



BROADCASTING NETWORK

PRODUCER'S AGREEMENT

**PJ DONNELLAN
& CO**

SOLICITORS AND ATTORNEYS

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Ref: PJW.2013007 Opal

PRODUCER'S AGREEMENT

Made at _____ on _____
(place) (date)

BETWEEN Xabc Entertainment Pty Limited ACN 151 022 507 t/as Opal Broadcasting Network in the State of New South Wales ABN 16746259636 ("**Opal**")

AND
of
..... ("**Producer**")

BACKGROUND

A. The Producer is an author who has created the original film or video program entitled _____
(the "Program");

B. The Author seeks publication of the Program;

C. Opal is a broadcaster, offering an opportunity for Producers to promote, broadcast and sell their original content film or video programs on Opal's established website utilising an ever-growing quality subscription list on a pay-by-view basis;

D. Opal considers a number of factors when determining whether a program is suitable for broadcast including but not limited to:

- i. whether the program reflects high professional standards;
- ii. whether viewers are likely to connect with the content,
- iii. whether viewers may learn something new about the world, or themselves through the content,

iv. whether the content explores issues of merit such as the human spirit, human rights, animal rights, spiritual development, cultural or indigenous issues, or it might be about the universal language, music.

E. The Producer and Opal seek to reach an agreement whereby Opal can assist in effecting production and broadcasting of the Program;

F. For and in consideration of the mutual promises and covenants herein and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Opal and the Producer hereby agree as follows.

OPERATIVE PROVISIONS

Opal's services

1. Opal will view and have the Program classified by trained assessors to Australian Classification Ratings and will publish the rating on all publicity material and online links to the Program.
2. Opal agrees to provide the Producer with a set price as agreed between the parties on the "Book Your Seat" link on the Opal website.

3. Opal agrees to offer the Program for sale via the "Shopping Cart" link on the Opal website on a pay per view basis to viewers.
 4. Opal will dedicate a unique online time-slot to the Program via the Opal website.
 5. Opal further agrees to:
 - i. Produce a Program / Download Page for the Program on the Opal Website;
 - ii. Produce a Producer Store Front for the Producer on the Opal website unless the Producer already has one on the Opal website;
 - iii. If the Producer supplies a trailer Opal will upload the trailer to the Program Page on the Opal Website;
 - iv. Upload information from the Online form to the Opal website's Home Page, Producer's Page, Program/Download Page, and Promotional Pages;
 - v. Convert the Program if necessary to enable it to run on multiple electronic devices;
 - vi. Link the Program to a payment page;
 - vii. Make the program accessible via the Producer Dashboard for any edits or amendments;
 - viii. Upload the program to ensure its availability for the online broadcast date;
 - ix. Send a Program Email to Opal's subscription list not less than 4 weeks prior to the online broadcast date;
 - x. Create a promotional email in relation to the Program to enable the Producer to send it to the Producer's own contacts.
 - xi. Include the Program on Opal's Program Guide email which will be sent to Opal's list of subscribers on a weekly basis;
 - xii. Include the Program in all of Opal's marketing and promotional materials; and
 - xiii. Collect data to calculate the number of views of each broadcast of the Program and fees accrued.
- Fees payable**
6. The fee-per-view payable by viewers of the Program will be agreed upon by both Opal and the Producer.
 7. Opal agrees to pay the Producer an amount equivalent to 75% of the fee per view, payable monthly on the 1st day of the month following receipt of payment by each viewer.
 8. No fee will be payable by Opal to the Producer or its heirs or successors after the expiration of 50 years following the death of the Producer or upon the Producer becoming or being considered to be insolvent (including if bankrupt or where a provisional liquidator, liquidator, administrator, controller, receiver, or receiver and manager is appointed) or ceasing to carry on business.
 9. The terms of this Agreement including the fees payable under clauses 6 and 7 above may be reviewed on 1 August annually commencing 1 August 2015.
- GST**
10. The parties agree that all payments to be made under this Agreement are exclusive of GST and:
 - a. If GST is payable in respect of a payment for a supply made under this Agreement, the payment must be increased by the amount of GST so long as the payee:
 - i. is registered for the purposes of GST; and
 - ii. provides the payer with a GST compliant invoice; and
 - b. If a party is required to pay any GST amount according to this

clause, it must pay the GST amount within 14 days of receiving the applicable tax invoice.

Producer's warranties and obligations

11. Having regard to the factors set out in clause D above, the Producer warrants that the Program is of high quality in terms of content and professional standard.
12. The Producer represents and warrants to Opal, upon which representations and warranties Opal is specifically relying in entering into this Agreement, that the Producer has the authority or permission to publish the entire content of the Program, including ownership of the copyright and all other applicable rights to the underlying content including but not limited to any local and international rights to the use of any music, and Program content does not defame or impinge on the rights of another in any way. The Producer shall hold Opal harmless from and indemnify Opal against any and all claims or demands arising out of a breach of these representations and warranties, including legal costs.
13. The Producer may broadcast the Program on any free to air channel or via cinema release in any country around the world.
14. The Producer may not broadcast on any Pay television network channel in any country without prior consent from Opal.
15. The Producer may not broadcast the Program on any "On-Demand Pay Channel" or website ever.
16. The Producer may not distribute their Program with any other "distributor" DVD or the like.
17. The Producer may continue to comply with its contractual arrangements pre-dating this agreement as set out in Item 1 of the Schedule to this agreement to broadcast online on any "On-Demand Pay Channel" or website.
18. The Producer agrees not to extend or take up any option to extend the term of any agreement referred to in Item 1 of the Schedule to this agreement.
19. If the Program airs on a free to air television, or has consent to broadcast on a "Pay Television Network" channel the Producer shall do all things necessary to add Opal to their list of credits, including display of Opal's logo in a recognisable size, with the Opal website address noted as the place of distribution.
20. The Producer will perform its obligations under this Agreement professionally, ethically and courteously and will use its best endeavours to promote the business of Opal for the term of this Agreement.
21. The Producer acknowledges that all viewer and customer information including names, addresses and other details of viewers and customers of Opal referred to the Producer pursuant to or in consequence of this Agreement is confidential and is and will remain the property of Opal and the Producer will keep it confidential and use it only for the purpose of carrying out the Producer's obligations pursuant to this Agreement.
22. The Producer will keep the terms of this agreement confidential.
23. The Producer will make themselves and use their best endeavours to make the talent involved in the creation of the Program available for media, publicity and promotional purposes at all reasonable times.

24. The Producer agrees to allow Opal the right to use, reproduce, distribute, prepare derivative works of, display, publish, adapt, make available online or electronically transmit, and perform the Program for promotional purpose in relation to Opal.
 25. The Producer acknowledges that the Producer is an independent contractor and not an employee of Opal.
 26. The Producer acknowledges that it is the Producer's sole responsibility to hold and maintain all relevant licences, rights, consents, permissions, copyrights, registrations and insurances (including but not limited to public liability and professional indemnity insurance and, where applicable, workers' compensation insurance) for the program submitted.
 27. The Producer Agrees that any program that contains material from a third party including music has the necessary legal entitlements for world-wide broadcast.
 28. The Producer for themselves, their heirs, executors and assigns covenant with Opal to indemnify Opal against and to release Opal from all suits, claims, actions, damages, interests, appeals, applications and costs howsoever arising whether at law or in equity as a result of the Producer providing services pursuant to this Agreement.
- b. A party may terminate this agreement by notice in writing to the other party if the other party is or becomes or is considered to be insolvent (including if bankrupt or where a provisional liquidator, liquidator, administrator, controller, receiver, or receiver and manager is appointed) or the other party ceases to carry on business or threatens to do so.
 - c. If a party breaches this Agreement, the other party may give the party at fault written notice of the breach and give 7 calendar days in which to remedy the breach. If the breach remains unremedied the parties shall attempt to resolve the dispute in accordance with clauses 14, 15, 16, 17 and 18 of this Agreement. If the parties are unable to resolve the dispute under those clauses, the non-breaching party may terminate the Agreement.
 - d. Opal reserves the right to discontinue broadcast of the Program immediately upon giving written notice to the Producer on grounds of quality or suitability of content at its absolute discretion.

Term of agreement and Termination

29. The term of this agreement is for the life of Opal's website unless terminated by one of the parties at an earlier date.
 30. This agreement may be terminated only under the following circumstances:
 - a. A party may terminate this agreement by giving not less than 30 days' notice in writing to the other party.
31. If the parties disagree about this Agreement, whoever disagrees must:
 - a. first tell the other party about the dispute in writing; and
 - b. not start any litigation or arbitration in relation to the dispute until the process for dispute resolution in this Agreement is followed.
 32. Once all parties have been told of the dispute both parties must arrange for representatives to meet within 14

calendar days and take all reasonable steps to try and solve it

33. If the dispute is not resolved under clause 15, the parties agree to:

a. submit the dispute to a mediator or mediation process that all parties agree to; or

b. if the parties are not able to agree to a mediator and mediation process under clause 16.a, submit the dispute to mediation according to the Arts Law Centre Mediation guidelines current at the time. These guidelines are part of this Agreement.

34. If the parties are unable to resolve the dispute within 7 calendar days of commencing mediation or at a later time that they agree to during mediation, they may refer the matter to arbitration or commence litigation.

35. The parties must continue to perform their respective obligations under this Agreement even if they disagree.

Following termination

19 Following termination of this Agreement the Producer shall not market the Program in any broadcast region in which Opal broadcasts the Program.

Notices

EXECUTED AS AN AGREEMENT

Signed on behalf of Xabc Entertainment Pty Ltd t/as Opal Broadcasting Network in accordance with its constitution in the presence of)
)
)
)

.....
(Witness's Signature)

20 Any notice authorised or required to be given to any party shall be sufficiently given by leaving it or posting it by prepaid post addressed to that party at their last known address.

21 Any letters sent by post shall be deemed to have been received in the ordinary course of post.

General

22 Neither party may assign, sub-licence, sub-contract, novate or otherwise transfer any of its rights or obligations under this agreement without first obtaining the other party's consent which consent shall not be unreasonably withheld.

23 Subject to clause 24, this agreement is the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to this subject matter is replaced by this agreement and has no further effect.

24 This Agreement may only be changed in writing signed by all parties.

25 Where the Producer comprises two or more persons, the obligations and covenants in this Agreement bind them jointly and each of them severally.

26 This Agreement is governed by the law in force in New South Wales.

.....
Signature

.....
(Name of authorised signatory)

.....
(Witness's Name)

.....
(Role of authorised signatory)

Signed by)
(the Producer) in the presence of)

.....
Signature

.....
(Witness's Signature)

.....
(Witness's Name)

Signed for and on behalf of)

.....)

(the Producer company) in accordance)
with its constitution by)

.....)
(Name/Position))

.....
Signature

in the presence of)
(Name of witness))

.....
(Witness's Signature)

Schedule to Opal Broadcasting Network Producer's Agreement

Item 1:

(Clause 17) Particulars of contractual arrangements for broadcast of the Program between the Producer and any "On-Demand Pay Channel" or website pre-dating this agreement:

Date of contract	Other party	Term of contract

DRAFT