

**TERMS OF SETTLEMENT
NEGOTIATED BETWEEN ACTRA and CFTPA and APFTQ
RESPECTING THE INDEPENDENT PRODUCTION AGREEMENT
(IPA) FOR PERFORMERS**

1. **Term of Agreement: 3 years, i.e. January 1, 2004 to December 31, 2006**

2. **General Increases in All Rates & Fees: All hourly, daily, and other fees in the IPA to be increased:**
 - a. 1% for the First Year of the Term effective 1st of January, 2004 & 1.5% for the Second Year of the Term effective 1st of January, 2005, 2% for the Third Year of the Term effective 1st of January, 2006.

 - b. Hourly Rates for Additional Background Performers: Article C503: "...and such rate shall be not less than \$9.00 per hour for the 1st and 2nd year of the term of this Agreement and \$9.25 for the 3rd year of the term."

 - c. CIPIP: Increase the budget levels by the aggregate monetary increase.

3. **Insurance and Retirement:**
 - a. A3801 Insurance: The Producer shall contribute, for insurance benefits of each Performer who is a member of ACTRA, an amount equal to 5% ~~4%~~ of the Performer's Gross Fees (inclusive of Use Fees), subject to Articles A3804 and A3805.

Conforming Change: A3703 a) i) Non-Members – Equalization Payments and Deductions:

- a) In order to equalize the payments and deductions in respect of ACTRA members and non-members, the Producer shall:
 - i) contribute an amount equal to 11% ~~40%~~ of the Gross Fees paid to each Performer who is not a member of ACTRA, including those designated as Apprentice or temporary members, and work permittees, (a Non-Member), and ...

- b. A3804 Maximum Retirement Contributions: Increase retirement cap (pursuant to Article 3802) from \$6,000 to \$6,850 for 2004, \$7,250 for 2005 and \$7,920 for 2006 pursuant to Article A3802;
 - c. A3808: The Parties confirm that contributions shall be made to one plan not both, and that A3703 does not apply when contributions are made to the SAG or AFTRA Plans.
- 4. Background Performers: The Parties confirm the agreement reached by them on March 27, 2003, which includes the following:**
- a. Eliminate the weekly rate for Stand-ins, except as provided in c) i) below;
 - b. C501: Increase to 30 (from 25) Background Performers in Toronto on all Productions, except as provided in c) i) below;
 - c. In respect of television series, the Producer shall elect, prior to the commencement of each season, either of the following 2 options:
 - i. A Producer may maintain the status quo for ACTRA Background Performers as per the current version of C501 – i.e. 25 vouchers in Toronto, and the weekly rate for Stand-Ins on the understanding that Background Performers shall be compensated in accordance with current practices; OR,
 - ii. A Producer shall comply with the revised provisions of C501, (which provides for 30 vouchers in Toronto) on the understanding that the minimum fees for Background Performers shall only be the applicable daily rate regardless of the number of episodes.

- d. ACTRA Additional Background Performer Voucher: Revise Appendix 17 (a): (Note: All grievances on this issue will be withdrawn)

BACKGROUND VOUCHER

Producers may use when the requirements of Article C501 have been satisfied

ACTRA Additional Background Performer	Date
Performer Name	Call Time
Address	Wrap Time
Phone #	Rate (as per C503) \$ _____ per hour
Production Title	Total Amount Due
Episode Title & Number	
Production Company	Producer's Representative
Performer's Signature	ACTRA Member #
Comments	Either GST# OR SIN#

5. Animated Productions: Status Quo respecting language. However, the outstanding grievances respecting repackaging of animated programs shall be resolved on the basis that the initial broadcast of the program must be consistent with the Performer's contract.

6. **Casting Directors:**

a. **The Committee of Enquiry into Casting Directors and the Casting Process:**

- i. In response to concerns raised, the Parties agree to establish a standing committee to investigate and make recommendations to the Parties in respect of all aspects of the casting process.
- ii. The mandate of the Committee shall include, without limiting the generality of the foregoing:
 1. The conduct of an ongoing Nation wide enquiry into best casting practices in the industry;
 2. Concerns in respect of the allegations of conflict of interest;
 3. To hear and make recommendations into specific complaints that are brought to the attention of the Committee – with the ultimate decision as to whether to accept any recommendations of the Committee, to be left to the 3 Parties to the IPA.
- iii. In addition, the Committee shall have the right to draft and recommend appropriate IPA language to deal with any of the legitimate concerns identified by the Committee for consideration by the 3 Parties to the IPA.
- iv. Members of the Committee (at a minimum) shall be as follows:
2 performers and 2 agents appointed by ACTRA
2 casting directors and 2 producers – one from each Producers' Association (appointed by the respective Producers' Association).
- v. Representatives from ACTRA, APFTQ and/or CFTPA may also attend as observers at these sessions. All costs associated with the operation of the Committee shall be shared equally among the 3 Parties.
- vi. The Committee shall meet at least quarterly, in a place to be determined by the Committee.
- vii. The Committee shall determine its own process. It shall have the right to offer confidentiality to the persons who make representations or appear before it.

- viii. The Parties agree that any issue that is brought to the Committee may be the subject of a formal grievance under the IPA which shall be resolved by arbitration, if the Parties are unable to resolve it pursuant to the grievance provisions.

- b. Conflict of Interest: Amend A806: The Producer shall, as a condition precedent to hiring a casting director, or other person responsible for hiring Performers, require the said casting director, or person to execute a Statutory Declaration in the form attached as Appendix 13 and deliver an executed copy of the said Declaration to ACTRA. A casting director shall, when negotiating terms of engagement with Performers or their agents, negotiate in good faith. Without limiting the generality of the foregoing, the casting director will not apply undue pressure or coerce Performers into accepting only minimum terms and conditions. Furthermore, the casting director will negotiate only the terms and conditions applicable to the particular engagement without explicit or implicit reference with respect to any other engagement.

7. Security for Payment: New Appendix X:

The following provisions will not apply to members of the APFTQ, CFTPA or AMPTP member companies, affiliated Companies and the Canadian counterparts of those Companies.

1. Payroll Report: ACTRA may require a Producer who is not a member in good standing of one of the Producers' Associations, to provide a report that will include the payroll period, the amount paid, the names of the Performers and the dates that payments were issued and mailed. The Production would be responsible for signing, verifying and issuing this report to the ACTRA representative no more than 24 hours after the payroll has been processed and mailed.

2. Requirement for Security: A Producer who is not a member in good standing of one of the Producer's Associations shall be required to post a security for payment, and ACTRA may require that the amount of security be up to the full amount of Performers' fees during the entire period of Production (to be based upon the production schedule provided by the Producer) and the insurance and retirement payments, no earlier than 30 days prior to the commencement of work by the Performers. The security for payment may take the form of a cash deposit to be held in trust by ACTRA in an interest-bearing account, and all accrued interest shall be the property of the Producer, or at the Producer's election, the security for payment may take the form of one

or more irrevocable letters of credit in favour of ACTRA, drawn on a Canadian chartered bank.

3. Producer Failure to Meet Payroll Obligations:
 - a. In the event that a Producer fails to meet its payroll obligations, in respect of which obligations there is no bona fide controversy...the declaration is based and the Producer is given 3 business days from the date of receipt...
 - b. A Producer who receives a notice under paragraph a), and does not cure the default on or prior to the expiry of the 3 business days notice period may be declared Unfair.
4. In the event that a non-member of a Producers' Association is declared Unfair under the above provision such Producer (whether or not they become a member of one of the Producers' Associations during the period noted below) shall be required to post a security for payment sufficient to cover 6 weeks Performer payroll on the same terms as provided for in Article A516, for any further Productions produced by the said Producer, under the terms of this Agreement, until the earlier of:
 - i. 5 years from the date on which the Producer has cured its default as a result of which a revocation was issued by ACTRA, under paragraph c) or;
 - ii. such time as ACTRA may determine, in its sole discretion, to reduce such security from 6 to 4 or 2 weeks of Performer payroll.

Other Security Provisions:

- A903 (a) and (b) timeline amended to 3 business days
- ACTRA confirms that they are not seeking any amendments to Alternate Guarantee Letters 1 and 2 – Appendix #24

Appendix 9, Distributor's Assumption Agreement (Approved Distributor):
The Guarantor shall sign the following Distribution Assumption Agreement on its own letterhead and forward it to the local ACTRA office ...

6. "As the Producer may have ~~has~~ executed a Security Agreement and..."

New Appendix 9A, Distributor's Assumption Agreement (Non-approved Distributor): Amend the existing Appendix 9 as follows:

"The ~~Guarantor~~ Distributor shall sign the following Distribution Assumption Agreement...

Whereas _____ (the Distributor) is an ~~Approved~~ Distribution Guarantor...

6. As the Producer ~~may have~~ has executed a Security Agreement and..."

Conforming Change: Article A517 c):

"...and a Distributor's Assumption Agreement shall be in the form set out in Appendix 9 or 9A as applicable..."

8. Stunt Rigger: Without prejudice to the position of the Producers' Associations to the contrary, ACTRA's position is that the work of Stunt Rigging – i.e. the rigging and operation of stunt and safety equipment used to manipulate or provide safety to a Performer or Stunt Performer – is carried out by ACTRA Stunt Performers and ACTRA will continue to insist that such Stunt Riggers are engaged under the terms and conditions of the IPA.

9. **Fact Based, Lifestyle Production & Documentaries:**

- a. The Parties agree to the establishment of a Committee to conduct an enquiry and analysis regarding the emerging production opportunities in the area of Fact Based/Lifestyle Production.
- b. In addition, the Committee will review and analyze the Producer's proposal in respect of B601 c), re: Prepayment Rights from Narrators and Commentators in Documentaries.
- c. The Committee will have a mandate to recommend to the Parties hereto suggested improvements in the IPA that would effectively deal with Fact Based/Lifestyle Production and B601 c). Each of the Parties to the IPA shall nominate 2 members to the Committee. These members shall be assisted by the staff of the respective Associations. The Committee will establish its own procedure and shall report to the Parties by October 15, 2003.
- d. The Producers' Association shall make full and comprehensive disclosure to ACTRA in respect of the financial model that applies to this type of Production. In this regard all relevant details in respect of

examples of current or planned Productions that fall within the definition of Low Budget Fact Based Proposals shall be provided. The financial details shall be kept strictly confidential by the members of the Committee.

e. By November 15, 2003 the Parties shall use their best efforts to negotiate:

- i. A definition for Fact Based/Lifestyle Production that will be subject to the terms and conditions of these provisions. The Parties agree that examples of Fact/Based Lifestyle Production include but are not limited to: Cooking, Home Improvements and/or Travel programs.
- ii. Modifications to the exclusions contained in A2 of the IPA.
- iii. Fee structure(s) and Use Fees for Performers working in Fact Based/Lifestyle Production that are subject to the terms and conditions of this Agreement.

- f. If the Parties fail to negotiate a mutually satisfactory set of terms and conditions applicable to Fact Based/Lifestyle Production by December 31, 2003, the Parties shall not have concluded a renewed IPA unless otherwise agreed by the Parties. Any subsequent negotiations shall, however, be limited to the issues detailed above.

10. CIPIP: Amend Paragraph 3 of Appendix #18:

3. Eligible Projects: Those projects which may be eligible for CIPIP shall be of the following nature and type:
 - d. Open Market: Any project seeking qualification under CIPIP cannot have its world distribution rights pre-sold to finance production i.e. there must be meaningful open markets for distribution of a CIPIP-qualified project. ~~Distribution rights for Canadian Use only may be pre-sold to finance production;~~ Producers, at the time of production shall make full disclosure to ACTRA PRS in respect of any and all proposed Licensing agreements or the like, (including territory, term and the amount of the License Fees – etc). Allocation of revenue issues, if any, shall be determined pursuant to the provisions of B509.

11. The New Business Development Plan:

In respect of new, live action, television series, and pilots the terms and conditions of the IPA shall be amended as follows, for the first 2 seasons of the series only:

- a. ACTRA shall forgive the payment of administration fees otherwise payable under A3701 a).
 - b. The provisions of C501 shall provide that this type of production may maintain the status quo for ACTRA Background Performers as per the current version of C501 – i.e. 25 vouchers in Toronto.
 - c. Add to A701 a) and b): The Producer shall not be required to pay work permit fees hereunder.
- 12. Turnaround: The Parties will enter into a “Comfort Letter” regarding issues pertaining to Rest between Days.
 - 13. Letters of Understanding in Appendix #22, #25, #26 & #27 shall be renewed and appear in the new version of the IPA.
 - 14. Co-Productions: A706: Status Quo. The outstanding grievances will be withdrawn.
 - 15. Approved Production Guarantor: A518 a):
An Approved Production Guarantor shall mean an entity:
 - i. Which the APFTQ or CFTPA confirms by written notice to be a member in good standing;
 - ii. Which has maintained a permanent active entity with established offices and staff for the previous 4 years and has produced or financed the production of at least 4 theatrical motion pictures or 26 hours of television under this Agreement or its predecessors;
 - iii. Which has had a good track record for payment of ACTRA members, excluding minor infractions;
 - iv. With respect to an application for Approved Production Guarantor status, ACTRA shall take into consideration the Producer’s production record with Union des Artistes.

A518 c): ACTRA shall within 30 days communicate in writing as to whether the status has been denied. Failure to communicate denial in writing shall result in the Producer being granted Approved Guarantor status. The 30 day time limit may be extended by mutual agreement, which agreement shall not be unreasonably denied. When Approved Guarantor status is denied, the Producer shall have the recourse to the following appeal procedure. Should status as an Approved Production Guarantor or Approved Distribution Guarantor...

This Memorandum of Settlement is binding when ratified by ACTRA, APFTQ and CFTPA.