

# GENERAL TERMS AND CONDITIONS FOR ADVERTISING PERFORMANCE

Dated 1 November, 2004 and Agreed \_\_\_\_\_

## PART 1 General Terms and Conditions.

**1.1 Personal Appearance:** The **PERFORMER** is not to change their personal appearance in any way prior to the shoot date unless required to do so by the company.

**1.2 Other Special Requirements:** Agency reserves the right to overdub actor's voice. This clause is for the sole benefit of The Company.

### **1.3 Copyright:**

**1.3.1** All property and copyright in the performance and all elements of it belong exclusively to the Company, which also has exclusive rights, title and control over all records of the Performance.

**1.3.2** The Performer will at the request of the Company execute appropriate documentation to give effect to the Company's rights and title under clause 1.3.1

**1.4 Income Tax:** If the performer is not represented by an agent then The Company shall make withholding tax deductions where applicable and as required by law, at the rate prescribed by the NZ Income Tax Act 1994.

**1.5 Right of Entry:** Reasonable access will be granted to the Performers' representative.

**1.6 Health and Safety:** The Film and Video Production Code of Practice for Safety and Health, and the Health and Safety in Employment Act must be complied with. The Producer is responsible for identifying and eliminating hazards. The Performer is obliged to report hazards and to avoid harming others.

**1.7 Governing Law:** This contract is governed by New Zealand law.

**1.8 Breaks:** There should be a break of not less than ten hours between the finish of work and the commencement of work.

**1.8.1** Where the performer is engaged for five days per week, the two days off should be scheduled together wherever operationally practicable as the 6<sup>th</sup> & 7<sup>th</sup> days after a 5 day working week or 7<sup>th</sup> day after a 6 day working week.

**1.8.2** Where a working day commences less than ten hours after the completion of the previous working day, the time worked will be paid at the agreed overtime rate in this contract.

**1.8.3** The minimum duration of a single day off is 34 hours, being 24 hours plus 10 hours minimum turnaround. Where the single day break is less than 34 hours, time worked will be paid at the agreed overtime rate in this contract.

**1.8.4** Meal and Rest Breaks: A standard 45 minutes is required for lunch unless by mutual agreement otherwise.

**1.9 Tea Facilities:** Suitable hot and cold beverages will be supplied free of charge by the employer at meal breaks and at rest intervals.

**1.10 Engagement of Juveniles:** Juvenile Schedule (JS): Special conditions apply to all Juvenile Actors and the Juvenile Schedule (JS) must be attached to the main contract if it applies.

**1.11 Stunt work and Special Effects:** The Company will notify the performer of any stunt or special effect that is required as part of their performance as soon as the Company knows of the requirement, whether before or after the signing of the contract. Unless the performer has specifically consented, he/she may refuse to perform such stunts.

**1.11.1** Where stunt work is to be carried out, the employer will ensure that medical or first aid assistance is available at the work place and standard health and safety guidelines are followed.

**1.11.2** When setting fees for the performer, account will be taken of any extraordinary discomfort that may be required as part of the performance

**1.12** **Nudity:** The employer will notify the performer of any nudity that is required as part of their performance as soon as the employer knows of the requirement, whether that is before or after the signing of the contract. Unless the performer has specifically consented, he/she may refuse to carry out any part of the performance involving their nudity.

**1.12.1** Where a performer does not consent to appear nude and the employer proposes to substitute a double, the employer must obtain the written consent of the performer, acceptance of which will not be unreasonably denied

**1.12.2** With the exception of the final rehearsal for camera and lighting, there will be no rehearsals in the nude or semi-nude

**1.12.3** During the rehearsal or shooting of nude or semi-nude scenes, the set will be closed to all persons, except those having a legitimate reason for being present. Observation by monitor or any other means will be prohibited, except where that is necessary as part of the production process.

**1.13** **Illegal and Offensive Acts:** The Performer will not be required to carry out any act which would make the Performer liable to prosecution.

**1.14** **Make-up Accessories and Wardrobe:** The Company will provide all make-up, wigs, special accessories, and special wardrobe, required to be used in rehearsal and performance. Where the company asks the performer to provide special wardrobe or special accessories, the company and performer may agree to a reimbursement of the costs associated with the provision of such special wardrobe or special accessories.

**1.14.1 Facilities:** Where practicable, appropriate clean dressing rooms and toilet facilities, hot and cold running water, soap and towels at all places of engagement are provided and facilities for affording privacy will be provided where a performer is required to make a change of wardrobe. On location the Company will provide facilities that take into account the age and physical status of the performer, and the nature of the location.

**1.14.2 Time for Dressing:** Make-up and costume calls prior to rehearsal or performance will count as time worked. Time spent in changing after the rehearsal or performance to a maximum of a quarter hour (or longer by specific agreement), will count as time worked.

**1.15** **On Location:** If a Performer is required to work away from his or her town of normal residence: he/she shall be provided single room accommodation paid for by the Company. Where this is not possible, the Performer and the Company must agree on suitable accommodation, and;

**1.15.1** The Company shall provide all meals and cover laundry costs or pay per diems sufficient to cover all these costs as they apply to the particular location.

**1.15.2** Transport from the provided accommodation to the production office or film location will be provided by the Company.

**1.15.3** Where a performer is required to stay away from home overnight a reasonable amount of luggage will be transported at the Company's expense.

**1.15.4** The company shall provide or pay for transport to and from the performer's home to the location.

**1.16** **Transport:** If a performer is detained to, or required to begin prior to, an hour that prevents him/her traveling by reasonably safe public transport to his/her home (temporary or permanent as the case may be), the employer will provide for him/her proper conveyance to or from his/her home.

**1.17** **Dispute Resolution:** Any dispute between the parties may be submitted to the arbitration of a sole arbitrator to be appointed by the parties, or if the parties are unable to agree, to be nominated by the President of the NZ Law Society. The parties may agree to mediation before an independent mediator.

**1.18** **Restrictions on use of material:** The Company will not use any part of the photography or soundtrack of a performer for any purpose other than in the commercial and as outlined in the contract, except with the prior written agreement of the performer or their duly authorized agent.

## **PART 2 EXPLANATORY NOTES:**

### **1. PERFORMER'S ROLES:**

Lead / Featured/ Hero/ Recognisable /Key Performer/Star/Co-star: All pivotal to the commercial/campaign, usually the most featured visually with or without dialogue, appears in the final cut of the commercial. Rollover fees and territory additions required/notifiable.

Non-Featured /Non-recognisable/Extras: Background talent used only in non-principal roles, may be seen and heard but not usually to camera.

Body Part Talent: Face not featured at all.

Note: If non-featured or non-recognisable talent becomes featured during the course of the production, another negotiation must be made and a new standard contract drawn up to replace the original Extra release form.

### **2. EDITING DEFINITIONS:**

Re-edit: Audio and visual changes to an existing commercial that may or may not alter the original performance in the original advertisement.

Cutdown: Duration shorter than the original commercial that uses identical or similar video and audio.

Upcut: Duration longer than the original commercial.

Donut: Insertion of new material into the original commercial without altering the original duration.

Caption Change-out: Audio announcements and/or visual captions added to or changed in an existing commercial that does not alter substantially the original performance in the original advertisement.

## **PART 3 Additional Territories:**

<b>Tick box</b>	<b>Territory</b>	<b>Includes but not limited to</b>	<b>Indicative % Per medium</b>	<b>Agreed %</b>
	South Pacific Islands excluding New Zealand	Fiji, Rarotonga, Samoa, Tonga, PNG, Solomon Islands	25%	
	Australia	NSW, Victoria, Qld, SA, WA, Tasmania, NT, ACT	150% or 50% per state	
	Asia	South East Asia, Philippines, Japan, China	50% per country up to max of 200% for the whole territory	
	Africa		100%	
	South and Central America		100%	
	Middle East		100%	
	Europe (except UK)		150%	
	UK		100%	
	Ireland		75%	
	Canada		100%	
	USA		200%	
	Other (Specify)			

**Note: The above territories fees are indicative percentages per region, to be used as guidelines to negotiation. Groups of regions or more than one region should be negotiated as appropriate, these per region fees are therefore not cumulative.**

## **PART 4 Juvenile Performances:**

- 3.1 These conditions make up part of the contract and are enforceable as contract provisions. They make up a minimum code and no working time provisions can be exceeded under any circumstances.
- 3.2 A juvenile is for the purposes of this contract a performer under 16 years of age. In determining the hours that a juvenile works the company must take into account their age and maturity and the conditions of work, eg Appropriate limits must be made to any night and location filming.
- 3.3 It is accepted that juveniles must not work extended hours.
- 3.4 All maximum working hours stated are inclusive of rest breaks and travelling time
- 3.5 Travel Time The Company shall take into account the individual age and maturity of the child, but under no circumstances shall exceed the restrictions as stated in the Hours of Work.
- 3.6 Maximum working hours are:

<b>Age of Juvenile</b>	<b>Maximum Hours per Day</b>
Up to and including 8 year olds	6 hours
8 to 11 year olds	8 hours
12 to 16 years	10 hours

- 3.7 **Juveniles must work no more** than 5 consecutive days, and no more than 5 days in a calendar week. It is expected that young children will work fewer days.
- 3.8 Juveniles must have at least a twelve hour overnight break exclusive of travel time.
- 3.9 Babies under 12 weeks of age must be cared for by a parent or parent's approved alternative and must not be exposed to harsh light, extreme temperatures, irritants including irritating or contaminated make-up, infections or excessive handling.
- 3.9.1 Professional baby care present at all times and parental access to the baby guaranteed at all times.
- 3.9.2 Babies must not be exposed to direct lighting.
- 3.9.3 Makeup used must be non-irritating and uncontaminated.
- 3.9.4 No more than four people to handle baby during any single period of employment.
- 3.9.5 No person with respiratory or skin infection to come into contact with baby.
- 3.10 Filming must be scheduled so that juveniles are not exposed to scenes which are harmful or likely to cause distress.
- 3.11 When scheduling, all practicable steps will be taken to reduce call times and travel times for juveniles.
- 3.12 When contracting juveniles the Company should ensure that:
- 3.12.1 An agent, parent or guardian is easily contactable.
- 3.12.2 A suitable, primary-duty, chaperone is engaged at the Company's expense.
- 3.12.3 Where five or more juveniles are working at any one time, two chaperones should be engaged. For more than ten juveniles, the number of chaperones will be dependent on the number of juveniles, their ages, their roles, the time of day, the location and circumstances of the shoot.
- 3.12.4 The chaperone must be suitably experienced to fulfill the responsibilities of the role.
- 3.12.5 When traveling to and from work, the juvenile should be accompanied by the chaperone, or a parentally approved alternative.
- 3.12.6 The company shall provide age appropriate rest and meal breaks and offset facilities including recreation, rest facilities accommodation and appropriate food.

- 3.13 The Education Act must be complied with. This means that young performers of compulsory school age (in 2000 this means 6-16 years old) must not be engaged in work (whether as employees or independent contractors) in such a way that it has a detrimental effect on their education.
- 3.13.1 The production company must allocate appropriate time, facilities and supervision for the completion of school work for all juvenile performers, including those younger than 6 years old who are engaged in formal school programmes. Methods of complying include:
- 3.13.1.1 Short term engagement. *School work can set by school, supervised by an appropriate tutor or chaperone.*
- 3.13.1.2 Long term engagements. *Correspondence School can be a suitable way of complying with the Act*
- 3.14 Night Shooting / Night Work
- 3.14.1 To be negotiated between agents/parents and production. The production company shall inform in detail its schedules as far in advance as possible.
- 3.15 Health and Safety
- 3.15.1 At no time shall the production company expose a child under the age of 16 years to any situation that could be deemed too detrimental to the child's mental, physical and moral wellbeing.
- 3.15.1.3 See clause s54(1) subclause (2) Health and Safety in Employment Act 1992.
- 3.16 Chaperone's release form & (house parent's) guardian's release form comprise part of this schedule

## **Chaperone Authority (CA): Chaperones and House Mother/House Parents**

- CA1) Chaperones and House Mother/House Parents contracted in the Film and TV industry must have teaching, childcare qualifications or appropriate experience and/or nursing qualifications and a clean driver's license.
- CA2) In addition:
- a) They must have knowledge of the industry
  - b) And be familiar with:
    - i) the Code of Practice for Safety and Health in the NZ Film and Video Production Industry
    - ii) The Occupational Safety in Health Act 1992
    - iii) Equity standard conditions for juvenile actors
    - iv) Individual Contract provisions for juvenile actors
- CA3) Job Description of Chaperone
- a) To drive or travel with children to and from set.
  - b) To coach children with their lines.
  - c) To supervise schoolwork, rest periods and meal breaks.
  - d) The chaperone is responsible for the child's general physical well being during the working day.
- CA4) Job Description of House Mother/House Parents
- a) To provide for the support and general well being of child/children including, meals, all laundry (personal items, bedding etc).
  - b) To supervise after hours and weekend recreation, homework and script work.
  - c) To act as liaison between child and parent if necessary.
  - d) The chaperone/house mother/house parent must be available day or night and should an emergency arise – such as illness – nothing must prevent the chaperone/house mother/house parents from taking immediate action – (i.e. going to emergency clinic.) If the chaperone/house mother/house parent is looking after more than one child the production company must provide an on-call chaperone/house mother/house parent to look after the other children.
  - e) If a chaperone/house mother/house parents is/are acceptable on every point but has a dependent (i.e. baby/child) the chaperone/house mother/house parents must employ or arrange a 24 hour care giver for their own child/children so that there would be no conflict of interest.
  - f) If after commencement of work the chaperone/house mother/house parents is/are found to be negligent in the duties set out in this agreement and this negligence is not rectified by discussion, then it would be considered to be a breach of contract with the production company and the production company will find a replacement chaperone/house mother/house parents.
  - g) When children are contracted, a suitable chaperone shall be engaged at the production company's expense. Where five or more children are working at any one time, two chaperones shall be engaged and at any one time the ratio of chaperones to children shall not be less than 1:4. When children are contracted the company shall contract a suitable housemother/ houseparents. No more than three children to be housed together.
  - h) Curriculum Vitae of proposed chaperone/s and housemother/house parents to be provided by Production Company to agent and parents for discussion and a chaperone authorisation / release form to be signed by parents, chaperone/housemother/ houseparents and production company upon approval of chaperone.

**CA5) Chaperone / houseparent authorisation & release form**

Name of the Child ..... Date of birth .....

Name of the Parents/Guardians .....

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Name of the Company .....

Name of the Production .....

Name of the Chaperone / House parent .....

Period of contract from: ..... to: .....

As parent(s) or guardian(s) I/we release my/our child into the care of the Chaperone / House parent for the duration of the contract with the above named Company on the above name production.

I/we, as parent(s) expect the Chaperone / Houseparent to act solely in my/our child's interest in all matters relating to the production. The Company agrees that this includes the Chaperone / Houseparent exercising the right to refuse requests from people involved in the production (including directors, producers and any others) where they exceed the provisions of this contract or are otherwise unreasonable.

This release is made on the clear undertaking from the Chaperone / Houseparent and the Company that they will abide with all of the provisions and the spirit of this contract for juvenile performers.

My/our child will not be required to perform any stunt whatsoever without consultation and permission from myself/ourselves.

Special Conditions or requirements of my/our child are: .....

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Signed: ..... (Parents)]

Signed: ..... (Chaperone / Houseparent)

Signed: ..... (Company)

Date: .....