production Agreement.

Fees means the total fees (including Creative Fee and Production Fee), hard costs, charges, commissions, markups, profits, and taxes payable by the Client to the Company for the provision of Services, including those set out in the Budget (and may include Approved Overages or fees and charges referred to in clause 3f).

GST means the goods and services tax levied in accordance with the A New Tax System (Goods and Services Tax) Act 1999 (Cth.).

Hard Cost means fees, costs, expenses, or penalties already incurred (out-of-pocket) or liable for payment in the future (at the time of the triggering event or notice) including Overages, delay, relocation, recommencement, postponement, or cancellation as quoted or advised by the Company.

Indemnified Person means the Company and each of its principle directors, officers, employees, contractors, and agents.

Key Personnel means those people who specified as Key Personnel in the Standard Production Services Agreement, are essential to carrying out Services and whose absence or diminished participation would jeopardise, delay or otherwise render the Services undeliverable to an agreeable standard or equivalent value between the Client and Company for insurance purposes. Personnel who can be replaced by personnel of similar experience or skill are not generally considered Key Personnel and may not be insured.

Material means all information and materials, including television commercials, audiovisual content, recordings, scripts, legal disclaimers, claims and artwork including logos and other trademarked or copyrighted materials, provided by or on behalf of the Client to the Company in connection with the Services. The Company accepts no liability for or damages / fees arising from the use, accuracy or compliance with relevant regulations of Material supplied by the Client.

Overage means additional fees, hard costs or charges above and beyond those included as agreed Services or not specified in the Budget including those incurred due to overtime, loadings, penalties, additional Deliverables / versions, change of scope, delay according to the Production Schedule, additional services, Client changes or revisions, talent rollover fees, rush fees, additional despatch, or items / Services otherwise listed as Exclusions. Overages may include Production Fees, Insurance Fees, or GST. The Company will provide an Overage quotation or Overage Form (Annexure Three) prior to incurring financial liability for services related to Overages for Client Approval (see Clause 4b and 4c).

ANNEXURE TWO: STANDARD PRODUCTION TERMS AND CONDITIONS

Pitch means any documents including Director's Treatment, Cover Letters, or Storyboards indicating the intended approach of the Company to the provision of the Services

Production Fee means the fee as quoted as the 'Production Fee' in the Standard Production Services Agreement (Annexure One) or Budget and represented as a percentage of the total Fees (excluding the Creative Fee) or flat service fee (at the discretion of the Company).

Production Schedule means the agreed production schedule including the shoot commencement date (first date of principle photography), timeline or deadline (including progress, milestone or approval deadlines) for the Services and Deliverables provided by the Company to the Client in conjunction with the Budget. If an agreed shoot commencement date is not specified in the Standard Production Services Agreement or Production Schedule the shoot commencement date will be TWENTY Working Days from the signature date of the agreement or issue of a Purchase Order (whichever comes first) for the purposes of these Terms and Conditions. Changes to the Production Schedule may trigger Cancellation or Postponement Terms and Conditions (refer to Clause 11).

Recommendation Costs means hard costs and fees including Relocation Costs, Cancellation Fees or Postponement Fees that may arise from a change to the Scope, Production Schedule, delay, Termination of part of the Agreement, or Event of Force Majeure.

Relocation Costs means hard costs associated with changing the location of the Services including the shoot location.

Rushes means digital (audio / visual) media, film negatives, magnetic media (including videotape), computer files, images, recordings, animations, renders, project files, artwork, data, scans, or other miscellaneous audio / visual assets distinct from and used in the creation of Deliverables. Rushes may exclude the work or files of third party suppliers and sub-contractors such as visual effects studios, post-production houses, musicians or recording studios who exercise their rights in separate agreements beyond the control of the Company. Rushes exclude ByProducts and vice versa.

Scope means the total agreed Services and Deliverables as specified in the Standard Production Services Agreement; and supersedes the Client brief, specification sheets, or Materials that do not explicitly form notated attachments to this agreement.

Services means responsibilities, obligations or work associated with the development, production or post-production of audio-visual Deliverables, including television commercials and audiovisual content, as detailed in the Budget, Pitch, and any other agreed services or facilities provided or to be provided by the Company to the Client specified in the Standard Production Services Agreement except for the Excluded Services. Services are time limited to a specific calendar period as detailed in the Production Schedule and non-transferrable. If Cancellation or Postponement occurs, it's unlikely the committed period can be re-booked or opportunity costs associated with declining other competing projects can be recovered.

Transfers means new Deliverables resulting from existing Rushes or Deliverables including transfers, aspect ratio conversions, format conversions, end frame revisions, compression, versioning or encoding for use on other platforms or mediums or additional use.

Weather Day means a day held for the use of filming in the event of bad weather including limiting access, making shooting impossible, dangerous or unsuitable photographic conditions. The Weather Day is not included in the Budget Fee or Agreement, it's a calendar date representing held bookings only (typically on the next Working Day after the shoot date). The client may be asked to Confirm or Release Weather Day holds (Client Approval).

Weather Day Contingency Quote means a quotation for Overages, Hard Costs, Creative Fees or Production Fees related to delay, postponement, or cancellation due to a weather event. The Weather Day Contingency Quote amount is not included in the Budget or Fees, is indicative only, constitutes Additional Services and is charged as an agreed Overage. The Company will endeavour to minimise associated Hard Costs.

2. INTERPRETATIONS

- a) A reference to a **clause** is a reference to a clause of these Terms and Conditions
- b) **Clause** or **sub-clause headings** are inserted for convenience only and do not form part of these Terms and Conditions
- c) **Including** and **includes** are not words of limitation
- d) The singular includes the plural and vice versa
- e) 'Or' is the inclusive 'or' and also means 'and', but only one condition is required to trigger a clause.
- f) Words importing one gender include all other genders and non-genders

3. DELIVERY AND PAYMENT

- a) **Budget:** The Company will provide the Client with a Budget setting out the Fees for the provision of Services in connection with the Deliverables.
- b) **Payment Terms:** The Client agrees to pay the Company the Fees in exchange for Services in this Agreement in accordance with the Payment Terms.
- c) **Scope and Standards:** The Company agrees to provide the Services and Deliverables in accordance with agreed Scope to the highest applicable production standards.
- d) **Late Payment:** The Client acknowledges that any payment of the Fees later than the times required under the Payment Terms shall attract a daily interest rate of 2% above the current interest rate set by the Reserve Bank of Australia.
- e) **Failure to Pay:** In the event the Client fails to pay the Company in accordance with this clause 3, the Company may, at its option, cease to provide Services to the Client.
- f) **Other Invoices:** All charges for Services, other than the Fees, payable by the Client to the Company will be invoiced separately and will be payable within 30 days after the date of issue of an invoice by the Company to the Client for those charges. This may include fees and charges associated with Overages, Postponement or Cancellation.
- g) **Commissions and Rebates:** The Client acknowledges the Company may receive, and is entitled to retain for its own use and benefit, all and any commissions and rebates paid or allowed by any supplier of services to the Company and the Client expressly authorises the Company to retain such commissions and rebates for its own benefit.
- h) **Audit:** The Client waives the right to audit costs or invoices associated with Services provided under this Agreement. The Company will provide the Client with regular Budget or expense / liability reports detailing the Fees or liabilities incurred in connection with the Services as requested. The Company shall have the sole right to determine and allocate all costs associated with the Services, and the Client shall have no right to dispute or challenge any such costs as quoted in the Agreed Budget or Approved Overages.

ANNEXURE TWO: STANDARD PRODUCTION TERMS AND CONDITIONS

- i) **GST:** The parties acknowledge that all amounts payable in accordance with the Budget or under these Terms and Conditions are exclusive of GST and:
- if a party is liable to pay GST in respect of any good or service supplied to the other party pursuant to a Budget or under these Terms and Conditions, that party will invoice the other party for that GST and will ensure that the invoice complies with the form of tax invoice required by the relevant GST legislation; and
 - the party who receives such a tax invoice must pay the amount of GST invoiced simultaneously with a corresponding consideration required to be paid or given in accordance with an Estimate or under these Terms and Conditions.

4. CLIENT APPROVALS AND MATERIALS

- a) **Client Materials:** The Client must provide to the Company the Material set out in the Standard Production Services Agreement, or as otherwise agreed in writing between the Client and Company including in Budget, treatments, scripts or briefs.
- b) **Approval Material:** The Company shall submit the Approval Material as soon as possible and the Client shall approve or disapprove the Approval Material as soon as possible having regard for the need of the Company to proceed with the provision of Services in accordance with the approval or to change the disapproved item in advance of the shoot. The Client representative should be available to approve Approval Material at the request of the Company.
- c) **Deemed Approval:** If the Company submits to the Client for its approval any Approval Material required to proceed with the provision of Services or for inclusion in the Deliverables, and the Client fails to notify the Company of its approval or disapproval of such material on or before any deadline made known by the Company to the Client and / or indicated in the Production Schedule, such material will be deemed to have been approved by the Client.
- d) **Artistic Endeavour:** The Client acknowledges and agrees that the Services provided in the production of the Deliverables constitute an artistic endeavour, and as such, the Deliverables may vary artistically but not in quantum from those described in the Scope. The interpretation of Artists involved in the production of the Deliverables shall be the final determinant of the artistic direction and style of the Deliverables with consideration to Approval Material. The Client acknowledges that variations may occur due to creative or technical reasons, and that such variations shall not constitute a breach of this Agreement.

5. CLIENT ATTENDANCE

- a) **Right to Attend:** The Client shall have the right to have the Client Authorised Representative in attendance during shooting, recording or post-production for consultation and approvals as may be necessary relating to the provision of Services and production of Deliverables.
- b) **Means of Approval:** The Company shall provide the representative with a monitor or other agreed means to view live Approval Material.
- c) **WHS:** The Client agrees to abide by any prevailing Workplace Health and Safety protocols (and Company policy or directive) whilst on set.
- d) **Visitor:** The Client Authorised Representative attends the Company workplace at their own risk in the capacity of a visitor and not an employee of the Company.
- e) **Non-Attendance:** If the Client Authorised Representative is not at the shoot at any stage the decision of the Company in all such matters will be determinative and final.

6. PRODUCTION OF NEW DELIVERABLES AND TRANSFERS

- a) **New Deliverables and Transfers:** Where the Client wish to produce new Deliverables or Transfers using Rushes or Deliverables produced under this Agreement or further production or post-production work, the Company shall be given a first opportunity to undertake such work if a reasonable and competitive price can be agreed between the parties.

7. SAFEKEEPING AND OWNERSHIP OF RUSHES AND BYPRODUCTS

- a) **Safekeeping Rushes:**
- The Company shall be responsible for the safekeeping of Rushes during production of the Deliverables and during their data transfer or laboratory processing and at all other times up to the point at which the Deliverables are delivered to the Client.
 - The Company shall be responsible for making back-up copies of digital Rushes on the day of recording.*
 - The Company will be responsible for the storage of the back-up digital Rushes for a maximum period of 6 months, or as per the date stipulated within the Client's briefing documentation.
 - Should the maximum period of storage be achieved, the Company will return a copy of all backup Rushes to the Client, or reach an agreement with the Client for continued storage for an agreed period and at an additional cost to the Client.
 - The Company shall not be responsible for the security of the Rushes or any other items in any other circumstances.
 - The Client is responsible for insuring the Rushes, Deliverables or any other materials which remains in the possession of the Company after the final Delivery Date or the Completion Date (whichever date occurs first).
- b) **Byproducts:**
- The Company shall be responsible for the safekeeping and storage of Byproducts during the provision of agreed Services.
 - Upon completion of principle photography the Company shall deliver all Byproducts as stipulated under this Agreement (Annexure One, Clause 12 "Rushes and Byproducts") to the Client excluding unused Byproducts that can be returned to recoup expenditure.
 - The Company is not obligated to store or keep safe Byproducts after principle photography.
 - The Company accepts no liability for the loss, damage or disposal of Byproducts after principle photography.
- c) **Lien:** Ownership of the Deliverables and all related property produced (including Rushes) under this Agreement shall remain vested in the Company until it has received the total Fee, at which point the ownership of the Deliverables shall vest in the Client and the Company shall deliver them to the Client or such other place as the Client shall notify the Company in writing.

8. LEGAL AND TECHNICAL REQUIREMENTS

- a) **Compliance:** The Client shall be responsible for ensuring Deliverables and Material comply with any legal or regulatory requirements relating to content and post-production.
- b) **Compliance or Accuracy:** The Company accepts no liability for the compliance or accuracy; or damages or loss arising from any claim, fine or penalty related to supplied Material.
- c) **Material Suitability:** The Company shall ensure Materials comply with the technical requirements and standards in force in Australia at the date of signing of the Agreement.

ANNEXURE TWO: STANDARD PRODUCTION TERMS AND CONDITIONS

9. PERMITS AND VISAS

- a) **Company Liability:** The Company shall be responsible, unless otherwise agreed in writing, 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 employed by the Company (but excluding any talent or personnel engaged by the Client).
- b) **Client Liability:** The Company will not be responsible for delays, difficulties or inability to obtain visas or work permits for talent or personnel engaged by the Client; and accepts no liability for any damages, loss, fine or penalty that may arise from the Client's failure to do so.

10. COPYRIGHT, INTELLECTUAL PROPERTY AND OTHER RIGHTS

- a) **Copyright Assignment:** Upon receipt by the Company of the total Fee and any Overages, Cancellation, or Postponement, the Company shall assign to the Client all of its copyright in the Rushes and Deliverables throughout the world for use in the approved Mediums.
- b) **Third Party Rights:** Where the Company expressly commissions any material from a third party for use in the Deliverables or uses any existing Rushes which has been created by the Company or a third party for the Deliverables, the Company undertakes to obtain either an assignment to the Client 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 Client to use the materials in the Deliverables.
- c) **Moral Rights:** The Company undertakes to procure and pass on to the Client moral rights consents in a form to be approved by the Client, from the director and all other persons engaged in the creation or production of the Deliverables or any part thereof by the Company.
- d) **Additional Use:** Notwithstanding 10e) below, the use of the Deliverables, the Rushes or any part thereof in connection with the production of any other Deliverables for any purposes other than those expressly detailed in this Agreement shall be subject to the Company's prior written consent.
- e) **Permissions:** The Client and the Company will ensure appropriate permissions are obtained in respect of any copyright or trademarked material supplied by the Client or the Company, as the case may be, for inclusion in the Deliverables.
- f) **Consent:** Where the Company agrees to be responsible for the engagement of actors, other performers or models, the Company undertakes to obtain all necessary consents from such third parties on terms to be approved by the Client.
- g) **Right to Self-Promotion:** The Client agrees that the Company shall retain a non-exclusive, royalty-free, perpetual licence to use the Rushes or Deliverables to enter into industry competitions and for promotion of its services via a show-reel or archive on the Company's website.
- h) **Intellectual Property Rights and Moral Rights:** The Client acknowledges that the Company retains all intellectual property rights, including copyright and moral rights, in any original creative ideas and materials prepared by the Company for the Client, excluding those rights expressly assigned to the Client in the Deliverables as a result of work for hire. The Client agrees not to use or exploit any such original creative ideas or materials, including Pitch material, without obtaining the prior written consent of the Company. The Company reserves the right to exercise its moral rights in relation to any such original creative ideas and materials.

11. RELOCATION, POSTPONEMENT OR CANCELLATION

- a) **Cancellation by Client:** The Client shall be entitled to relocate, postpone or cancel the whole or any part of the Services under the Agreement for any reason by written notice to the Company. In the event of such notice (other than as a result of an Event of Force Majeure as defined in Clause 17 or Termination of the Agreement under Clause 18) the Company shall be entitled to recover and the Client shall on receipt of the Company's invoice pay to the Company an amount in respect of Services carried out or Hard Costs liable in the future up to the receipt of the notice of cancellation as per Clause 12 ("Cancellation Fee").
- b) **Cancellation by Limitation:** It is possible that the parties will need to relocate, postpone or cancel whole or any part of the Services under the Agreement if an Authority advises against all travel (or all but essential travel) to the relevant location, or in the event that any decision, guidance or recommendation (including but not limited to travel bans, quarantine and isolation periods, government lockdowns or Event of Force Majeure) by any such Authority prevents the Company, Client or any of their personnel or equipment essential for the shoot from travelling to the location, or completing the shoot as per the Production Schedule.
- c) **Company Entitlement:** In the event of a confirmed relocation, postponement or cancellation of the whole or any part of the Services under the Agreement, for the reasons set out in Clause 11b) above, the Company shall be entitled to recover from the Client, after providing all Deliverables (if any) and its invoice supported by substantiating documentation that is in accordance with the Budget, an amount in respect of work performed or Hard Costs liable in the future by the Company up to the date of the notice of cancellation and not yet paid as per clause 12 ("Cancellation Fee").
- d) **Postponement:** In the event of a postponement, the Cancellation Fee will be calculated as per clause 12 ("Cancellation Fee") below; and Recommencement Costs will be calculated and quoted by the Company to the Client, subject to new shoot dates being provided to the Company within 2 months of the date of postponement.
- e) **Recommencement Costs:** Recommencement Costs will take into account Services that have already been completed to date under the Agreement. The Creative Fee and Production Fee for recommencement will be set at an agreed percentage to be negotiated in good faith between the parties, with consideration to the level of Cancellation Fee already incurred.
- f) **Mitigation:** The Production Company shall use reasonable endeavours to mitigate the Cancellation Fee including Hard Costs and Recommencement Costs.

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12. CANCELLATION FEE

The Cancellation Fee payable to the Company by the Client shall be calculated as follows in the following circumstances:

- a) **Short Notice:** Where notice of cancellation, postponement, or relocation is given to the Company by the Client, ONE (1) TO TEN (10) Working Days prior to the commencement of the shoot, or on the day of the shoot, the Client will be liable to the Company for:
 - i. All Hard Costs;
 - ii. Full Creative Fee (100%) as per Budget; and
 - iii. Full Production Fee (100%) as per Budget.
- b) Where notice of cancellation, postponement, or relocation is given to the Company by the Client ELEVEN (11) TO FOURTEEN (14) Working Days prior to the commencement of the shoot, the Client will be liable to the Company for:
 - i. All Hard Costs;
 - ii. Full Creative Fee (100%) as per Budget; and
 - iii. Not less than half the Production Fee (50%) as per Budget.
- c) Where notice of cancellation, postponement, or relocation is given to the Company by the Client FIFTEEN (15) OR MORE Working Days prior to the commencement of the shoot, the Client will be liable to the Company for:
 - i. All Hard Costs;
 - ii. Full Creative Fee (100%) as per Budget; and
 - iii. Not less than a quarter the Production Fee (25%) as per Budget.

13. CLIENT WARRANTY, INDEMNITY OR INSURANCE

- a) **Client Indemnity:** should the Company incur any loss or liability, costs (including legal costs) or damages as a result of the Client breaching this Agreement the Client shall indemnify the Company. The Client indemnity shall be limited to the total Fee (together with the cost of any extra work required by the Client and carried out by the Company) as set out in Clause 7 ("Safekeeping") and the Client shall have no liability for any consequential loss, loss of business profits or other pecuniary losses.
- b) **Insurance:** The Client agrees to indemnify the Company and to insure itself effectively for all actions, claims, losses and demands which may arise out of or in respect of:
 - i. Any breach by the Client of its obligations under this Agreement.
 - ii. The non-appearance or inability to complete the scheduled performance of any artist or Key Personnel.
 - iii. The non-appearance, inadequacy or unsuitability of any Material or production facilities provided by the Client to the Company including but not limited to special wardrobe, props or product other than those items included as Services provided by the Company under this Agreement.
 - iv. Loss of or damage to any property as a result of the actions, recklessness or negligence of the Client or its representatives.
 - v. The death or bodily injury to artists and other persons caused by or arising out of the negligence or recklessness of the Client or their representatives.
 - vi. Risks to the Rushes, Deliverables or other derivative material whilst being worked on or transported by third party companies or individuals at a time when said material is under the Client's care, custody and control or that of its representatives
 - vii. Safekeeping of the Rushes, Deliverables and other derivative material after the delivery of such materials by the Company in accordance with this Agreement.

- viii. Any responsibility the Client may have for providing Professional Indemnity Insurance, Employer's Liability insurance, Worker's Compensation insurance or superannuation to its personnel;
- ix. The total loss sustained due to the interruption, postponement, cancellation or abandonment of the production which arises out of any matter for which the Client is responsible including, where relevant reasonable Company costs, director's and producer's fees and Company mark-up. The Client agrees on request to provide the Company with evidence that the above insurances are in effect.
- x. If any of the above amounts cannot be agreed the provisions of Clause 20 ("Dispute Procedure") shall apply. Any amounts which are not in dispute will be paid by the Client within seven days of their provision of notice to the Company cancelling the Deliverables.
- c) **Costs:** The Client agrees to cover the costs and losses of any Indemnified Person resulting from any legal action arising from a breach of the Client's obligations or any terms of the Contract.
- d) **Defence:** If legal proceedings arise from a breach of the Client's obligations or any terms of the Contract, the Client must take over and pay for the defence of any Indemnified Person involved in the proceedings.
- e) **Enforcement:** The Client acknowledges that each Indemnified Person has the right to enforce the indemnity clause and will not challenge their right to do so in legal proceedings.

14. COMPANY WARRANTY, INDEMNITY OR INSURANCE

- a) **Company Indemnity:** should the Client incur any loss or liability, costs (including legal costs) or damages as a result of the Company breaching this Agreement, the Company shall indemnify the Client. The Company's liability shall be limited to the Fee paid to them by the Client under this agreement and the Company shall have no liability for consequential loss, airtime costs, loss of business profits or other pecuniary losses.
- b) **Company Insurance:** The Company agrees to obtain the insurance detailed in Annexure One and indemnify the Client against and to insure itself effectively for all actions, claims, losses and demands which may arise out of or in respect of:
 - i. Any breach by the Company of its obligations under this Agreement;
 - ii. The non-appearance or inability to complete the scheduled work by Key Personnel explicitly listed in the Standard Production Services Agreement Annexure One for insurance purposes (unlisted personnel will not be insured and are deemed replaceable).
 - iii. The non-appearance or unsuitability of key production facilities including but not limited to equipment, animals, props, wardrobe and sets (other than those items and personnel that are the responsibility of the Client).
 - iv. Loss of or damage to the property of the Client as a result of the recklessness, negligence or actions of the Company.
 - v. The death or bodily injury to employees, contractors, artists or other persons caused by or arising out of the negligence of the Company or their representatives.
 - vi. The employment by the Company of any other person, firm or company as employee or sub-contractor in the production of the Materials.
 - vii. Risks to the Materials whilst being worked on or transported by third party companies or individuals at a time when said Materials are under the Company's care, custody and control.
 - viii. Safekeeping of the Rushes and Deliverables up until their delivery to the Client in accordance with this Agreement.

ANNEXURE TWO: STANDARD PRODUCTION TERMS AND CONDITIONS

ix. The Company agrees on request to provide the Client with evidence that the above insurances are in effect.

15. WEATHER POLICY

- a) **Weather Day:** Throughout the production period a 'Weather Day' shall be a day on which filming takes place because it has not been possible to complete filming on the scheduled filming days because the weather on all or part of one or more of those days was unsuitable. Weather Days are not included in the agreed Services and are charged as Overages.
- b) **Confirm or Release:** Availability of Key crew cannot be guaranteed on a Weather Day. The Client will be asked to 'Confirm or Release' (Client Approval) bookings or other liabilities associated with the Weather Day booking holds from time-to-time.
- c) **Weather Report:** The Company can provide a professional Weather Report upon request at cost to the Client, but accepts no liability for the accuracy or decisions arising from the report. The Client should seek their own meteorological advice.
- d) **Company Weather Policy:** The Client acknowledges each Company may have different policies regarding Production Fee and Creative Fee for Weather Days and Reshoots which form part of this agreement. The Company will specify in writing the Company's Weather Policy or indicate a Weather Day Contingency Quote as part of the Pitch.
- e) **Weather Costs:** Hard Costs may arise due to weather and be charged as an Overage, see clause 16b ("Services, Additional Services"). Overages arising from weather shall be in accordance with the Company's Weather Policy.
- f) **Weather Insurance:** If the Client requests weather insurance, the Company will provide a quotation (if available) on the Client's behalf. The Company shall not be liable for the suitability of the insurance policy or for the payment of premiums or excess. The Client acknowledges and agrees that the Company is not a party to any insurance policy or contract that the Client may enter into, and that the Client shall be solely responsible for reviewing and accepting the terms of any insurance policy obtained through the Company's quotation.
- g) **Insurance Liability:** It is for the Client to decide whether or not to insure against the cost of a Weather Day and if it takes out such insurance the fact that it has not been paid by its insurer shall not permit the Client to refuse or delay payment to the Company.
- h) **Weather Cancellation:** If the Client decides to relocate, postpone or cancel due to weather, Clause 11 applies ("Relocation, Postponement or Cancellation") to the confirmed Budget and Production Schedule.
- i) **Adverse Weather:** If both the Client and Company cannot reach the location; or cannot supply personnel or equipment to the location; or it is dangerous to work and to do so would breach Workplace Health and Safety protocols; or would result in negligent damage to equipment or assets because of adverse weather the Company's Weather Policy is automatically triggered.

16. SERVICES

- a) **Services:** The Company will provide the Services to the Client to produce the Deliverables, in accordance with the Production Schedule and Scope. The Company will not be obligated to commence the provision of the Services to the Client unless and until the Company receives a signed and dated Standard Production Services Agreement by the Client.

- b) **Additional Services:** The Client may request the Company to provide services in addition to those detailed in the Budget, Scope or Standard Production Services Agreement in respect of a particular Deliverable or Additional Service (in which case, such additional services will be treated as "Services" under these Terms and Conditions in respect of that Deliverable or Service). The Company will notify the Client of the variation in the fees and charges payable by the Client to the Company for such Services by providing to the Client a revised Budget, Overages quotation or completed Overages Form (Annexure Three).
- c) **Overtime:** Overtime caused by factors beyond the control of the Company (including the non-performance of talent, delay in receipt of Material, delayed Client Approval, or third parties including an Authority, ClearAds (CAD) or unfavourable weather will be billed to the Client in addition to Fees as Overages.
- d) **Sub-contracting:**
 - i. The Company may sub-contract for the provision of any Services without notifying the Client and the Company must pay all monies due to such sub-contractor.
 - ii. If the Client directs or requests the Company to engage the services of any person not referred to in the Budget, the Company will be acting as agent of the Client in engaging such services and the Client must pay all monies due to such person for the provision of such services, unless otherwise agreed in which scenario Production Fees apply.

17. FORCE MAJEURE

See clause 1 ("Definitions") for the definition of 'Event of Force Majeure' under this Agreement.

- a) **Breach:** Neither party shall be liable for any breach of its obligations under this Agreement resulting from causes beyond its reasonable control due to an Event of Force Majeure.
- b) **Default:** If default due to an Event of Force Majeure shall continue for less than FOURTEEN (14) DAYS all dates specified in this Agreement shall be correspondingly postponed until work on the Services can be completed.
- c) **Cancellation:** If an event of Force Majeure shall prevent work continuing or being completed for FOURTEEN (14) DAYS or more either party may terminate this agreement. On such termination the Client shall pay the Company in accordance with the cancellation provisions detailed under clause 11 ("Relocation, Postponement, or Cancellation") above.

18. TERMINATION

- a) **Breach:** The Client may terminate this Agreement by FOURTEEN (14) DAYS written notice to the Company if the Company commits any material breach of this Agreement, and fails to remedy that breach within fourteen (14) days of receiving written notice identifying the breach.
- b) **Insolvency:** 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

ANNEXURE TWO: STANDARD PRODUCTION TERMS AND CONDITIONS

- c) **Entitlement:** In the event of termination by the Client under Clause 18 a) or b) the Client shall be entitled, without prejudice to any other rights it may have, to recover any reasonable additional costs which the Client incurs in completing the production. The Client shall in addition be entitled on demand to immediate delivery of the Rushes to complete the production or to transmit the Deliverables.

19. ENTIRE AGREEMENT

This Agreement is the entire agreement between the parties relating to the subject matter of this Agreement which 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 signed by both parties.

20. DISPUTE PROCEDURE

- a) **Dispute Policy:** For the purposes of this Agreement, 'CPCDP' shall mean the Commercial Producer's Council Dispute Policy.
- b) **Complaint Restraint:** 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 submit to and agree to comply with;
- c) **Mediation:** If the parties agree to mediation, the mediation shall be administered by mediators recommended in accordance with the CPCDP. The mediator shall be a person nominated from their register of CPCDP accredited mediators. The parties and their associations shall comply with all procedures and time limits identified by the CPCDP or the mediator in their draft mediation procedure or otherwise.

21. CONFIDENTIAL INFORMATION

- a) **Non-Disclosure:** The parties acknowledge a duty not during or after the termination 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 Deliverables disclosed as a result of this Agreement.
- b) **Sensitive Material:** In particular during and after the provided Services the Company acknowledges its responsibility to treat in confidence all the marketing and sales information and statistics relating to the advertiser's business.
- c) **Express Permission:** 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 Deliverables is of a confidential nature and may only be discussed outside of the production/standard production procedures with the express written permission of the Client.

22. 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.

23. 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 affect to the purposes of this Agreement.

24. GOVERNING LAW

This Agreement shall be governed by the laws of the State or Territory of the Company's registered Australian business address (or New South Wales, Australia, if registered outside of Australia) and the parties hereby submit to the non-exclusive jurisdiction of the Courts of that State or Territory.

ANNEXURE THREE: OVERAGE FORM

Production Title:
 Producer:
 Agency:
 Agency Producer:

Production #:
 Commercial:
 Date:
 Overage:

Date	Description of Overages	Total

Sub Total

Production Fee (@20%)

Insurance (@2.5%)

TOTAL

GST (@10%)

GRAND TOTAL (Aust\$)

SIGNED:

APPROVED:

.....
 Producer / Prod. Company

.....
 Agency Producer / Agency Name

ANNEXURE FOUR: TVC PRODUCTION SPECIFICATIONS
AND RESPONSIBILITIES CHECKLIST



Client:
Product:
Job Title:
Agency:
ECD/CD/Creative Team:
Agency Producer:
Job Number:
Briefing Date:
Delivery Date:

PRODUCTION INFORMATION

Production Budget
Location/Studio
Casting & Talent
Sound Studio
Post Production
Shooting Ratio
Music
Art Department
Stills
Weather Day
Mandatories
Deliverables

USAGE INFORMATION

On Air Date
Deliverables
Aspect Ratio delivery
Territory
Period of use
Media
Key Numbers

RESPONSIBILITY OF:	AGENCY/ CLIENT	PRODUCTION COMPANY	NOTES
CAST & CASTING			
Casting			
Cast Fees - ALL			
Cast payroll service			
Child Employment			
Cast Travel			
Cast Accommodation			
PRE PRODUCTION			
Storyboards			
Office & couriers			
Pre-production Crew			
Crew Travel			
Crew Accommodation			
CREW			
Shooting Crew			
Stunts Co-Ord & Performers			
Safety Supervisor			
Product Specialist			
Precision Driver			
SHOOT TRAVEL			
Crew Travel			
Crew accommodation			
Agency travel			
Agency Accommodation			
Client Travel			
Client Accommodation			
Cast Travel			
Cast Accommodation			
LOCATIONS & STUDIOS			
Location Fees			
Logistics/Traffic Mgmt			
Council Permits/Fees			
Studio Fees			

RESPONSIBILITY OF:	AGENCY/ CLIENT	PRODUCTION COMPANY	NOTES
ART DEPARTMENT			
Props/Dressing/Set			
Wardrobe Hire			
Costume Design & Make			
Home Economist			
Animals/Handler/Vet			
Special Effects			
Models			
Pack Mockups			
Product Supply			
Car logistics, prep			
EQUIPMENT			
Camera/Lighting/Grip			
Motion Control			
Tracking Vehicle/Crane			
Synch Sound			
Drone/Aerial			
Water/Underwater			
DATA MANAGEMENT			
Master Hard Drives			
Back-Up Hard drives			
Rushes Archive			
Film Stock - 16/35mm film			
Film Processing			
Stock Footage			
POST PRODUCTION			
Rushes Prep			
Offline			
Colour Grade			
Online			
Visual Effects - 2D			
Visual Effects - 3D			
Supers			
Graphics & Titles			
Animation			
Sound Mix/Effects/ Restripe			
V/O Record			
V/O & Audio Talent Fees			
Music			
CAD Approval			
Release Dubs			
Orig. Neg/Dig			
Data Storage			

RESPONSIBILITY OF:	AGENCY/ CLIENT	PRODUCTION COMPANY	NOTES
INSURANCES & SUNDRIES			
Data/Neg 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)			