

STANDARD COMMERCIAL PRODUCTION AGREEMENT

Job Title: _____
Job Number: _____
Effective Date: _____
Agency: _____
Client: _____

Production Company Name and Address: _____ (“Producer”)

Editorial Company Name and Address: _____ (“Editorial Company”)

This Standard Commercial Production Agreement, together with (i) the Specifications Sheet attached as Attachment 1; (ii) Standard Terms and Conditions for Production of Video Assets attached as Attachment 2; (iii) the awarded budget; and (iv) the production calendar, if any (collectively, the “Agreement”) is made as of the Effective Date between Agency, as agent for Client, on the one hand, and Producer, on the other hand.

For good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

- Producer will produce the number of filmed or taped commercials (“Commercials”) relating to the Product(s) listed above, in accordance with the Specifications Sheet and any attached scripts and/or storyboard(s).
- Producer will deliver footage and final files for the Commercials to Agency or Editorial Company, as applicable, upon completion of the project and in accordance with the Specification Sheet.
- Producer will deliver original camera footage and original sound elements and all production and post-production elements created in the filming process by carrier to Agency or Editorial Company, as applicable.
- Per bid specs and awarded bid, job is bid firm.
- The total fee due to Producer under to this Agreement is \$ _____ (the “Fee”).
- If Cost Plus, subject to reconciliation, as noted in the Specification Sheet. Upon Agency’s request, Producer will furnish Agency with all paperwork related to all backup on cost plus fixed fee jobs, or backup that specifically relates to additional costs billed to Agency for review before final payment will be made; provided, however, that such review shall not delay the final payment set forth below.
- Subject to Agency’s inspection and approval of Producer’s Commercials, Agency shall pay Producer as follows:
 - **Fifty percent (50%)** of the Fee upon receipt by Agency of this Agreement executed by Producer, along with a valid invoice; Expected (date) _____
 - **Twenty-five percent (25%)** of the Fee upon acceptance and delivery of dailies, along with Agency’s receipt of a valid invoice; and
 - **Twenty-five percent (25%)** of the Fee within thirty (30) days of Agency’s approval of final delivery and all production costs, along with Agency’s receipt of a valid invoice.
- With respect to the Coronavirus/Covid-19 pandemic, Producer will (i) conduct the shoot and perform its obligations in accordance with all applicable laws, rules, orders and regulations (including all laws, rules, regulations and orders pertaining to Coronavirus/Covid-19); and (ii) abide by best practices, guidelines and protocols (including those pertaining to health and safety) relating to Coronavirus/Covid-19, including, without limitation, those issued by federal, state and local authorities, as such rules, regulations, orders, protocols and guidelines may be changed, updated or modified from time to time. If Producer believes that

any aspect of the production may be postponed or cancelled due to Coronavirus/Covid-19, Producer will immediately contact Agency; will consult with Agency before making any decisions regarding postponement or cancellation (to the extent commercially feasible); and shall use commercially reasonable efforts to terminate, suspend and/or mitigate any further payment obligations and to otherwise mitigate the adverse effects of any postponement or cancellation.

This Agreement constitutes the entire understanding between the parties as to the subject matter of this Agreement. No amendment or modification of this agreement shall be valid or binding unless made in writing and signed on behalf of the parties by their respective authorized officers or representatives. If, in the event that Agency separately purchases any additional work from Producer with reference to the Commercials noted above, the Standard Terms and Conditions for Production of Video Assets attached as Attachment 2 shall apply to such additional work.

[INSERT CONTRACTOR NAME]

_____(Agency), as agent for
_____(Client)

By: _____

By: _____

Name: _____

Name: Bill McBain

Title: _____

Title: SVP Finance

Date: _____

Date: _____

ATTACHMENT 1

SPECIFICATIONS SHEET

Producer hereby agrees to produce and deliver the production of the below-referenced commercial(s) subject to and in accordance with all terms, conditions, and specifications set forth in this Agreement.

PRODUCER PERSONNEL:

Director: [REDACTED]

Exec. Producer: [REDACTED]

Agency Producer: [REDACTED]

COMMERCIAL DELIVERABLES:

- [REDACTED]
- [REDACTED]

FEE TERMS:

Production bid is firm. Producer is responsible for all subcontractor payments included in Producer's production bid.

In the event that expenses covered by the firm bid look to exceed \$ [REDACTED], Producer will inform prior with cost estimate details and obtain written approval from Agency prior to incurring such cost overages, to the extent that such overages will be billed to Agency or Client.

MEDIA USAGE:

[REDACTED]

ADDITIONAL BUDGET REQUIREMENTS:

Producer is responsible for all production-related costs, including but not limited to the following:

- [REDACTED]
- [REDACTED]

Agency and/or Client are responsible for the following:

- [REDACTED]
- [REDACTED]

TENTATIVE SCHEDULE:

Key dates are currently scheduled as follows:

[Include here or reference and attach production calendar]

ATTACHMENT 2

STANDARD TERMS AND CONDITIONS FOR PRODUCTION OF VIDEO ASSETS ("COMMERCIALS")

1. Materials and Services to be supplied. Except as otherwise herein provided, and in the awarded bid, and as otherwise agreed to by Agency in writing, Contractor will at its sole cost and expense, furnish all casting, elements, services and materials necessary or incidental to the production of the Commercial(s) (which is described in Exhibit A or a comparable Statement of Work, incorporated by reference into this agreement and which includes pricing, a description of work, schedule and deliverable information), including but not in any way limited to, the following: photography, sound recording, production and technical personnel; casting; studio operations; costumes; properties; all traveling and living expenses (not for Talent); gratuities and subsistence (not for Talent); and all production including formatting, digitizing, recording and re-recording complete to and including delivery to Agency of negatives, dailies and Videotape Master of the commercial footage of telecast quality without any obligation on Agency's part except as set for herein, in the awarded bid for the project that is the subject hereof, and except for insurance as provided herein and talent payments, and except for the contract price herein, plus any additional costs pursuant to paragraph 3 below, the final payment of which shall be payable upon due performance of Contractor as provided in Exhibit A.

2. Ownership. It is agreed that the Commercial(s) constitute audio and visual work(s) made for hire within the meaning of the United States Copyright Law. All tapes, negatives and prints of all pictures and sound tracks and material, exposed and/or processed, in the production of the Commercial(s), (except for materials supplied to Contractor by Agency/Client) and all material and content contained in the Commercial(s), including but not limited to any characters, names, copy, art, logos and animation (other than materials licensed for use in the Commercial(s), if any, provided: Agency has (a) been notified by Contractor in writing of such materials, and (b) provided Contractor with prior written authorization for their inclusion and any associated usage rights or restrictions) , and all right, title, interest and copyrights therein, shall become the property of Agency and Client upon delivery thereof in accordance with the provisions hereof. In the event that the Commercial(s) for any reason is determined not to be a work made for hire, then Contractor hereby grants and assigns all right, title and interest to the Commercial(s) to Agency and Client, and Contractor will promptly execute and deliver such documents as may be requested by Agency in order to accomplish the assignment and transfer of all such right, title and interest. Without in any way limiting the foregoing, Contractor hereby waives any and all "moral rights," and any rights Contractor may have regarding the Commercial(s) pursuant to the Visual Artist Rights Act (17 U.S.C. § 106 A(e)) or other federal, state or local statute. Contractor will not mortgage, pledge, assign or otherwise encumber the aforementioned sound tracks, tapes and negative and positive films.

3. Agency Supervision and Approval; Price Adjustment. Contractor will submit, for Agency's inspection and approval, each stage of the production of the Commercial(s) and will make any reasonable changes or substitutions in the Commercial(s) that Agency at any time directs. If such requests are made after the completion of the photography work previously approved by Agency, or if changes not due to Contractor's breach of this agreement are requested by Agency, Agency will pay the substantiated additional costs if the same are first approved by Agency in writing. Once such additional changes have been approved in writing by such representative, they shall be binding on Agency and Client, and reimbursement for such costs shall be payable at the same time as the final payment is to be made pursuant to this agreement. During the course of production, duly designated representatives of Agency and Client shall be permitted to be present for any purpose, at any time, at all places where the Commercial(s) are being made in any stage of production. The Agency representative will be authorized to approve any and all elements of the production, or changes in the production which are subject to or require approval by Agency. Contractor agrees to secure Agency's written approval prior to making any changes in, or variations from the scripts or storyboards during the course of production. Agency shall be notified in advance as to the time and place of photography, recording, re-recording, etc. Agency's representative shall be consulted on all factors, elements and decisions concerning the Commercial(s) and their production.

4. Warranty. (a) Contractor warrants and represents that it will obtain and furnish to Agency prior to or concurrent with the delivery of the completed Commercial(s), legal and effective written consents; releases; copyright and other licenses; authorizations; and other agreements in form and substance satisfactory to Agency, covering all persons, matter and materials used by Contractor in connection with the Commercial(s) (except persons, matter and materials

supplied to Contractor by Agency) to insure the right to free, unlimited and unrestricted exhibition and use in any way or place, of said Commercial(s), in whole or in part or modified or interpolated, including the right to substitute, “double” and “dub” voices, acts, poses, sound effects by or with others in any language for any cast members, either alone or in connection with other matter, in any media and by any means, now known or hereafter devised, for any and all purposes, including trade, publicity and advertising, without limitation as to time, products, use or otherwise, by Agency, Agency’s clients, sponsors, exhibitors, broadcasters and others authorized by Agency and/or Client, subject to limitations imposed by applicable union agreements.

(b) Contractor warrants and represents that the Commercial(s), when delivered to Agency will be free and clear of any and all claims, liens, mortgages, and any other encumbrances of any kind or character (except with respect to the scripts and materials furnished by Agency), that none of the Commercial(s) will in any way infringe upon the rights of any person or entity or violate the property, privacy or other rights of any person or entity or any federal, state or local law, order or regulation, and will in no way constitute a libel or defamation of anyone.

(c) Contractor warrants that the director’s treatment and substantive statements in the bid letter will be upheld during the production process.

(d) Agency represents and warrants that: (a) it is free and has the full right to enter into this agreement and to perform all of its obligations hereunder and (b) it is providing the insurance as set forth in the insurance addendum attached hereto, if any.

5. Indemnification. Contractor will indemnify and hold Agency, Client, their nominees and assigns and all broadcasters, exhibitors and other users of the Commercial(s) authorized by Agency and/or Client (“Indemnitees”), harmless from and against any and all damages, losses, claims, judgments, penalties, and costs, including reasonable counsel fees and court costs, which may be obtained against, imposed upon or suffered by any of the Indemnitees by reason of Contractor’s actual or alleged breach of any of the representations, warranties or covenants herein contained, or from any injury or death to persons or loss or damage to property arising out of or resulting from the negligent acts, failure to act or willful misconduct of Contractor, its employees, or those it has engaged. Agency will indemnify and defend Contractor with respect to (i) the scripts and materials furnished to Contractor by or on behalf of Agency, (ii) any breach or alleged breach by Agency or Client of any of their representations, warranties, duties, or covenants contained herein, (iii) Agency’s or Client’s gross negligence or willful misconduct and (iv) claims covered or which should have been covered had the Agency/Client maintained adequate insurance coverage under the wrap insurance program described in the Addendum hereto. The non-breaching party shall have the right, but not the obligation, to have Contractor defend any such claim.

6. Union Agreements. Contractor each agrees to comply with all rules, regulations, and requirements of any applicable collective bargaining agreement with any union representing performers, technicians and other personnel employed by Contractor or in any way participating in the production of the Commercial(s). Under no circumstances, however, will Contractor’s compliance be deemed an agreement by either Agency or its Client to become a signatory to any such collective bargaining agreement. Contractor will indemnify and hold Agency or Client and other authorized users harmless from and against any and all damages, expenses, claims, suits, judgments, penalties and costs including reasonable counsel fees and all losses of any kind arising out of Contractor’s actual or alleged breach of such agreements. Agency shall have the right, but not the obligation, to have Contractor defend any such claim

7. Intentionally left blank.

8. Nondisclosure. In providing the services hereunder, Contractor, its employees and those it engages may come into possession of information or materials that are confidential, trade secrets or otherwise considered secret by Agency and/or Client (“the Confidential Information”). Confidential Information includes, without limitation, layouts, storyboards, scripts, reports, and information regarding advertising, marketing and sales promotion, products, services and strategies, research results, media plans and any other information deemed confidential, whether or not marked confidential or proprietary. Contractor agrees to maintain all aspects of the Services provided hereunder and the Confidential Information in the utmost of confidence, to take all measures necessary to protect the Confidential Information and any data or information pertaining to the Services, and agrees not to disclose or permit disclosure of the Confidential Information by its employees or those it engages, except to those persons whom Contractor is authorized in writing by Agency to disclose such information. The foregoing restrictions shall not apply with respect

to information Contractor can document it possessed before Contractor's relationship with Company began; is publicly known, or which Contractor received from a third party not bound in a confidential relationship with Company. Contractor agrees to require those Contractor employs on engages for this production to sign appropriate agreements not to discuss or disclose Confidential Information. The confidentiality provisions of this paragraph 8 shall apply reciprocally to protect Contractor's Confidential Information which shall be non-public information contained in Contractor's bids and budgets. For purposes of clarity, Agency may share such Contractor Confidential Information with Client on a need-to-know basis.

9. Cancellation. Agency shall have the right to cancel this Agreement by written notice to Contractor at any time prior to acceptance by Agency of the completed Commercial(s). In the event of such cancellation, Agency shall pay Contractor all documented non-cancellable out- of-pocket costs and expenses (to the extent approved in advance by Agency in writing) theretofore incurred by Contractor in the normal routine of producing said Commercial(s), and Agency and Client agree to adhere to AICP Cancellation and Postponement Guidelines but in no case shall Agency pay Contractor more than the contract price hereunder, except as otherwise agreed pursuant to paragraph 3 above. Upon such payment neither Agency nor Client shall be under further liability under this Agreement.

10. Laws and Insurance. (a) It is understood that Contractor shall carry, at its own expense, Workers Compensation, Employer's Liability, owned Commercial Automobile Liability Insurance, and any other insurance it is required to carry in accordance with any addendum hereto.

(b) In addition, if Contractor is providing the following services with respect to livestreaming, Contractor shall carry, at its own expense, Errors & Omissions/Professional Liability insurance in accordance with the limits set forth in Section 10(a) above: (i) interactive content; (ii) personalization of content; (iii) delivery of content to mobile applications; (iv) satellite transmission of content or livestreaming; or (v) development of proprietary or original source code.

(c) Furthermore, in the absence of an addendum hereto indicating that Agency will arrange for such coverage, Contractor agrees to obtain at its own expense, from an insurance carrier acceptable to Agency and Contractor, standard production, errors and omissions and special hazards insurance coverage (if special hazard insurance was included in the bid specifications and the awarded bid for the project that is the subject hereof), in an amount sufficient to cover the replacement cost of such elements against such hazards or risks customarily insured against in the motion picture production industry and on terms and conditions approved by Agency. Contractor shall ensure that such policy provides "all risk" property insurance coverage, including but not limited to (i) the theft, destruction or loss of cameras and other production equipment; props, sets, wardrobe, production vehicles, and damage to production locations; with limits equal to the replacement value of these items, and to include Extra Expense Coverage for out of pocket expenses resulting from such loss; (ii) the theft, destruction or loss of the negative, film or videotape with limits equal to the full amount of the budget for the specified production; (iii) faulty stock, camera and processing coverage to cover out-of-pocket expenses resulting from such loss with limits equal to the full amount of the budget for the specified production.

(d) Agency and its Client shall be named as additional insurers to protect their interests on the insurance policies referenced in subparagraphs (a), (b), and (c) hereof, except Contractor's worker's compensation insurance policy, evidence of which Contractor shall provide to Agency upon request. All such policies shall further waive any right of contribution from insurance held or owned by Agency or its Client. A certificate of insurance evidencing such coverage shall be provided to Agency prior to commencement of services and must provide that such insurance may not be materially altered or canceled on less than thirty (30) days prior written notice to Agency.

11. Re-Shoot. If a re-shoot is required due to the failure of Contractor to fulfill its obligation (including performing services in a workmanlike and professional manner) or the negligence or willful misconduct of the Contractor, its personnel, and those assigned to this job by them (but not subcontractors or vendors furnished or designated by Agency/Client), the Contractor shall pay for the re-shooting costs, only in excess of applicable insurance coverage.

12. Laws and Regulations. (a) It is understood that Contractor is an independent contractor hereunder and Contractor agrees, warrants and represents that the Commercial(s) referred to in this Agreement shall be produced in compliance with all national, state and local laws.

(b) Contractor is cognizant of the requirements of the Federal Trade Commission and other regulatory organizations relating to demonstration techniques employed in television commercials. Contractor agrees, warrants and represents that in the production of the Commercial(s) it will not use any mock-ups or substitute materials or employ trick photography or comparable technique or effect without written disclosure thereof to Agency and without first having obtained Agency's specific written approval. Contractor will not engage in any deceptive practice in the production of the Commercial(s) and will indemnify and hold harmless Agency and the Client with respect to any and all costs, including counsel fees and court costs, which may arise from a breach of Contractor's obligations under this paragraph.

13. No Waiver. Failure of any party to this Agreement to exercise any rights shall not constitute a waiver of those rights.

14. Return of Properties. It is agreed that (a) Contractor will safeguard all properties, products, packages and materials supplied to Contractor by Agency, Client or third parties on their behalf, (b) upon the completion of production, or such time as Agency shall request, Contractor will return all such properties, products, packages and materials, and (c) Contractor shall have at no time any right, title or interest therein.

15. Delinquent Supplier Payments. After brief, good faith consultation with Producer, brief notice and a brief opportunity to cure, and only in the event such delinquency in payment would result in a lien against the work or materials to be furnished hereunder, Agency reserves the right in cases of delinquent payments by Contractor to any supplier(s) performing work on or furnishing material for this production to: (a) pay such supplier(s) directly, irrespective of any set-off, or counterclaims Contractor may have against the supplier(s), an amount equal to the money owed such supplier(s) for work the supplier(s) has furnished or is furnishing for this production, with such payment being deemed payment to Contractor and reducing the contract price herein by the amount of any such payment and any mark-up thereon that would have been payable, and, at Agency's election, having such supplier(s) deliver such Commercial(s) and all materials relating thereto directly to Agency, and Contractor hereby expressly authorizes such delivery, and/or (b) terminate this Agreement in which case Contractor will immediately deliver to Agency all then existing components of the Commercial(s) and all materials related thereto.

16. Assignment. This Agreement may not be assigned by either party without the prior written consent of the other except that the Client at any time will have the right to designate itself or any advertising agency or firm in the place and stead of Agency, provided, however that any such assignee agency shall agree in writing to be bound by and assume all of Agency's obligations hereunder, and upon such designation being made, the Agreement will be read and construed as if the Client's name or the name of the advertising agency or firm so designated by the Client were substituted for "Agency", wheresoever the same shall appear in this Agreement.

17. Intentionally left blank.

18. Publicity. Contractor shall not refer to nor use in sample reels or in printed matter or otherwise, the services performed by Contractor hereunder, the results thereof, or otherwise make reference to Agency or to Client, for publicity, advertising or marketing purposes, without Agency's prior written consent.

19. Equal Employment Opportunity Company. In connection with Contractor's performance hereunder, Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, or national origin.

20. Bankruptcy. If at any time prior to the complete performance hereof by Contractor, there shall be filed by or against Contractor a petition in bankruptcy, insolvency or reorganization, or for the appointment of a receiver or trustee of all or part of Contractor's property, or Contractor shall make an assignment for the benefit of creditors or petition to enter into any arrangement, no further payments shall be due to Contractor from Agency hereunder until complete, due and timely performance by Contractor. In the event of any of the foregoing events occurring, at Agency's option and upon written notice to Contractor, this Agreement shall forthwith terminate and Contractor will forthwith return all elements or parts of any Commercial(s), whether fully or partially completed, and any and all materials contained in such Commercial(s), and any and all of Client and Agency's property to Agency and depending on the timing of such an event, (for example only, if such a termination occurs after the commencement of principal photography), Agency and Client shall in good faith take into account AICP Cancellation and Postponement Guidelines.

21. Governing Law; Arbitration. This Agreement shall be construed in accordance with, and all disputes hereunder shall be governed by, the laws of the state in which Agency is located, excluding its conflict of law rules. Except as set forth below, any dispute arising under this Agreement that cannot be resolved between Contractor and Agency within ten (10) days of written notice by either party to the other, will be submitted to arbitration in the city in which Agency is located, and shall be referred to a single arbitrator to be appointed by the parties in accordance with the rules of the American Arbitration Association, and any arbitral award will be enforceable in accordance with the laws of the state in which Agency is located. The costs of any arbitration will be shared equally between Agency and Contractor, unless the award provides otherwise. Nothing herein shall prevent Agency or Client from seeking injunctive relief from a court, at any time. Contractor recognizes that in the event of a breach by Agency or Client of any of their obligations under this Agreement or other violations of Contractor's rights in connection herewith, the damage, if any, caused Contractor thereby is not irreparable or sufficient to entitle Contractor to injunctive or other equitable relief. Contractor therefore agrees that its rights and remedies shall be limited to the right, if any, to obtain monetary damages at law and it waives any right it might have to seek injunctive relief against the use of the Commercial(s) by Agency, Client and/or their licensees.

22. Force Majeure. If due to force majeure occurrences, labor condition, war, governmental action or any other cause beyond Contractor's reasonable control, Contractor shall be unable to perform its obligations hereunder, Contractor shall not be deemed to be in breach of this Agreement but Agency may, by written notice to Contractor, either extend the time specified for delivery of the Commercial(s) or terminate this Agreement forthwith or upon the expiration of any time extension Agency has granted. In the event of such postponement or termination, Agency and Client agree to adhere to AICP Cancellation and Postponement Guidelines.

23. Books and Records. For cost plus items and/or cost plus projects only, and for one (1) year from the date of final payment to Contractor hereunder, Contractor agrees that, at any time upon reasonable advance written notice to Contractor, Agency, Client and/or their authorized representatives, shall have access to and the right to examine any books, and records of Contractor, involving cost plus items and/or cost plus projects only related to this Agreement and/or the performance of the Services hereunder.

24. Entire Agreement. This Agreement, together with all addenda, constitutes the entire understanding between the parties and there are no other agreements or understandings, written or oral, in effect between the parties relative to the subject matter hereof. This Agreement may not be modified or terminated orally. If there is any conflict between the terms and conditions set forth herein and the terms and conditions set forth in any Purchase Order related to the subject matter hereof, issued by Agency, the terms of these standard terms and conditions shall control. And, any section of any Purchase Order that addresses "setoff" rights shall be deemed null and void.