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Producers often create an idea for a reality show based on a specific person (“Keeping up with the Kardashians”), a type of person (The “Real Housewives” franchise), or a business (“Rob Dyrdek's Fantasy Factory”). Producers may also base an unscripted show on the ideas and/or existing intellectual property of another (“Rich Kids of Instagram”). Once the producer has settled on a concept, the producer will want to “attach” the on-camera services of talent. This “attachment agreement” gives the producer the right to present the project and the on-camera talent to potential buyers for a limited period of time. If the talent is essential to the project or the talents on-camera participation will help sell the project, an agreement between the talent and producer is essential. Otherwise, when the show is sold the talent may ask for a bigger ownership stake than the producer is ready to give or ask for compensation and other benefits that make it impossible for a buyer (generally, television networks or financiers) to produce the show.

Once the project is sold to a buyer (i.e. the producer receives a commitment from a buyer to purchase or fund the project), then the talent is “attached” (i.e. he or she is committed to providing on-camera services for a pilot/presentation and/or the initial series of episodes). The producer is also “attached” to the series. Typically, the producer elects to render services as an executive producer and as the production company on the project (i.e., the production of the program will "run through" the producer, or its affiliate or designee).
Talent Attachment Agreement

As of (DATE)

Producer or Production Company Name
Address
Address

Talent Name
Address
Address

RE: “Untitled Project”

Dear ______:

This confirms the agreement (“Agreement”) between you, ________, (“Artist”) and _________ (“Producer”), for the purpose of developing, producing and exploiting a television series, special or series of specials based upon __________ (the “Project”). The agreed terms are as follows:

The producer is the person or production company who develops and submits the project to potential buyers (i.e. television networks or other financiers) to determine the buyers’ interest in the project. The producers’ objective is to obtain the buyers commitment to finance, purchase and/or distribute the project. The producer does not purchase the rights to the project; the producer only promises to solicit the interest of potential buyers and to produce the pilot and/or series once the project is sold.

The artist is the talent whom the producer would like featured in the television pilot and/or series of the project is produced. The talent is anyone whose services will be rendered on-camera – the talent may be a celebrity who brought the idea to the producer, an unknown personality who was discovered by the producer or a person who created the concept and features prominently in the proposed project.

The project is the name of the proposed television show (also known as the “working title”). The parties may define the concept in the introductory paragraph, e.g. a docu-series following talent on his quest to find love in small town Iowa. If the actual concept of the project is unclear, it may be difficult to determine with certainty whether either party is violating the terms of the talent attachment agreement at the expiration of the agreement. Alternatively, if the concept is being created around the talent, defining the concept would not be necessary.
1. Conditions Precedent

Producer’s obligations as set forth herein are conditioned upon receipt by Producer of a copy of this Agreement executed by Artist in a form acceptable to Producer.

Before the producer has the legal obligation to fulfill its responsibilities under the agreement, the talent may be required to satisfy certain conditions. The obligations are always specific to the talent, producer, and project. Some examples of common conditions precedent include:

(1) Receipt by producer of a copy of the agreement executed by each member constituting talent (e.g. if the concept is a docu-series featuring a husband and wife, the producer will have no obligation to either individual until both have signed the agreement).

(2) The producer may make all obligations subject to the right to review, accept and approve a customary background check of talent. This may apply if the show features doctors and/or medicine, where the talent is required to drive or operate heavy machinery, or in any other situation where the producer could reasonably foresee a buyer requiring it.

(3) If the project will feature music composed and/or performed by the talent, the agreement may be conditioned on producer’s receipt of a fully executed agreement between the producer and the talent’s music publisher granting a master and synchronization license in connection with the project.

(4) If there was a prior agreement between the talent and another producer with respect to the project, the current producer may condition its obligation upon receipt and approval of clear chain-of-title for the project. The producer may also request documentation showing that the former producer has no claim to the project or any proceeds derived therefrom. This is especially important if the prior agreement exposes the producer to liabilities (e.g. a per episode royalty to the former producer) or prevents the talent from granting certain rights to the project.

2. Talent Hold/Option

In consideration for Producer’s efforts to create, develop and pitch the Project with Artist attached thereto as on-camera talent, for a period of one (1) year following Artist’s execution of this Agreement (the “Option Period”), Producer shall have an exclusive
option ("Option") to engage Artist as an on-camera performer on and in connection with the Project. During the Option Period Producer, with Artist’s assistance, will approach broadcasting networks (or a parents, subsidiaries or affiliates thereof), or cable or satellite networks (or a parents, subsidiaries or affiliates thereof) (collectively the "Network") to obtain a commitment for purchase or funding for the Project ("Commitment").

The option period (or the term of the agreement) is the period of time the producer has to develop and submit the project to buyers (i.e. broadcast networks, cable or satellite networks, studios, financiers and distributors) to solicit interest in developing and exploiting the project and obtain a commitment to purchase or fund the project. The length of the term is negotiable and can be as short as a few months and as long as a few years.

The talent will want the attachment period to be as short as possible (e.g. 6-9 months), especially if the talent is exclusive to the producer for the option period or if there is heat on the talent (a shorter option period gives a quicker opportunity to get back on the market). This also forces the producer to pitch the project with urgency. The producer, on the other hand, will want the longest period possible (e.g. 1-2 years). This gives the producer more time to develop the project and to solicit interest from buyers. The producer may also benefit from a full year of pitching the project, where the producer can take full advantage of a networks year-long schedule for hearing pitches and purchasing projects. Generally, the parties settle on an attachment term between 9 months and 1 year.

The producer may also request additional time (e.g. 30-90 days) upon the expiration of the term in the form of an automatic extension. If there is an offer from a buyer, the automatic extension provides the buyer the opportunity to wrap up pending negotiations. This automatic extension benefits both parties. Otherwise, there would be no incentive for the producer to pitch the project towards the end of the term.

3. Services

If a Commitment is obtained, then upon Producer’s exercise of the Option Artist shall be engaged to render on-camera talent services for a pilot and/or initial series of episodes based on the Project.
Development Services:
During the attachment period, the producer pitches the project to buyers in an attempt to
gauge interest in the project and interest in the on-camera talent with the hopes of getting
the project “set up.” The producer will usually require the talents participation in its
efforts to pitch the program. The producer may also engage in customary development
activities that require the talents services (e.g., shooting a sizzle reel) and request the
talents assistance in obtaining permission/clearances to film other individuals and
locations affiliated with the talent (e.g. employees, family members, friends, and other
affiliated individuals, locations or entities of the talent) and other potential cast members
to participate in the project. In order to accomplish this, the producer will likely require
reasonable access to the talents day-to-day activities.

The producer may also request additional time (e.g. 30-90 days) upon the
expiration of the term in the form of an automatic extension. If there is an offer from a
buyer, the automatic extension provides the buyer the opportunity to wrap up pending
negotiations. This automatic extension benefits both parties. Otherwise, there would be
no incentive for the producer to pitch the project towards the end of the term.

Pre-Production and Production Services:
Standard services rendered during pre-production might include filmed and/or taped
interviews, pre-production meetings, fittings for costumes, wigs and the like, make-up,
tests, publicity and production stills, auditions, conferences regarding story, music and
other production matters. During production of the series, the talent will be expected to
film the number of episodes required by the network, including any episodes added after
the initial order. The network will define the services required of the talent at the time of
purchasing the project. However, the services required during pre-production and
production may be listed if there is a specific service the talent refuses to render or if the
terms of talents exclusivity somehow affect the talents ability to render such services.

Instead of listing the pre-production and production services that may be
required, the producer may include a broad statement providing that “talents on-camera
services shall consist of all such services customarily rendered by featured stars in
connection with first class reality television programming.”

4. Series Options
Provided Artist renders services on an initial season of the Project, Producer shall have
five (5) additional, separate, exclusive, consecutive, irrevocable, dependent options (each,
a “Subsequent Series Option”) to engage Artist to render on-camera services, under the
same terms and conditions contained herein, for additional seasons of the Project.
Subsequent Series Options shall be exercised by Producer in writing, if at all, no later than thirty (30) days following a firm, non-contingent Network order for an additional season of the Project.

For purposes hereof, “season” shall be defined as per Producer’s agreement with the Network.

When the producer enters into an agreement with a buyer, the talent attachment governs the length of time that the agreement between the producer and the talent will be extended. The talent attachment agreement will either automatically extend the term of the agreement as required by the buyer or provide for series options whereby the producer will secure an exclusive option to elect to engage the talent on the project.

If the parties select the first category, an automatic extension, then the extension includes the length of any options the buyer may have with respect to the pilot/presentation and/or series and any ancillary or subsidiary rights therein (e.g. spin-offs, etc.). In the Production Services Agreement (See Chapter ____), the buyer will provide for the minimum deal requirements that the producer must secure between itself and each person comprising the talent for the series.

Generally, the buyer will require a minimum of 5 or 6 exclusive options to engage talent to render on-camera services in connection with the first, second, third, fourth, and fifth series cycles of the program. Generally, the minimum and maximum episode orders will match the producers’ obligation in the Production Services Agreement. Moreover, the number of cycles within a year and the number of episodes within a cycle will be determined by the buyer (at this stage, a network). The Production Service Agreement will also provide the date by which each option must be exercised. Most agreements fall into this category and are more favorable to the producer than the second category.

If the parties select the second category, defining the amount of options and the terms of the option at the talent attachment stage, the options in the attachment agreement will be what the producer expects the buyer to require: 5-6 options and a firm date by which the option must be exercised. The talent may ask to negotiate the options up-front if they are a celebrity or have some leverage and don’t want to be locked for 5 or 6 seasons (which could last up to seven years) to one project.

The talent may also ask for shorter notice periods, so that they are not held off the market for months at a time while the buyer decides to pick-up the show. The producer should note, however, that agreeing to these terms up front may hamper his or her ability to sell the project unless the celebrity or the project is highly sought after. Networks rarely agree to shorten the number of options or the amount of time they have to exercise an option on an additional season. If the series is a hit and the buyer has no more options, the buyer will have to negotiate a new agreement with the talent. This gives the talent the opportunity to negotiate for an increased fee and improved perks.
5. Compensation

For any development steps of the Project (i.e., any elements other than a full pilot [airable or non-airable] or a series episode), no fee shall be payable to Artist in connection therewith, unless Producer obtains a fee for any such element(s).

A talent attachment agreement is the most cost-effective approach for a producer to lock key talent to a concept before pitching it to potential buyers. Unless there is heat on the talent (i.e. there is more than one producer interested in creating an unscripted television series based on the talent or a concept created by the talent) or the talent is an established or noteworthy celebrity, the talent attaches his or her self to the project for free. If the producer does provide an attachment fee to the talent, it can range from several hundred to several thousand dollars depending on the nature, significance, and heat on the talent. In the alternative, the producer may agree that no fee will be payable to the talent in connection with any development steps (i.e., any elements other than a full pilot [airable or non-airable] or a series episode) unless producer receives a fee.

When the talent's attachment is free to the producer, a valid legally enforceable contract can only be created if both sides have to give something of value (e.g. money, services, promised action or inaction, etc.). This “consideration” is an essential element for formation of a contract. In the case of a talent attachment agreement where no money is exchanged, both parties provide mutual promises and each promise is regarded as sufficient consideration for the other. The talent grants the free attachment in exchange for the producer’s efforts to create, develop and pitch the project with the talent attached to render on-camera services (i.e. the producers efforts to “set up” the project). In exchange, the talent makes a promise to hold himself or herself off of the market during the talent attachment period.

Some attachment agreements may also provide for nominal consideration (i.e. $1) in order to give effect to the intent of the agreement.

6. Exclusivity

During the Option Period (including any extension thereof) and for all periods during which Producer has an unexpired Subsequent Series Option hereunder (collectively, the “Term”), Artist shall be exclusive to Producer as on on-camera performer in series television throughout the universe.

The level of exclusivity to the producer during the attachment period is also negotiable, and may be as restrictive as prohibiting the talent from rendering on-camera services in any form of media and as permissive as only requiring the talent to be available for development activities and pitching.
Depending on the prior experience of the talent, the current projects and agreements for which talent is currently engaged, and the type of media the project is intended (i.e. web, network television, subscription video on demand (SVOD) etc.) the talent may negotiate carve-outs for specific projects or negotiate for looser exclusivity provisions. Some examples include:

(i) Talent shall be exclusive in all forms of non-scripted and/or reality programming in all media (including any reality/unscripted programming produced for the “internet”); provided talent shall be permitted to render service in connection with scripted television and theatrical motion pictures.

(ii) Talent shall be exclusive in all unscripted programming and all programming with a format or concept similar to the project in all media.

(iii) Talent shall be permitted to render services in connection with talents “stand-up” comedy engagements, so long as such engagement(s) are rendered without material interference with the project.

(iv) Talent shall be permitted to render services in connection with internet programs featuring talent as a stand-up comedian, so long as the internet programs are not similar to the project (i.e., not a docu-reality/alternative style program or special).

(v) Talent shall be permitted to participate as a host or judge in connection with reality or alternative style programming.

If the producer does not require complete exclusivity, the producer should require that none of the services permitted would materially interfere with talents services for the producer. Further, the producer should request that the project be in first position (i.e. the project is the first priority over all other projects). Additionally, the producer will want a guarantee that the talent will render all pre-production, production, and post-production services in connection with production of the project when and where the producer requires.
As we covered in the beginning chapters, the primary players that are involved in the reality television shows that have an opportunity to be aired are the networks and the established production companies. Content across platforms still comes down to the parties that make the content (production companies) and the parties that distribute the content (networks). If a network provides an order for a show, that is, agrees to fund a specific number of episodes, then the production company is required to negotiate and enter a “Production Service Contract” with the owner of the rights of the show. Often the owner of the rights is a number of individuals and they can be referred to as “Producer(s)”, “Executive Producer(s)” in addition to sometimes also being attached as talent such as a participant, a consultant or a writer. The sample production service contract below is an agreement that is between a production company that will fulfill the “order” of episodes that a network has ordered and the network. As we covered previously, the production company has previously entered into an agreement with the owner of the rights to the show and has most likely created a sizzle reel and other development items to assist their pitches to the networks to attract an offer for the show.

The production company is the primary party involved in the production and delivering of a show to the network and the owner of the content is usually included in this contract, specifying the role of the owners in the show and the basic terms controlling the services the owner will provide to the show in exchange for transferring all rights in and to the property. As discussed previously, the terms of the agreement between the owner and the production company are contained in a Collaboration Agreement. The
following is the sample production services contract with comments and explanations of the terms.

Production Service Agreement

As of (DATE)

Production Company Name
Address
Address
Executive Producer’s Name

RE: “Production Services Agreement” With Production Company Name (“Production Company”) f/s/o Executive Producer (“Artist”) regarding currently entitled project “Unscripted Show” (“Project”)

The following sets forth the terms of the Production Services Agreement (“Agreement”) between Subsidiary Entity of Network (“Network Subsidiary”) and Production Company regarding an unscripted thirty minute television program currently entitled “Unscripted Show” (the “Project”, sometimes also referred to as the “Series”) based on a concept created and/or developed by Production Company (“Concept”) for the production services of Production Company and the producing services of Executive Producer.

(*The production company name is the production company that will produce and deliver the show to the network. Networks most often work with established production companies that have previously produced and delivered shows to that specific network because the network is expending large sums of money and is entrusting the parties with delivering the show on time and on budget. Examples of established reality television production companies, for example: 3 Ball Entertainment (“Extreme Weight Loss”, “Bar Rescue”), Original Productions (“Deadliest Catch”, “Storage Wars”), and No Coast Originals (“Fast N’ Loud”, “Salvage City”). The Executive Producer “Artist” is often the party that developed the show or at least attached himself or herself with other people who developed the show. In any case, this party has agreed in a previous contract to transfer any and rights to the production company upon the happening of a specific event, usually an order or sale to a network.*)
The networks often use a subsidiary to enter the agreement with the production company. Networks own many subsidiaries to segregate funds and liability for different endeavors (such as television shows, movies, gaming, etc.).

1. Conditions Precedent.

Network Subsidiary’s obligations in this Agreement are subject to the satisfaction of all of the following:

a. Signature and delivery of this Agreement to Network Subsidiary;

b. Delivery by Production Company and Executive Producer chain-of-title to the Concept satisfactory to Network Subsidiary in its sole discretion, and the obtaining of all releases, licenses and assignments required by Network Subsidiary. (It being agreed that approval of the chain-of-title by Network Subsidiary or acceptance by Network Subsidiary of any deficiencies therein shall not in any way affect Production Company’s and Executive Producer’s warranties and indemnities hereunder, all of which shall remain in full force and effect); and

c. Delivery by Production Company all fully completed and fully-executed forms required to comply with all government and other regulatory bodies, including, but not limited, all tax and immigration forms, as applicable.

Conditions precedent means that unless all of the items listed in this paragraph are satisfied, then the network is not obligated to fulfill any of its promises in the Production Services Agreement. There are certain factors that are assumed during the pitches and negotiations of reality television shows. One assumption is that the party or parties presenting the show actually own the rights to the show. The documents that prove who is the owner of intellectual property (such as a reality television show) is called the “chain-of-title”. If the participants or crew for a show are outside the United States, the Production Company and Artist must make sure that all of those participants and crew can provide the proper tax and work documentation as necessary as a condition to this Agreement.

Production Company and Artist shall receive an all-inclusive fee of Eight Thousand Dollars ($8,000), payable upon the Network Subsidiary’s receipt of the Development Delivery Items (defined below). Production Company and Artist agree to provide Network Subsidiary all pre-existing materials regarding the Concept in addition to providing development services for the Concept and Project as customarily provided by production companies and producers of unscripted television programs in New York and Los Angeles including, but not limited to providing the budget (subject to Network Subsidiary approval), a tentative schedule (subject to Network Subsidiary approval) for the Project (collectively, the “Development Delivery Items”).

*The all-inclusive development fee is negotiable but it is usually a small amount between $5,000 and $15,000. Of course, certain shows, certain producers and certain production companies can and do command more than this range of fee, but producers and production companies usually don’t want to stall or lose the overall order of the show because they demand more upfront development money. The production company and producers want a show that has many episodes over many cycles which is how they can maximize the amount of money they can make from a reality television show.*


   a. Pilot. Network Subsidiary hereby orders and Production Company agrees to deliver an eighteen (18) to twenty-two (22) minute not for air pilot (“Pilot”) and a three (3) to (5) five minute “sales presentation reel” (as the term is generally understood in the North American television industry, also sometimes termed a “sizzle reel”) of the Project. In consideration of delivery of the Pilot and sales presentation reel to Network Subsidiary, the full performance of Production Company’s and Artist’s obligations in this
Agreement, Network Subsidiary shall provide One Hundred Thousand Dollars ($100,000.00) ("Pilot Fee") upon full execution of this Agreement.

The Pilot Fee shall be inclusive of all development and/or production costs incurred to deliver the Pilot and sales presentation reel. Production Company shall be solely responsible for any and all Pilot and/or sales presentation reel overages (that is, in excess of $100,000.00). Production Company will deliver to Network Subsidiary the sales presentation reel no later than _________, 20__ and the Pilot no later than ________, 20__, both subject to force majeure.

The amount of the Pilot Fee is an all-in amount. This means that all costs required to deliver the pilot and the sales presentation reel is the sole responsibility of the Production Company. This one reason that networks usually only work established production companies, and often, only with production companies with whom the network has experience. The Production Company, on the other hand, is taking a risk that the delivered elements can be produced at the all-in budget amount and at a quality level acceptable to the network. Again, these are further reasons why reality television producing is primarily within the control of established production companies. Experience is required to create an accurate budget and to execute the production on time and on budget. Further, an experienced production company often has working capital or access to lenders if there are production problems and the pilot goes over budget. It should be noted that any line item fees that could be payable to the Production Company and Artist would have to be paid from the all-in amount. It is not uncommon for production companies and producers to end up with no payment from the production of the pilot and sales presentation reel.
b. First Cycle. Subject to Network Subsidiary’s approval of the budget for the Series (Network Subsidiary hereby acknowledges approval of the budget for the First Cycle, as defined in this Agreement, and which is attached hereto as Exhibit __), and the conditions precedent set forth in Section 1, Network Subsidiary hereby engages Production Company Name to provide production services and to furnish Artist’s executive producer services in connection with the first cycle of the Series, on a “pay-or-play” basis (with respect to the fee payable for Production Company’s production services and Artist’s executive producer services, and subject to Network Subsidiary’s rights in the event of default, disability or force majeure), with a minimum guarantee of six (6) episodes (“First Cycle”). Principal photography shall commence no later than ________, 20__ and be completed by ________, 20__.

If the Network Subsidiary orders a Pilot they most often will then make the First Cycle subject to an option. That is, “Subject to Network Subsidiary’s approval of the budget for the Series and the conditions precedent set forth in Section 1, the Network Subsidiary shall have the exclusive, irrevocable option to order a First Cycle.” The Network Subsidiary’s approval could also be subject to its approval of the on-air talent that is cast in the Pilot.