



PO 101781
 Denver, CO 80250
 303.303-4179
 303.495-0665
tonypfau@gmail.com
<http://www.avpfilms.net>

commercial production agreement

12/27/07 - The Undersigned;

_____ as (Client/Agency) herein named.

AVPfilms LLC (Producer or director) hereby agrees to produce and deliver to Client/Agency, subject to and in accordance with all terms, conditions and specifications set forth herein for the production of:

type of production

director-director of photography

Director / Director of Photography having full and un-encumbered creative control over the creative and production of the commercial thru 1st cut--Anthony Pfau- AVPfilms llc--

deliverables

ALL rights remain with the producer until such time as the final bill is paid.

client provided materials

to be PROVIDED PRIOR TO SHOOTING -

See also Addendum A for other client provided materials.

Client assumes any and all liability arising from copyright or other licensing of material provided to producer.

schedule

X- Production Schedule Attached -Providing Client returns this agreement and provides 1st payment by _____ and all other accounts with producer brought current, It is estimated that the production will be completed by _____ and Producer will make every effort to meet that date subject to causes beyond Producer's control.

Client/Agency agrees to supply artwork, scripts, approvals, materials, props, and other production elements needed for said production to the Producer in a timely manner. **Delays in elements or payments provided by Client to Producer may result in project delays, additional caosts and / or overtime charges.**

change of specifications

Client/Agency shall have the right during the course of said production to make changes in the scripts, specifications, editing, cutting, arrangement, assembling, and to make eliminations there from or additions thereto. If such a change or changes increases a Producer's costs, and increases the cost of the total budget, Producer shall be reimbursed those costs plus mark-up and also a reasonable amount based on Producer's normal day rate or overtime rate depending on circumstances. The following procedure will be followed if a change is desired:

- a. Upon being informed of the change, Producer shall estimate in writing the cost of the requested change.
- b. Producer shall also inform Client of the reasons for the increased costs.
- c. Producer shall not proceed with the changes until Client approves in writing the additional sum Producer will charge Client for change.
- d. Producer will be paid only the amount of the written estimate for the change unless Client agrees in writing to any additional cost above Producer's estimate unless client has given written authorization for changes where hourly or as used rates were quoted.
- e. If a change requires additional time beyond the estimated delivery date, Producer shall inform Client.
- f. Cost estimates based on attached timeline are time sensitive, Delays by client with regards to materials, returning contract, change orders, could result in delays in delivery or an increased in costs. Any delay by client shall be considered an automatic approval for ANY additional costs to reschedule, rework or replace resources, including producer or production staff's time, that would cost more as a result of non-availability of previously estimated resources, due to the clients delay.

approvals

Client agrees to be available for approvals on the all creative aspects of the project in a timely manner. Client agrees to furnish a liaison representative who will have full power to act for client as requested by Producer at various steps in the course of production. Person solely responsible for approvals and changes will be named in AGREEMENT.

All video tapes, motion pictures, or dailies and each and every part there of at all stages of production, including, but not limited to the sound track, and all literary, dramatic and musical material therein, which the motion pictures, dailies, video tapes are based, locations, cast, wardrobe, shall be subject to client approval.

Signing this agreement or making first payment constitutes approval of the attached board _____ for production. The following shall be subject to Client approval with the following deadlines

- A. This contract signed and returned by _____
- B. Cast selection (5 days prior to pre-light day)
- C. Prop / Wardrobe approval no later than 1 days prior to pre-light day.
- D. 1st rough cut with graphics -as completed
- E. Revised 2nd and final cut with graphics and client revisions-when completed.
- F. Motion tests, rough animation, bottom layer live action, as completed , if such tests would be extremely costly to revise or re-render later (i.e. 3d motion tests)

ALL elements shall be produced hereunder in accordance with a script and/or storyboard approved by Client and in such form as authorized by Client.

The following will be provided for client reference or as a courtesy but not subject to client approval.

- G. Director's shooting boards
- H. Call sheet and shooting schedule
- I. Director's preliminary rough cuts, work in progress, at director's discretion.

If the Client elects to make changes after approval, Producer agrees to make such changes. If the changes incur additional cost, Client agrees to reimburse Producer for requested changes.

In all cases the director/producer shall be entitled to a finished master tape of the directors cut, prior to client revisions or re-editing requested by the client.

client represents warrants and agrees

Client/Agency agrees to pay for all session fees for talent, SAG, AFTRA, SEG on-camera or off-camera performances, and will discharge all obligations imposed upon employers under any federal state or local laws, worker's compensation, unemployment compensation, or insurance, social security tax and state disability tax, all payroll taxes and residual payments. Client/Agency is the contracting party (employer) for said talent. Talent union contracting forms and the filing thereof with various union offices, in connection with the said talent, is the direct responsibility of the Client/Agency unless otherwise specified herein.

Client agrees to compensate the talent (Union or Non-union) on the basis of the use of his or her likeness or voice for this project only with the following use restrictions:

Client will not reproduce the likeness, or voice of the talent without the express written consent of both Farrell Talent Management, or other agent if applicable, (Actors representative) and the talent. Client agrees to indemnify producer against any claim, damage or loss she may suffer as a result of any such unauthorized use, including reasonable attorneys fees incurred in the defense thereof.

Client assumes full and complete responsibility for violation of the Copyright Law of 1976, Title 17, U.S.C. 101 et seq., including any civil or criminal penalties resulting from copyright infringement for client supplied and/or approved artwork, music, footage, copy, etc. Further, Client holds Producer without fault or liability should any legal action result due to copyright, trademark, or patent infringement, false claims or errors and omissions.

Client assumes all responsibility for raw tape and master storage. Producer assumes no liability for property, damages or theft. If any dispute results in litigation, the client will assume all reasonable attorney fees and court costs.

Minimum interference: Producer puts forth that the director specified is a highly skilled, award winning and experienced artist and an expert in all aspects of professional motion picture production and talent direction. As such, Client agrees that it's in the best interest of the client to have the one director and producer named have complete control over the creative execution, direction, and technical production methods of this production.

While producer & director understand **and agrees to accommodate reasonable changes to specifications from the client as well as obtaining the specified approvals noted in this contract**, Client agrees not to excessively interfere with, or

attempt to micro manage or co-direct the director's work in any way that would inhibit or distract directors concentration on the project.

Suggestions or additional desires regarding production of the spot, from client, shall be given in writing on a signed change order, as outlined in the change of specifications section.

The director -producer have no obligation to present unfinished work, prior to its deadline that isn't deemed suitable by the director for client presentation.

SET OPERATIONS--Client also understands that all **set operations and offline editing** are under the control of the director and production staff. **Excessive interference:** includes, giving cast or crew direction, shot selection, shouting "cut", detailing or attempting to instruct director regarding aspects or directorial methods on the shoot, detailing camera positions or action, other activity in which client is attempting to direct set or shooting operations or creating confusion on the set. Should client breach this and engage in activity which the director deems as excessive interference, the producer may treat this contract as cancelled, cease production operations, and all fees outlined in the cancellation-postponement section shall apply. Should the project be re-instated, any costs to re-prep-and continue the production shall be at the expense of the client. ____ Initial

The client understands that the director, reserves the right to refuse, or cancel any shot which the director or others on set deem unsafe or hazardous

The director shall be entitled to a completed directors cut of the project.

producer represents warrants and agrees

Producer agrees to perform services herein to the best of their ability and deliver first class quality and artistically produced spot with direction, sound, art, animation equal to current standards for motion pictures of similar character and purpose and will conform with all network or broadcast technical requirements. The production will be produced with the best quality available for rates quoted.

Producer will provide or oversee all professional technical personnel, cast, production support and equipment required to complete the project. (post production operations to be managed by producer but billed directly to client by post companies)

All photography will be composed to fit in a 16x9 frame which will have letterbox black borders, with a logo bug and web address in the black area when seen on standard definition television sets (4x3).

Producer is hired as an independent contractor on a work for hire basis for said project. Client assumes no responsibility for Producer's federal, state or local tax withholding, medical insurance and/or workers compensation. Producer is wholly independent and shall exercise full control over its employees and agents performing the work covered by this agreement. Nothing herein shall be understood or construed to create a joint venture, partnership or employment relationship between Client and Producer.

Producer shall comply; at the Producer's own expense, with the provisions of all applicable state and municipal requirements and that of state and federal laws applicable to the Producer. Producer will supply liability insurance, protecting client from claims for bodily injury or property damage arising out of film production activities. Coverage does not apply to automobiles, aircraft or watercraft.

Producer shall not reveal or disseminate to, or use Clients proprietary information or trade secrets for any third party in any manner whatsoever.

Producer shall not be held liable for incompatibility issues with media, computer software, programming, hardware, equipment and performance or other technical issues occasionally resulting with new media and DVD deliverables.

c a n c e l l a t i o n / p o s t p o n e m e n t

All scheduled time (booked) is subject to cancellation fees. If at any time Client or person acting as agent for Client, calls for termination of production Covered by this agreement for any reason whatsoever, the Client may do so by giving written notice to the Producer and paying the Producer for costs of production incurred or committed to, by the Producer, prior to date of termination.

This agreement shall also include a cancellation fee according to the following conditions:

- A. Prior to ten working days to first shoot day:
Producer fees in accordance to days spent on the project.
Actual travel or out-of-pocket costs incurred.
- B. Ten working days to first shoot day:
All out-of-pocket expenses plus full Director/Producer's fees plus 50% of initial production fee mark-up.
- C. One to five working days prior to first shoot day:
Full out-of-pocket costs, plus full Director's fee, plus full production fee mark-up.

Producer agrees that immediately upon notice of termination Producer shall acknowledge and agree to terminate, end all work, commitments and expense in the best financial interest of the Client, **and submit within reasonable time of receipt of termination notice a detailed and final invoice.**

CONTINGENCY DAY

"Contingency Day," is any day where a scheduled film or tape shooting has been prevented from occurring due to circumstances beyond the control of the production company.

- a) These circumstances may include, but should not be limited to:
WEATHER CONDITIONS (rain, fog, sleet wind, hail or any adverse condition that is not consistent with the prescribed shooting conditions desired by the Client/Agency). **NON-PERFORMANCE OF TALENT OR ANIMALS** (illness, physical impairment, death). **INJURY OR ILLNESS INVOLVING IRREPLACEABLE PRODUCTION MEMBERS. "BREAKDOWNS"** (not due to gross negligence on the part of the production company) **FORCE MAJEUR** (earthquake, riot, fire, flood, volcano eruption, acts of war, etc.,).
- b) The Producer recognizes its obligation to minimize contingency day liabilities and will apply all union job cancellation regulations and conventional industry cancellation privileges. (firm booking equals commitment to pay)
- c) Producer will quote the maximum exposure figure (a "not to exceed" figure) as a Contingency Day cost. This will be a *cost per day figure*. However, this figure does not include the cost of raw stock and processing or Saturday/Sunday/Holiday premiums. (see bottom of AICP topsheet labeled weather)

If production is postponed due to a contingency situation and provided that that day can't be rescheduled to be *contiguous* with scheduled shooting day(s) in that calendar week the cost that Contingency Day shall consist of:

- a) All non-recoverable out-of-pocket costs
- b) All directoral costs arrived at as follow
-Full director's cost as bid if the shoot is postponed after 12:00 noon of the day prior to shoot day.
-One-half of the director's cost as bid if the shoot is postponed before 12:00 noon of the day prior to the shoot day.
- c) A service charge of no less than 15% on all the above amounts or \$500, whichever is greater.

If production is postponed because of a contingency situation and is re-scheduled for a later date *not contiguous* with the originally scheduled shooting day(s), the cost shall be.-

- a) All non-recoverable out-of-pocket expense (including previously booked crew and vendors)
- b) Full director's cost as bid.
- c) A service charge of no less than 15% on (a) and (b) or \$500, whichever is greater. If, and when, the production is resumed all start up' costs (i.e. re-casting, rehiring crew, etc.) will be billed at cost plus a service charge of _____% of said cost.

OVERTIME If overtime is required that results in an increase of fees charged by crew and/or subcontractors, including talent, client agrees to reimburse producer for such charges based on industry standards, plus a 15% service fee.

t e r m s o f p a y m e n t

Type of estimate X **Firm bid** with 10% overage approval.

This estimate does not include the costs for post-production facilities or lab costs.

Please note, editorial charges may vary depending on the number of client requested revisions or other necessary resources needed to finish the project and are not considered a flat bid.

The estimated price of this production through shooting and director's fees for post production time - is

PROJECT ESTIMATED COST

This contract and production estimate does not include the standard markup. In lieu of the discounted markup/handling fee a pre-approved 10% contingency shall apply- Producer will make every attempt to complete the project within the estimate, however, due to the nature of film production, and that certain costs that cannot be determined until project is in production, Producer reserves right to make decisions to facilitate production, that could increase costs up to 10% of the production budget, without client notification prior to booking necessary resources. Producer will provide a detailed report of expenses incurred with the final invoice. Producer will notify client as to such cost overages at the earliest possible time.

However, producer shall submit an estimate of any additional expected expenses for client approval, prior to incurring costs that would cause the total overages go above 10% of the production estimate. (overtime excluded)

Client acknowledges the above and gives producer authority to incur necessary additional expenses and gives producer the approval to bill client for the additional costs, in amount up to 10% of the production estimate, without prior client approval. These costs shall be subject to the markup/handling percentage detailed on the costs estimate item S.

NOTICE: some costs are unable to be estimated until such time as production prep begins.

Payable as follows: 50/40/10 plan

50 % signing of this agreement , + any outstanding balances owed to producer/ creative to be paid, PRIOR to start of any work.	\$ XXXXXX
40% At the wrap of principal photography (check "on set" and delivered to producer at the end of the shoot day)	\$ XXXXX
10 % +billable overages upon delivery of master and /or dub order.	\$ XXXX + plus overages if applicable.

- J. Payment for additional prints, at standard terms and rates. Client authorizes producer to order on client's behalf and expense,
- K.
- L. Client agrees to provide Producer with 1 HD or SD protective master and copy of all footage.
- M. Client grants producer and named director, director of photography irrevocable license to use commercial for demonstration purposes.
- N. Except as otherwise provided, or as talent license agreements may restrict, all rights, title and interest in the commercial(s) which are the subject of this agreement , including all copyrights and out-take footage, shall be the property of the client after full payment is made to the producer. If failure to pay results in initiation of collection activities, client agrees to pay any legal cost incurred by producer.
- O. Payment of 1st invoice # _____ shall constitute clients full and total acceptance of all terms and conditions. In this contract.

f i r m b i d o r c o s t s p l u s

As specified herein Agency/Client has no rights of audit of producer's firm bid. Client/Agency may request right of audit of producer's final actualization's on cost plus bid's. Client/Agency mutually agree that Producer will charge for audit cost incurred by Producer.

a g r e e m e n t

Please indicate your agreement hereto by signing in the space provided below. See additional pages for responsibilities, terms and conditions.

DATE OF AGREEMENT: 12.26.07
 PRODUCER - AVPfilms LLC

 (Signature)

 name

 (Title)

CLIENT –

 (Signature)

 name

 (Title)
 CLIENT LIASION -REPRESENTATIVE SOLELY RESPONSIBLE FOR PRODUCTION APPROVALS AND AUTHORIZED TO MAKE BINDING DECISIONS:

 (Name & Title)
 authorized by:

 FOR NRC BROADCASTING

 (Name & Title)

Attachments:
 Timeline Addendum Topsheet estimate summary Storyboard
 _____ Production Policies (courtesy)