

## Commercial Production Coronavirus Tripartite Addendum v2

### DRAFTING NOTE

THIS DOCUMENT IS DRAFTED AS A TEMPLATE ADDENDUM TO ASSIST ADVERTISERS, AGENCIES AND PRODUCTION COMPANIES IN DEALING WITH THE POTENTIAL RISKS AND ASSOCIATED COSTS TO PRODUCTIONS DUE TO COVID-19. IT HAS BEEN APPROVED BY THE APA, IPA AND ISBA. THERE IS NO OBLIGATION TO USE THIS ADDENDUM AND EVERY ORGANISATION IS FREE TO NEGOTIATE WHATEVER TERMS IT WISHES. HOWEVER, WE CONSIDER THE TERMS IN THIS ADDENDUM TO BE REASONABLE. THE PURPOSE OF THIS ADDENDUM IS TO ENABLE ALL PARTIES TO AGREE THEIR TERMS QUICKLY IN ORDER TO GET PRODUCTIONS UP AND RUNNING AGAIN. ORGANISATIONS WISHING TO USE THIS ADDENDUM SHOULD ENSURE IT IS SIGNED BY AN AUTHORISED PERSON FOLLOWING LEGAL REVIEW.

PLEASE DELETE THIS NOTE WHEN USING THE DOCUMENT AND ADDRESS THE OTHER HIGHLIGHTED ISSUES BELOW.

IF MAKING MATERIAL CHANGES TO THIS DOCUMENT, PLEASE REMOVE THE LOGOS OF THE IPA, ISBA AND APA.

### Introduction

The parties to this addendum acknowledge that, as at its date, there is a Covid-19 pandemic which may have an adverse effect on the ability of [insert name of Production Company] (the "Production Company") to perform its obligations under its production agreement (the "Production Agreement") with [insert name of Agency] (the "Agency") and on the ability of the Agency to perform its obligations under its advertising agreement (the 'Advertising Agreement') with [insert name of Client] (the "Client"), all in respect of the commercial production titled [Title of Commercial] (the 'Production'), in circumstances which are outside their control.

The insurance policies obtained by the Agency and Production Company will not provide cover for costs or liabilities that relate to Covid-19, and so the Client will need to bear responsibility for such costs should it accept the terms of this addendum. The terms of this addendum are only intended to apply if and to the extent that a Covid-19 event is not covered by the insurance policies of the Agency or Production Company (as appropriate).

The terms of this addendum are intended to supplement the Production Agreement in the case of the Production Company and Agency, and the Advertising Agreement in the case of the Agency and the Client. This addendum is not intended to, and does not, make the Client a party to, or impose on the Client any obligation under, the Production Agreement between the Agency and the Production Company. Neither is this addendum intended to, and nor does it, make the Production Company a party to, or impose on the Production Company any obligation under, the Advertising Agreement between the Agency and the Client. It is intended to act separately as an addendum between the Agency and the Production Company in respect of the Production Agreement on the one hand, and separately as an addendum between the Agency and the Client in respect of the Advertising Agreement on the other.

This addendum should be used in conjunction with risk mitigation documents provided by the agency for discussion with the client.

The parties to this addendum wish to progress with the Production on the terms set out below.

## Agreement

In consideration of the mutual rights and obligations of the parties, it is agreed:

1. These terms shall apply in respect of the Production in the event that, as a direct result of the Covid 19 pandemic, it becomes necessary to relocate, delay, postpone, or cancel the Production, or to make material changes to the nature of the Production, for example, because:
  - a. a competent or relevant authority, such as the World Health Organisation or appropriate UK Government department advises against all travel (or all but essential travel) to the intended location of the Production; or
  - b. any decision, guidance or recommendation by any such competent or relevant authority prevents the Production Company or Agency or any of their personnel or equipment required for the shoot from travelling to the intended location of the Production; or
  - c. a key person to the Production, including but not limited to the director, director of photography or a key member(s) of the cast having Coronavirus symptoms and thus being unable to perform their duties in respect of the Production or being required to self-isolate under the Government's Track and Trace scheme or similar requirements in place at the time, and a suitable replacement cannot be identified and is not readily available.
2. If, despite the Agency and Production Company's compliance with clause 5 below, there is a postponement, delay or relocation or material changes need to be made to the Production as set out in paragraph 1 above (whether due to the circumstances set out in sub-clauses 1a or 1b or 1c, or otherwise):
  - a. neither the Production Company nor the Agency shall be in breach of the Production Agreement, the Agency shall not be in breach of the Advertising Agreement and neither the Production Company nor Agency shall be liable for any delays, costs or damages associated with any such event; and
  - b. the Agency shall be entitled to recover from the Client and the Client shall pay to the Agency in accordance with the relevant payment period specified in the Advertising Agreement (or if none, within **30** days of date of invoice):
    - (i) such unavoidable costs incurred by the Production Company which are directly attributable to such postponement, delay, relocation or material changes, including: (i) crew costs, in respect of which paragraph 2.a. in the schedule below shall apply if the Production is in the UK; and (ii) a Production Fee, and a Director's Fee and Producer's Fee as set out in paragraph 1 in the schedule below; and
    - (ii) any other costs (including other third party costs) incurred by the Agency, including by way of example only, talent fees (in addition to any fees or costs payable under the Advertising Agreement); and
  - c. provided that, in the case of such costs referred to in 2b.(i) and 2b.(ii) above:

- (i) neither the Agency nor the Production Company (as relevant) are able to recoup their respective costs through their respective insurance covers;
    - (ii) the Agency and the Production Company are unable to avoid or otherwise mitigate their respective costs;
    - (iii) the Agency keeps the Client informed of such potential costs as far as is reasonably practicable (and the Production Company shall provide such information in respect of the costs referred to in clause 2b.(i) to the Agency for this purpose); and
    - (iv) the Client has received from the Agency all relevant invoices supported by substantiating documentation (and the Production Company shall provide such invoices and documentation in respect of the costs referred to in clause 2b.(i) above to the Agency for this purpose); and
  - d. if the Production is postponed or delayed and the parties have not, within 30 days of the commencement of the postponement or delay, agreed a new shoot date, then (unless otherwise agreed by the parties) the Production shall be deemed cancelled and the provisions of clause 3 shall apply.
- 3. If, despite the Agency and Production Company's compliance with clause 5 below, there is a cancellation of the Production as set out in paragraph 1 above (whether due to the circumstances set out in sub-clauses 1a or 1b or 1c, or otherwise):
  - a. neither the Production Company nor the Agency shall be in breach of the Production Agreement, the Agency shall not be in breach of the Advertising Agreement and neither the Production Company nor Agency shall be liable for any delays, costs or damages associated with any such event; and
  - b. the Agency shall be entitled to recover from the Client and the Client shall pay to the Agency in accordance with the relevant payment period specified in the Advertising Agreement (or if none, within **30** days of date of invoice):
    - (i) an amount in respect of work performed by the Production Company up to the date of the notice of cancellation, together with any unavoidable costs actually and already incurred or committed to by the Production Company, including: (i) crew costs, in respect of which paragraph 2.a. in the schedule below shall apply if the Production is in the UK; and (ii) a Production Fee, and a Director's Fee and Producer's Fee as set out in paragraph 2.b. in the schedule below, all such costs and fees subject to paragraph 3 of the schedule below; and
    - (ii) any other costs (including other third party costs) incurred by the Agency, including by way of example only, talent fees (in addition to any fees or costs payable under the Advertising Agreement); and
  - c. provided that, in the case of such costs referred to in 3b.(i) and 3b.(ii) above:
    - (i) neither the Agency nor the Production Company (as relevant) are able to recoup their respective costs through their respective insurance covers;
    - (ii) the Agency and the Production Company are unable to avoid or otherwise mitigate such respective costs;
    - (iii) the Agency keeps the Client informed of such potential costs as far as is reasonably practicable (and the Production Company shall provide such information in respect of the costs referred to in clause 3b.(i) to the Agency for this purpose); and

- (iv) the Client has received from the Agency: (a) all relevant invoices supported by substantiating documentation (and the Production Company shall provide such invoices and documentation in respect of the costs referred to in clause 3b.(i) above to the Agency for this purpose); and (b) such creative deliverables as have so far been developed in respect of the Production in the Agency's possession (if any) and which it is reasonably able to provide.
4. Within **[14]** days of receipt by the Agency of the amounts payable by the Client to the Agency in respect of the Production Company's costs under paragraphs 2b)(i) or 3b)(i) above (as the case may be), the Agency shall pay such amounts to the Production Company, and the Production Company hereby acknowledges that such amounts shall be sufficient to meet all liabilities of the Agency and the Client to the Production Company in respect of such costs (and, in the case of the Agency, under the Production Agreement).
5. With regard to the conception, planning, scheduling and execution of the Production, the Agency and Production Company shall each:
  - a. take particular care in recommending content ideas, choosing production locations and sets, preparing contingency plans and anticipating possible problems with shoots so as to try to mitigate any Covid-19 related problems as far as is reasonably practicable;
  - b. comply with the most recent APA Covid 19 Shooting Guidelines whether the Production Company is a member of the APA or not (which may be found at: <https://www.a-p-a.net/2020/04/news/updated-regularly/>); and
  - c. take into account all relevant UK government Covid 19 guidance, including but not limited to social distancing and conduct in public locations (which guidance shall take precedence in the event of any inconsistency or conflict with the APA Covid 19 Shooting Guidelines)
6. If at any point during conception, planning, scheduling and execution of the Production, it becomes apparent to the Agency or the Production Company that a relocation, cancellation, postponement or material change is, in their opinion, reasonably likely to occur, they shall notify each other, and the Agency shall notify the Client, as soon as is reasonably practicable and the parties shall use reasonable endeavours to agree in good faith a means of avoiding such an event from adversely impacting the Production.
7. In the event of any inconsistency or conflict between these terms and the Production Agreement, or between these terms and the Advertising Agreement, in respect of the subject matter of this addendum, these terms shall take precedence.
8. This addendum shall be governed by English law and the courts of England and Wales shall have exclusive jurisdiction over any disputes or claims arising out of or relating to this addendum.

### Schedule

1.
  - a. 10% Production Fee on any additional costs directly resulting from the postponement, delay, relocation or material changes or otherwise required to mitigate any such potential disruption.
  - b. 50% Director Fees/Producer Fees (day rates) on any additional shoot days required due to the postponement, delay, relocation or material changes that can resume on the next working day after the intended shoot day, or on an alternative date agreed by the parties.
  
2.
  - a. As per the APA/BECTU crew terms (for shoots in the UK) which are as follows:  
7 and more days prior to the engagement – no cancellation fee applies  
6 – 4 days prior to the engagement – 50% of the agreed fee  
3 – 2 days prior to the engagement – 75% of the agreed fee  
On the day prior to the engagement – 100% of the agreed fee
  - b. Director/Producer Fees & Production Fee (calculated as per below):
    - (i) 20 days or more before first shoot date - 25% of budgeted fees
    - (ii) Between 19-11 days prior to shoot (inclusive) - 50% of budgeted fees
    - (iii) Between 10-1 days prior to first shoot day (inclusive) - 75% of budgeted fees
    - (iv) During shoot - 90% of budgeted fees
    - (v) After final shoot day (i.e. during other contractual requirements if any) – 100% of budgeted fees
  
3. In the event of a cancellation of the Production, the aggregate of the costs and fees set out in this schedule shall not exceed the amount of the Production Company budget.

Agreed for and on behalf of [Client]

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Signature

Name: XXX

Title: XXX

Date: -----

Agreed for and on behalf of [Agency]

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Signature

IPA/ISBA/APA Coronavirus Addendum v2 25 September 2020



Name: XXX

Title: XXX

Date: \_\_\_\_\_

Agreed for and on behalf of [Production Company]

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Signature

Name: XXX

Title: XXX

Date: \_\_\_\_\_