

A1 Network Services – Standard Terms (fictional)

Redline for The client (a film production buying on-set network services) · Fair Ask sample

Signable vendor form after 10 changes: mutual liability cap with carve-outs, less outage and repossession risk, 30-day payment, and room to assign to financiers.

Blue = added ~~Red~~ = deleted [n] = comment

1. Background

1.1 A1 Network Services Limited (“A1”, “we”, “us”) will provide the Services described in the Quote to the client named in the Quote (“Client”, “you”). These terms and the Quote together form the “Agreement”.

2. Services

2.1 Offers. An offer lapses 30 days after we make it unless accepted in writing, and a revised offer revokes the earlier one. Services start only once a Quote is agreed.

2.2 Scope. The Services are limited to the work in the Quote. Changes in scope, force majeure events or delays outside our control will be charged as additional work, or under a new Quote, at our then-current rates. Further services requested by you are supplied on these terms at extra cost once recorded in an agreed Quote or agreed in writing.

2.3 Our obligations. We will perform the Services during the Term with reasonable skill and care and in line with the Quote. We will try to provide continuous, uninterrupted Services, but the Services are not fault-free and depend on factors outside our control, including the conditions at each Location. If the Services deteriorate, we will work to restore them promptly, which may include a temporary alternative such as a generator or another internet source.

2.4 Your obligations. You will promptly give us the assistance, information and documents we need. If an act or omission by you prevents or delays our performance (“Client Default”), we may suspend the Services until it is remedied and charge for the extra time and costs at our standard rates; our timing is extended by the delay and we are not liable for it.

2.5 Reliance on information. We may rely on information supplied by you or others without verifying it, and we are not liable (in negligence or otherwise) for loss arising from that reliance.

2.6 Acceptance. We will promptly remedy Services you notify as incomplete or defective. Unless you notify us in writing within 10 days of supply, the Services are deemed accepted.

2.7 Suspension. We may suspend, disconnect or discontinue the Services in whole or part at any time, ~~without notice or compensation~~ on reasonable prior notice (or, in an emergency under (a), (c) or (d), as soon as practicable)^[3], if in our reasonable opinion: (a) it is needed to protect the Services, the Equipment or our network; (b) the Services fail or need maintenance; (c) a security incident threatens our network; (d) there is unauthorised, unlawful or harmful use of the Services; (e) a government authority requires it; or (f) you fail to comply with a material term of the

Agreement and do not remedy that failure within 2 Working Days of notice. We will restore the Services as soon as the reason for the suspension ends.

[3] An outage mid-shoot stops the set. Ask for notice, a short cure period for your breaches, and prompt restoration.

3. Equipment

3.1 Ownership. We own the Equipment at all times, even while it is in your possession or attached to any premises.

3.2 Damage. You must promptly notify us in writing of any loss, theft, fault or damage to the Equipment. We may repair or replace inoperable Equipment with equivalent equipment as soon as reasonably possible, at your cost if the damage was caused by you, your negligence, misconduct, user error or breach.

3.3 Insurance. During the Term you must insure the Equipment at your expense with a reputable insurer, ~~in the joint names of A1 and the Client~~ naming A1 as loss payee^[5], against physical loss or damage up to the Insurance Value, and provide evidence on request. You may meet this requirement through your production insurance program. If you do not insure, we may do so and recover the premium from you. You must pay us any insurance money you receive for Equipment loss or damage and, ~~if it is in our opinion inadequate, the shortfall~~ any shortfall against the reasonable cost of repair or replacement. ~~You irrevocably appoint us your attorney to prosecute or settle any such insurance claim.~~

[5] Productions insure gear under their package policy. Loss payee is customary; drop the power of attorney.

3.4 Retaking possession. We or anyone we authorise may, on reasonable notice and in compliance with the Location's security and confidentiality requirements, enter the Location or anywhere the Equipment is kept, retake the Equipment and terminate the Agreement if: (a) you materially breach the Agreement and do not remedy the breach within 10 Working Days of notice^[4]; (b) you suffer an Insolvency Event; (c) the Equipment is uninsured; (d) you endanger the Equipment; or (e) you made a materially false statement when negotiating the Agreement; ~~or (f) an event occurs which, in our opinion, may materially affect your ability to meet your obligations.~~ We are not responsible for damage reasonably caused in retaking the Equipment, and you indemnify us against third-party liability arising from it.

[4] Limit repossession to uncured material breach. The "in our opinion" trigger in (f) is too open-ended.

4. Charges and payment

4.1 We invoice weekly. You must pay within ~~7~~30^[8] days of invoice, without deduction or set-off, except for amounts disputed in good faith. We may charge interest on late payments at ~~2% per month above our overdraft rate~~ 1% per month, calculated daily.

[8] 7 days doesn't fit production accounting. 30 days with good-faith disputes is customary; interest at a market rate.

4.2 No refund is due if you end the Services before the end of the Term.

4.3 Overtime (unless the Quote says otherwise): 1.5x after 10 hours and 2x after 12 hours; for continuous-day shooting, 2.5x after 10 camera hours and 3x after 12; 1.5x on a sixth consecutive day and 2x on a seventh; and 1.5x for work within a broken Turnaround Period.

4.4 Charges exclude GST and other taxes and duties, which you will pay in addition, grossed up for any required withholding.

5. Health and safety

5.1 When on site, we will comply with the health and safety policies and reasonable safety instructions you give us. We do not assume your obligations under the Health and Safety at Work Act 2015 and are not a PCBU or officer of your Production. You will give our personnel safe access to the Location and Equipment at reasonable times, and reasonable working facilities.

6. Confidentiality

6.1 Each party will keep the other's Confidential Information confidential, protect it with effective security measures, and use it only to perform the Agreement. We will not disclose information about the Production without your prior written consent.

6.2 Clause 6.1 does not apply to information that is or becomes public (other than through a breach), is lawfully received from another source, or whose disclosure is authorised in writing or required by law. Either party may disclose Confidential Information to its professional advisors, contractors, auditors and insurers for the purposes of the Agreement, and is liable for their acts.

7. Intellectual property

7.1 Each party keeps its pre-existing Intellectual Property. You own all rights in the Production. Intellectual Property we develop to provide the Services (including improvements, techniques, processes, know-how, materials and documentation) vests in us.

7.2 Client Content. All footage, files, communications and other data transmitted, stored or processed through the Services ("Client Content") belong to you. We will access Client Content only as needed to provide the Services, protect it using industry-standard security measures, not keep copies after the Term, and notify you promptly of any security incident affecting it.^[7]

[7] Confirm you own what runs over the network, with basic security and breach-notice duties.

8. Termination

8.1 Either party may terminate the Agreement immediately by written notice if the other party: (a) commits a material breach that cannot be remedied; (b) fails to remedy a material breach within 10

Working Days of notice; or (c) suffers an Insolvency Event. The parties may also terminate by written agreement.

8.2 You may terminate the Agreement for convenience on 5 Working Days' written notice, paying for Services supplied up to the termination date.^[9]

[9] Shoots move and wrap early. Ask for a short convenience exit, paying only for Services supplied.

8.23 On termination or expiry: we will invoice all unbilled Services and you will pay all outstanding invoices ~~immediately~~ under clause 4.1; each party will return or destroy the other's Confidential Information; and accrued rights and clauses intended to survive continue.

9. Liability

9.1 ~~On Each party's~~ total liability for any claim (including in negligence) is limited to the Charges ~~you~~ paid or payable in the 12 months before the first event giving rise to the liability. ~~We have no~~ Neither party has any liability for lost profits or revenue, business interruption, ~~data loss~~, reputational damage, or any indirect or consequential loss. These limits do not apply to breach of clause 6 or 7.2, death or personal injury, damage to property caused by a party's negligence, fraud or wilful misconduct, the indemnities in clause 9.4, or your obligation to pay Charges.^[1]

[1] Make the cap mutual and add standard carve-outs. Data loss stays recoverable: the network carries dailies and set comms.

~~9.2 Except under clause 9.1, we are not liable for any loss, damage or expense arising from the Agreement or the use of, inability to use or reliance on the Services.~~^[2]

[2] Delete. Read with 9.1, this excludes almost everything, so the cap becomes the only remedy.

9.32 ~~You may not bring a~~ No claim may be brought more than 12 months after the event giving rise to it.

9.43 To the extent permitted by law, all warranties and conditions not expressly stated are excluded. You are responsible for deciding whether the Services suit your needs and are compatible with your systems. The Services are acquired for business purposes, and the Consumer Guarantees Act 1993 and sections 9, 12A and 13 of the Fair Trading Act 1986 do not apply.

9.54 You indemnify us against all third-party costs, losses, claims and damages (including our ~~full~~ reasonable legal costs) arising from: (a) your material breach of the Agreement; (b) damage to the Equipment while in your possession or caused by the negligence, misconduct or user error of anyone involved in the Production (other than us); or (c) your wilful misconduct. We indemnify you against third-party costs, losses, claims and damages (including reasonable legal costs) arising from our negligence or wilful misconduct, or from any claim that the Services or Equipment infringe a third party's Intellectual Property.^[6] These indemnities are in addition to the parties' other rights.

[6] Limit your indemnity to third-party claims and make it mutual, including IP infringement by the vendor's kit.

9.65 If you breach the Agreement, we may require you to remedy it within the period we reasonably specify and/or to pay immediately everything you then owe us.

10. Non-solicitation

10.1 During the Term and for 24 months after it, you will not employ or engage any person who was our employee, contractor or subcontractor during the Term. If you do, you will pay us liquidated damages equal to what we paid that person in the previous 24 months.

11. Privacy

11.1 If you give us Personal Information, you consent to our using it to provide the Services and confirm you have the necessary consents. Both parties will comply with the Privacy Act 2020.

12. Disputes

12.1 Either party may give written notice of a dispute. The parties will try to resolve it in good faith through confidential negotiation and, if it is unresolved after 10 Working Days, escalate it to their chief executives. Neither party may start arbitration or litigation until 10 Working Days after the chief executives have met. Unresolved disputes go to arbitration in Auckland under the Arbitration Act 1996 before a single arbitrator agreed by the parties or appointed by the President of the New Zealand Law Society, whose decision is final and binding. The parties keep performing pending resolution, and either may seek urgent equitable relief.

13. General

13.1 The parties are independent contractors, and each will comply with applicable law. New Zealand law governs the Agreement (excluding the CISG provisions of the Contract and Commercial Law Act 2017), and you submit to the non-exclusive jurisdiction of the New Zealand courts.

13.2 Invalid provisions are severed. The Agreement is the entire agreement between the parties, and any terms you supply have no effect. If the Quote and these terms conflict, the Quote prevails.

13.3 You may not assign, subcontract or sublicense the Agreement without our prior written consent, except to an affiliate, a financier, a completion guarantor or a distributor of the Production. We may ~~assign or~~ subcontract any part of it by written notice to you, but remain responsible for our subcontractors, and may assign the Agreement only with your prior written consent^[10].

[10] Productions must assign to financiers, guarantors and distributors. Vendor assignment should need consent.

13.4 Variations and waivers bind us only if in writing, and our failure or delay in exercising a right is not a waiver. We are not liable for failure or delay caused by events beyond our reasonable control, including natural disasters, terrorism, government action, labour disputes, pandemics, transport stoppages, communications failures or hardware failures (“force majeure events”). Notices must be in writing and delivered personally or by email.

14. Definitions

“Confidential Information” means non-public information of a party in any form, including information about the Production and our Quotes, Charges and processes. “Equipment” means the equipment in the Quote and any replacement or additional equipment we supply. “Insolvency Event” means liquidation, receivership, a creditors’ arrangement, insolvency or enforcement against a party’s assets. “Insurance Value” means the full replacement value of the Equipment stated in the Quote or, if none, NZ\$250,000. “Location” means where the Services are provided. “Production” means the Client’s production for which the Services are supplied. “Term” means the period in the Quote. “Turnaround Period” means 10 hours between work days and 58 hours after five consecutive work days. “Working Day” means a business day in Auckland, excluding 24 December to 5 January.

Schedule 1 – Quote Q-2207 (fictional)

Client: Harbour Light Productions Limited, for the feature film “Low Tide” (Auckland region, 12 weeks of principal photography). Insurance Value: NZ\$180,000.

Location and stage internet (multi-LTE, satellite and fibre-over-air, with firewall): NZ\$1,850 per week. Network extension kits (Wi-Fi access points, switches, cabling; one kit per 50 crew):

NZ\$2,050 per week. Equipment trailer (4x4, network rack, battery backup): NZ\$900 per week.

Crew: Network Manager NZ\$740 per day; Technician NZ\$660 per day (standard 10-hour day). All prices exclude GST.