



AICP NATIONAL GUIDELINES – LIVE ACTION PRODUCTION

Revised 04/2020

In 1978 the AICP undertook the task of developing guidelines to be used to foster responsible business practices between production companies and their contracting-clients. Since that time, these guidelines have been recognized as the industry standard.

COMMERCIAL PRODUCTION BIDDING

The most important component in production is clear and specific communication between the production company and contracting-client. The bid proposal (which may include a financial bid, bid letter, treatment and/or storyboards) is a creative road map, an outline of how the company plans to execute the job, and reflects the prevailing rules, whether contractual union obligations or federal/state law under which the production company must operate. The best bid proposals provide the most production value and are developed with precise specifications supplied by the contracting-client that allows the production company to be equally specific regarding what it will supply. A bid proposal is more than simply an allocation of dollars, it serves as the articulation of the creative contract between the contracting-client and the production company.

The production company should be made aware of all bidders from the onset and bidders should be limited to three directors unless there are extenuating circumstances. A bidding production company should be notified when a company/director drops out and/or others are added during the bidding phase and should be notified, whether verbally or in writing, when the job has been awarded and to whom. In instances where an advertising agency's project has not been "sold through" to the advertiser, the agency must disclose this to the production company in advance of requesting any bids.

When a production company is being single bid no other production companies are competing for the project (such as participating in conference calls, submitting treatments, and/or submitting budgets for the project). In such instances, the production company must be made aware of the actual schedule and budget. If the budget or schedule changes after award, the production company should have the right to withdraw from the project. After agreeing to a single bid, the production company should not accept any competing projects that directly conflict with the single bid project. The agency should not require that the production company submit a treatment for single bid projects.

If the production company is engaged to give technical or creative advice prior to bidding, that company should be given first right to bid on the project. If there is a proprietary aspect of that production company's approach it should be held confidentially, unless that company gives written permission for those ideas to be incorporated into the overall specs of the job.

If an advertising agency requests the production company to provide pre-bid estimates, creative input, and/or other expertise prior to the agency selling the project through to an advertiser, fees for such work will be pre-negotiated and the production company shall have the right of first refusal on the project.



APPROPRIATION OF CREATIVE CONTRIBUTION

During the course of the bidding process, production companies - through their producers and directors - often provide approaches to a project that materially changes its overall look or direction. Ideas presented in the bid proposal that are not explicit in prior contracting-client communications are owned by the production company. The ownership of these ideas is transferred to the contracting-client upon award of the job to the production company and receipt of payment in full. When the job is not awarded to that production company the use or exploitation of such creative contributions, including but not limited to treatments, tests, animatics, or any concepts provided by the production company is the misappropriation of intellectual property and work product of that production company for which appropriate compensation is required. Under no circumstance should an agency, advertiser or advertiser's consultant share the production company's bid proposal with another production company, advertiser or agency.

BID FORM

The basic AICP bid form has through long term usage become the industry standard in bidding live action jobs for commercial production. This guideline is intended to point out the flexibility that the form gives to production companies in structuring their individual bidding approaches to the varying needs to fulfill contracting-client bidding, production and creative requirements.

The bid form was designed to organize the most commonly used live action cost items into groups A-K to which a single mark-up percentage the company determines and/or negotiates with the contracting-client is applied. The dollar amount known as the "production fee" is normally the result of simple multiplication, and represents the production company's administrative and sales costs as well as a fee for its services provided from prep through wrap. If any lines are pulled out of A-K and are subjected to a different mark-up(s) this direct relationship between costs and multiplier skew the formula for calculating the production fee and other methods of determining the production fee should be considered.

The traditional approach of applying the company's single mark-up percentage to A- K costs may also merit reconsideration when the production costs do not reflect the complexity of the approach, expertise required or are condensed to meet contracting-client needs (e.g. low budget productions). In such cases, other forms of expressing how the production company will be compensated should be considered, such as a lump-sum amount as an all-inclusive production fee.

The production company remains free to determine the range of services for which it will seek compensation and reflect (or not reflect) certain costs and/or services in its fee structure. For example, if the production company is performing creative services outside the traditional scope of "production" as that term is generally understood (A- K), such as concept/creative development, scripts, etc., the production company is free to include a creative fee in addition to or as part of the production fee, in its bid to the contracting-client.

The AICP stresses that the use of the AICP bid form (in whole or in part), fee or percentage amounts, business costs and components, and the terms of bid submissions or contract terms, are strictly a matter of independent determination by each production company. This guideline is intended for informational purposes only and not as legal advice and does not represent AICP policy or agreement with respect to any business practices.



FIRM BID

Under this system, production companies submit a proposal including a summary of costs. Once details of the approach have been agreed upon and the proposal is accepted, it becomes the contract price for the job, barring any change in specifications. There are no accounting obligations to contracting-client by the production company for actual costs after the production. It is standard industry practice that contracting-client producers have the authority to approve changes in specifications.

COST-PLUS-FIXED FEE

The buying method of Cost-Plus-Fixed-Fee is designed for projects where there are a number of unknown factors and when there is a risk that the job may involve costs that cannot be anticipated.

Under this system, production companies propose an estimate of the costs based on the agreed upon specifications. Typically this estimate is submitted on a six-page cost summary (long form). To the total of these costs, a fixed fee (a specific dollar amount) is added. When agreed upon, the sum of the estimated costs and the fixed fee becomes the contract price. At the conclusion of the job, the production company does a cost-accounting, and the contracting-client is billed all actual direct costs plus the agreed upon fixed fee (specific dollar amount).

Due to the nature of production, actual costs (not attributed to specification changes) may be higher than originally estimated, and accordingly, there should be no "Not to Exceed" expectation on behalf of the contracting-client. Costs incurred which greatly exceed the bid estimated amount should be approved by the contracting-client's representative prior to incurring such cost.

In instances where overages are incurred as a result of an agency or advertiser specification change, a production fee (utilizing the same mark-up percentage used to determine the fixed fee) should be added to those costs and included in the final accounting along with the actual direct costs and the previously agreed upon fixed fee.

The AICP recommends that all additional accounting expenses incurred as a result of utilizing the Cost-Plus-Fixed-Fee system be included as a direct cost of the production. Should the contracting-client wish to audit the costs of the production company the contracting-client shall do so at its expense and within one year of the completion of photography.

OVERAGES

An overage is incurred when there is a change in the project specifications and will be billable to the contracting-client as a change order to the contract price. Major changes such as the addition of a shoot day shall be treated as an addendum to the contract and increase the contract price by the amount of the overage. Accordingly, 75% of the overage shall be due and payable upon execution of the overage and prior to the delivery of the elements.

The contracting-client shall designate an on-set representative with the authority to approve changes in specifications. In instances where the contracting-client is an advertising agency, by executing the overage, the agency is binding the advertiser to payment.



All overages should be negotiated and executed prior to the commencement of the work contemplated by the overage. A verbal approval shall be considered binding in instances where the contracting-client's representative has instructed the producer to begin incurring costs prior to the execution of the overage.

The production company shall be entitled to a production fee on the overage. The percentage used for calculating the overage production fee should be the same percentage used in the awarded bid.

With the exception of major changes as stipulated above, and unless otherwise negotiated, all payments for overages shall be due at the same time as the final contracted payment.

AGENCY AS AGENT FOR CLIENT and SEQUENTIAL LIABILITY

When an agent (advertising agency) enters into a contract on behalf of a disclosed principal (advertiser), the advertiser is legally bound to all terms and conditions agreed to by its agent and is liable for the payment to the production company under the contract.

Many agency contracts include a Sequential Liability clause. This clause lays out the sequence in which the advertiser/agency are liable. The advertiser is initially liable to the production company for payment, and the agency is sequentially liable for payment to the production company once it has received the funds from the advertiser. It should be noted that the advertiser is not released from its obligation of payment until the production company has been paid in full. Therefore, even if the advertiser pays the agency, the advertiser remains liable if the agency defaults in fulfilling the payment obligation. In instances where the agency has received payment from the advertiser, the funds designated for production should be held by the agency in trust for the benefit of the production company. In all instances, the advertiser is not entitled to exhibit or use the work until the production company has been paid in full.

Other agency contracts do not contain a Sequential Liability clause, but do refer to the agency as "acting as agent for" (the advertiser) when they fail to pay the production company according to the agency's contractual payment terms.

To be clear, Sequential Liability does not mean "Sequential Payment" and does not supplant the contractual payment terms between the parties. If the agency has not requested or received payment from the advertiser in a timely fashion, and refuses to advance funds to the production company in order to meet its contractual obligations, then the advertiser must pay the production company directly according to the payment schedule.

In all cases where the agency claims to be acting as agent for a disclosed principal (including where the agency insists upon including a sequential liability clause in its contract), the contract should include a representation and warranty by the agency that it is authorized by the advertiser to enter into the production contract on its behalf and no other consent or authorizations are necessary. If the production company does not want to agree to a sequential liability clause, but the agency is unwilling to strike it, the production company should:

1. Have a specific written provision for the advertiser to pay the production company directly; or
2. Require the agency to acquire, and acknowledge in writing that they have received, 100% of the production costs in advance of production.



In absence of the above the production company should:

- a. Be provided with the advertiser billing and contact information,
- b. Copy the advertiser on all invoices, and
- c. Notify the advertiser of payment due as soon as terms of the contract (payment dates) are not met by the agency.

PAYMENT

It is recognized that this is a labor-intensive industry and accordingly prompt payment to the production company for services rendered is essential.

Each payment guideline is designed so that the first payment is made to the production company upon signing of the contract, but not later than 5 business days prior to the commencement of the first shoot day. In the case of foreign production, earlier payment may be required. It is recommended that if payment is not made as agreed, the production company reevaluate the ability of the contracting-client to meet its contractual obligations. Failure to make prompt payment, as set forth in the contract between the production company and the contracting-client, is a breach of contract giving the production company recourse to the cancellation provisions set forth herein. In the event the contracting-client is an agency and is in default of any payment, it is recommended that the production company notify and forward duplicate invoices to the advertiser.

Title of ownership of a commercial does not transfer until full payment is made. Each production company should consider adoption of a payment policy requiring full payment for the commercial prior to its broadcast use. The Association believes that such a policy is consistent with good faith business practices and it is also consistent with provisions used in Great Britain by the Advertising Producers Association, the Institute of Practitioners in Advertising, and the Incorporated Society of British Advertisers.

PAYMENT - THE 75-25 PLAN*

1. The "75-25" plan reflects the self-funded nature of a production with substantial up-front costs and is useful in instances of firm bid contracts whose requirements are production through dailies (film, videotape or digital).
2. Payment Procedures
 - a. First Payment: 75% of the contract price. The first payment is due upon signing of the contract, but not later than 5 business days prior to the commencement of the first shoot day. Since job confirmation is almost always a verbal order, first payment is due whether or not the production company is in receipt of a written contract, purchase order or letter of agreement. (Note: This provision serves to reaffirm the fact that a verbal order to commence production signifies that all proper agency and advertiser authorizations have been obtained and that the production company is to begin expending time and money on the confirmed job.)
 - b. Second Payment: 25% of the contract price. This amount (including all additional approved and invoiced overages) is due and payable upon approval of dailies, but not later than the airing of the commercial or 30 days from the date of the final invoice, whichever is sooner. In the event there is a cost-plus component of a firm bid job, the firm bid portion of the final payment shall be paid in accordance with this paragraph, and shall not be delayed due to the actualization of the cost plus items. Invoices for cost plus items shall be due upon receipt and payable within 30 days of the invoice.



* Production company determines actual ratio of first to last payment which may reflect factors such as up-front costs, full payment risks, scope of production, etc. “75/25” is shown as an example.

FOREIGN PRODUCTION COSTS

When shooting outside the U.S., the production company is often obligated to pay the foreign vendors in full before leaving the country with the elements. Where foreign production is involved, the first payment due the production company will be no less than 75% of the contracted price. *

In recognition of the occasionally volatile nature of currency rates, the agency and the production company should agree in advance to contingency plans for rate fluctuations.

Suggested options might include:

- a. Setting aside a contingency amount.
- b. Setting a time limit for an agreed exchange rate.
- c. Agree to revise exchange rate for subsequent billings.

* Production company determines actual ratio of first to last payment which may reflect factors such as up-front costs, full payment risks, scope of production, etc. “75/25” is shown as an example.

LATE PAYMENTS

When payment by the contracting-client under the terms of the production contract is late, there will be an interest charge at Prime + 2%* on all payments later than 30 days from the contract due date (using the prime rate as of the 30th day).

* The Production company determines the actual rate of interest. The rate inserted above is shown as an example.

CANCELLATION AND POSTPONEMENT

If the production company blocks out a specific period of time for a job with the agreement that it represents a commitment from the contracting-client, then, obviously, no further efforts are made to sell that time. This time represents a production company’s only source of income, and thus this understanding of this premise and the reasoning behind these guidelines should be fully discussed as a term of engagement.

If the job is canceled or postponed within the Guideline time frame, it is unlikely that this time can be re-booked. However, the production company should make all reasonable efforts to re-book the cancelled/postponed time with another comparable project. If the time is re-booked, then there is an area for negotiation of the director’s fee and/or the production fee, as the loss of this revenue may be fully or partially mitigated.

In instances where the contracting-client has awarded the production company start-up monies, the production company and contracting-client are still committing to the timeline of the project. Therefore, awarding the production company start-up monies prior to the award of the finalized budget should in no way relieve the contracting-client of its financial obligations to the production company for the full (or 50%, depending upon the timing) production fee and director’s fee as anticipated in the finalized budget, in addition to the



production costs incurred or committed to date, in the event of cancellation or postponement.

1. If notice of cancellation/postponement occurs DURING or is given ONE TO TEN BUSINESS DAYS prior to the commencement of the shoot, the contracting-client will be liable to the production company for:
 - a. All costs incurred or committed as of the date of cancellation/postponement.
 - b. Full director's fee AS BID.
 - c. Full production fee on the job AS BID.

2. If notice of cancellation/postponement is given MORE THAN TEN BUSINESS DAYS prior to the commencement of the shoot, the contracting-client will be liable to the production company for:
 - d. All costs incurred or committed as of the date of cancellation/postponement.
 - e. Not less than 50% of director's fee AS BID.
 - f. Not less than 50% of production fee on the job AS BID.

In the event of postponement, and prior to the recommencement of production, at the direction of the production company the contracting-client shall either execute an overage or new contract, and the production company shall be paid for such overage or new contract in accordance with paragraphs 1. and 2. above, and with the payment guidelines, including an initial payment prior to the commencement of production.

In the event of cancellation, the contracting-client shall pay the production company fees and costs in accordance with paragraphs 1. and 2. above. Invoices for cancellation shall be due and payable upon receipt of the invoice.

In the event of a partial cancellation of a firm bid job which results in the reduction of shoot days, the production company shall credit the contracting-client for costs not incurred or committed which can be attributed to the cancelled shoot day(s), provided that such costs have not been redistributed to accommodate the change in the scope of work and/or management of the cancellation. There shall be no reduction in the production fee or director's fee if notice of the partial cancellation occurs during or is given within ten business days prior to the commencement of the shoot. If notice of such partial cancellation occurs more than ten business days prior to the commencement of the shoot, the production company shall also credit the contracting-client 50% of the director's fee for such cancelled shoot day(s) and 50% of the production fee on such credited costs attributable to the cancelled shoot day(s). Credit memos for partial cancellation may be deducted from the contracting-client's final invoice.

The production company shall have the right to cancel the project without penalty in the event the contracting-client has breached the production agreement or defaulted on payment to the production company.

CONTINGENCY AND WEATHER DAYS

1. A contingency day is any day where a scheduled shoot has been prevented from occurring due to circumstances beyond the control of the production company.
2. These circumstances may include, but should not be limited to:
 - a. Weather conditions (rain, fog, sleet, hail or any adverse condition that is not consistent with the prescribed shooting conditions desired by the contracting-client).



- b. Injury, illness, or absence of agency or advertiser supplied elements (i.e. key talent, color-correct products).
 - c. "Force majeure" (meaning but not limited to, earthquake, riot, fire, flood, volcanic eruption, acts of war, strikes, labor troubles or unrests, civil authority, terrorism, epidemic(s)/pandemic(s), and acts of God).
3. The production company recognizes its obligation to minimize contingency day liabilities and will apply accepted industry cancellation practices.
4. If requested and practicable, the production company will quote an estimated exposure figure as a contingency day cost. This will be a cost per day figure. However, this figure may not include the cost of premiums for crew or suppliers (i.e., should the contingency day fall on weekends, holidays or premium days based on consecutive employment), and may need to be adjusted based on the timing of the contingency day occurrence as it relates to the scheduled shoot day.
5. If a contingency day situation arises, the cost of the contingency day postponement shall consist of:
 - a. All out-of-pocket costs.
 - b. All directorial costs arrived at as follows:
 1. Full director's fee as bid if the shoot is postponed the day prior to the shoot day.
 2. One-half of the director's fee as bid if the shoot is postponed two or more days prior to the shoot day.
 - c. A service charge of no less than 15% of all direct costs.
6. If a shoot is cancelled or postponed due to a contingency/weather day, the production company shall be paid in accordance with the cancellation guidelines. Contingency/weather days continuing for 3 or more consecutive days shall automatically become a cancellation or postponement, as applicable, and the production company shall be paid in accordance with the cancellation and postponement guidelines.

PRODUCTION INSURANCE

The production company is the preferred procurer of insurance for the production since it is in the best position to understand the need for special risk insurance, and it is in a contractual relationship with equipment vendors and/or locations should there be a loss.

Production insurance policies may encompass the following:

1. Production package including negative film and videotape; faulty stock; camera and processing; advertising agency re-shoot endorsement; talent cost endorsement; props, sets and wardrobe; extra expense; off premises power interruption; miscellaneous equipment; third party property damage; operator error; monies and securities; imminent peril; strikes and civil authority; ingress and egress; office contents; and difference in conditions coverage (when insurance is provided by agency/advertiser under a wrap-up program).
2. Commercial general liability covering bodily injury and property damage to others.
3. Worker's compensation and employer's liability covering the illness or injury to employees.
4. Non-owned and hired automobile liability and physical damage.
5. Errors and omissions liability covering libel, slander, privacy, copyright infringement, trademark or trade dress infringement, invasion of privacy or publicity or other violation of intellectual property rights.
6. Umbrella liability providing excess limits over the general liability, non-owned and hired automobile liability, and employer's liability policies.



7. Foreign liability, similar to commercial general liability and non-owned and hired liability, when filming outside of the United States and Canada.
8. Group travel accident insurance covering travel for guild members.

These policies have traditionally been purchased by the production company, but may also be provided by the advertiser or the advertising agency in policies known as “wrap-up.” When the production is insured under the advertiser’s or agency’s wrap-up program the coverage should begin upon award of the project or of start-up monies, whichever is the earlier event. The only insurance the production company should provide is workers compensation and employer’s liability covering the production company’s employees.

All other insurance for the production, including but not limited to the policies listed above (with the exception of item 3), should be provided by, and at the sole cost of, the advertiser or agency (as the case may be), including insurance for special risks.

When the advertising agency or advertiser is providing the production insurance the advertising agency and/or advertiser should indemnify, defend and hold harmless the production company from any and all premiums, deductibles, and claims covered, or which should have been covered had the advertising agency or advertiser maintained adequate insurance under the wrap-up program including but not limited to legal defense costs.

The wrap-up addendum should contain a clause which states that its policies are at least as comprehensive as those of the production company, and the wrap-up policies should include a Difference in Conditions policy to protect the production company in instances where the wrap-up coverage is lacking. Copies of the wrap-up insurance policies should be made available to the production company upon its request.

Under the wrap-up program, it is the production company’s responsibility to declare special insurance circumstances contemplated in the bid for which it is aware, such as stunts, precision driving, pyro-technics, aircraft, watercraft, railroad, animals, foreign locations, jewelry, fur, fine art and antiques, but the production company should not assume any responsibility or liability to declare special risks for which it is not aware or able to determine. It is the responsibility of the agency/advertiser and their insurance broker to review all job materials, including the declaration of special risks by the production company, and determine acceptable risk, limits, and appropriate coverage for the job. Agency/advertiser should indemnify and hold the production company harmless from any claims where the agency/advertiser elected not to procure or neglected to maintain the special risk insurance.

Under the wrap-up program, the production company should be listed as a “named insured” (co-owner) on the policies, and as such should have access to the insurance carrier or broker (at all hours of production) to assess risks during production and represent the production company as needed.

Whether production insurance is provided by the production company or the advertising agency and/or advertiser, the production company is actively involved in the insurance process and there are costs associated with this involvement. For wrap-up, the production company must have insurance certificates issued or directed to vendors and locations, and negotiate and process insurance claims should the need arise. In most cases, the production company is required by the advertiser or agency to maintain “usual and customary” insurance coverage in addition to that provided under the wrap-up insurance program. It is



therefore appropriate that the production company include in its estimate a charge for wrap-up administration, and purchased insurance (including coverage required by the wrap-up policy), and/or any coverage costs associated with uninsured risks in addition to a handling fee on any claims processed.

INDEMNITY

When two parties enter into an agreement it is common for those parties to indemnify each other for, among other things, the contributions each party makes to a project, in addition to breaches of their obligations under the agreement. Therefore, when the production company and contracting-client enter into a contract for a project the parties should mutually indemnify the other with respect to the items and/or materials each supplies for the production according to the bid proposal, job specifications and contract, and with respect to negligence and breaches of contract terms.

LIMITATION OF LIABILITY

The production company may be hired to execute an advertising agency's fully formed idea, or develop and execute an idea of its own based on the marketing needs of the contracting-client. In either event, the production company should only be responsible for its contribution to the project and the contract should clarify the extent of potential liability. In no event should the production company be liable for any consequential damages such as loss of business or profits.

COPYRIGHT CLEARANCES

In every live action commercial there are thousands of items captured, whether in the immediate frame or within the sightline; and it would be an enormous undertaking by the production company, requiring months of prep and significant funds, to clear/obtain usage rights for every item in the spot. Obtaining such rights would require the advertiser's approval, clarification on exact usage/markets/term and require a co-signature from the advertiser as the advertiser controls the usage of the work.

Location releases are obtained for the immediate filming footprint only, not the sightline. Should there be an item that must be used and is identifiable with a logo or marking, the item should be disguised or "greeked". Post-blurring or "greeking" is commonly needed for items such as signage captured during running footage; skyline or background shots of landmark properties; competitive products in the background; wardrobe worn by real people filming; or anything the advertiser's legal department finds questionable. Costs for "greeking" or post-blurring shall be at the expense of the contracting-client, unless included in the production company's bid.

Clearance and usage rights are the responsibility of both the agency/advertiser and production company. The agency/advertiser should alert the production company to any concerns or special needs during the bidding and production stages, as well as reviewing the final spot prior to airing.

The production company shall utilize its judgment and experience in determining whether or not it is necessary or possible to clear an item. Common practice is to use generic items for props, dressing and wardrobe. However, often decisions about the need for clearance will depend on context. Is there an implied endorsement of the product? Is it alone in the frame with the product? As these decisions are judgment calls, they must be a collective decision between the agency/advertiser and the production company.



TAX INCENTIVES

If the advertiser is interested in considering a production incentive job, it should be disclosed to the production company prior to a request for bids. In such cases, the advertiser may want to request bids from both an incentive state and non-incentive states to make a quality/cost-benefit analysis. Advertisers should be aware of the cost of preparing multiple bids when discussing administrative compensation for the production company, as referred to below.

Depending on the type of rebate, qualification for the rebate, and the state in which the commercial was filmed, an advertiser, production company, or third-party entity may be eligible to file/administer the process and application. This should be clearly planned and discussed, as most laws recognize the entity responsible for expenditures to be the “production company” and thus the recipient. In those instances where production/post-production costs are the only qualifying expenses, the production company should file and administer the application on behalf of the parties. In states where costs that qualify are outside the control of the production company, such as agency travel and talent fees, the advertiser may make arrangements with the production company to handle those costs, or the advertiser may want to handle the filing.

While AICP recommends that the production company should be the entity to handle the filing, in states where the production company is the only legal entity authorized to apply for the incentive, it **MUST** be the entity to handle the filing.

In cases where the advertiser is handling the filing, and engages a third party to do so, the advertiser should assume responsibility for the actions and conduct of the third party and, as such, should provide the production company with an indemnification/confidentiality agreement*. This document should be executed by the advertiser in order to safeguard the production company from legal issues arising out the release of confidential payroll information to a third party outside of the production company’s control; the release of information that may be proprietary to the production company (such as line item spend); or the fact that the third party may misrepresent themselves as being involved in the production to a greater extent than is truthful (which may be unlawful). Therefore, the indemnification/confidentiality agreement should:

1. Warrant that the third party is in fact a third party with no interest, involvement, or activity in the production outside of filing the incentive.
2. Warrant that all information contained in the filing is truthful and accurately represents all parties’ roles in the production and complies with state laws and regulations. The third party cannot misrepresent itself as the production company.
3. Clearly limit the usage of all information disclosed by the production company to the filing of the application.
4. Hold the production company harmless from any damages caused by the misuse or mishandling of information by the advertiser, or any agent or third party representative.
5. Warrant that the third party is bound by confidentiality and shall not discuss line item details with either the advertiser or agency.

An example of such an indemnification/confidentiality agreement is available to AICP members by clicking [here](#).



In the event the production company does not agree to the advertiser's choice of third party to handle the filing, a mutually agreed upon "independent" third party should be engaged to file the application on behalf of the production company or advertiser, as the case may be and the law requires, by collecting the costs from both the production company and advertiser, which have been submitted independently, and combine those costs for the submission of the application. That entity should also be a disinterested third party and be held to the same indemnification.

If the advertiser is participating in the incentive, production companies should be incentivized to follow state guidelines and maximize the qualified spend/rebate by having an equitable split or compensation. That specific compensation, taking into consideration the type of rebate and qualification for the rebate, is negotiable between the advertiser and production company.

- A bookkeeping fee should be added to the bid to cover the production company's administration costs related to preparing all applicable and necessary documentation and should be detailed as an additional cost above and beyond the contract price.
- A percentage of the state commercial production incentive should be paid to the production company as additional compensation in order to reward the production company to maximize the return.
- Any terms of the incentive, including production company compensation, should be defined in the production contract between the advertiser or advertiser's agency and the production company.

Every project is different. Fairness, good judgment, and transparency are key practices that should be followed by all parties when considering state commercial production incentives jobs.

CONFIDENTIALITY

Each party (the advertiser, advertising agency and production company) has confidential information that should be protected; therefore, the confidentiality requirements of the project should be mutual. The agency should not be able to reveal the production company's treatment ideas to another production company, and an advertiser's cost consultant should not be able to use information from a production company's bid for one advertiser against the production company when bidding for another advertiser. In no event should the confidentiality requirements be so restrictive that it prevents the parties from performing their duties. Any agency/advertiser Non-Disclosure Agreements are subject to union approval and any extraordinary confidentiality requirements for the job should be articulated in the agency bid specifications.

LABOR LAWS and AGREEMENTS

Production companies are required to comply with all rules, regulations, and requirements of those unions and guilds having jurisdiction over creative personnel and technicians participating in the production to which the production company is a signatory. In the absence of a collective bargaining agreement the production company must comply with state and/or federal wage and hour regulations. The contracting-client and production company shall comply with all state and federal labor laws, and all union and guild requirements to which the other is a party.



PORTFOLIO RIGHTS/ PUBLICITY

In order to attract new business a production company must be properly credited for the work it has done and be able to showcase its talent and production expertise by advertising, exhibiting, and promoting its work. Therefore, the production company should have the right, which shall not be unreasonably withheld, to advertise their involvement in work that has aired, launched, or been released publicly in any form. Production company promotion shall include, but is not limited to, exhibition of the work on production company's website (provided that work involving actors who have not given consent for internet use is password protected to avoid potential violations of the applicable SAG contract and publicity and privacy laws) and referencing or exhibiting work in either digital or print publications or speaking engagements, and entry into awards shows and exhibitions.

In all instances the agency, advertiser, and production company shall identify and give proper credit to each other in reference to the work.

GRIEVANCES

The AICP has established a Grievance Committee for the use of its members. Composed of former AICP chairmen currently affiliated with member companies, as well as the current chairman and vice chairman, the committee investigates complaints by members of violations of the National Guidelines, above, or other unfair or unethical business practices. Members may file a grievance by completing the official form and mailing it with back-up material to the Grievance Committee, c/o AICP, 3 West 18th Street, New York, NY 10011.

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AICP has prepared these Guidelines for consideration by its individual member companies as a working tool to be used at that company's option. While the Guidelines do not represent agreement among Association members to apply any particular terms, through adoption by individual producers, the Guidelines reflect, and have over time become, part of the industry's "custom and usage."