

Terms of Settlement Reached between ACTRA and Citytv

The Citytv/ACTRA Agreement has been based on the CTV / ACTRA Agreement. The following Terms of Settlement have been agreed between ACTRA and Citytv:

Term of Agreement: 3 years from date of ratification

General Increases in Fees: 8% effective on date of ratification
2.5% effective year 2 of the Agreement
2.5% effective year 3 of the Agreement

General Changes: Delete all references to *CTV* and replace with *Citytv*

Article 2: Exclusions

Article 201: Exclusions

New:

Save and except for members of ACTRA as provided in clause 203 hereof, the following classifications of Performer shall not be covered by the terms of this Agreement...

- m) A reporter analyst or commentator, or a full-time employee of Citytv appearing on any program.

Formerly:

The clause referred to employees of CTV rather than employees of Citytv.

Article 202: Partial Exclusions

New:

A person in any of the following categories may be engaged to appear up to **eight (8) times** in any twelve (12) month period without being qualified by a work permit issued by ACTRA or by membership in good standing:

- (a) An interviewer or interviewee
- (b) A person speaking or commenting with special knowledge on a particular topic by reason of training or experience.

Formerly:

The partial exclusion was limited to four (4) times in any twelve (12) month period.

Article 4: Definition of Terms

New:

419 Variety Program means a Program that consists of songs, music, dances, sketches, vignettes, blackouts and similar material, ordinarily as a mixture of some or all of such elements. Performers engaged to appear in a segment of thirty (30) minutes or longer in length shall be paid not less than the appropriate category of performance minimum for a fifteen (15) minute Program as set out in the fee schedule under Article 3905.

Correction:

Definitions in Article 4 that are currently numbered 419 and 420 will become 420 and 421.

Article 33: Pick-up of Outside Performances

Article 3304: News/Magazine Program

New:

With the prior permission of the Performer(s) and the Producer of the original Program, an excerpt of up to two (2) minutes from such Program may be used on a news or news magazine program without payment to the Performer(s) involved, provided the material is used because of the newsworthy nature of the performance or for the promotion of the Performer(s), or the original production. There shall be no more than four (4) such excerpts of different Programs in any thirty (30) minute period.

Article 34: Publicity, Stills, Trailers and Promos

Article 3405: Self-Promotion

New:

A Performer may agree to appear and perform without fee on Citytv for the purposes of self-promotion. Self-promotion appearances are defined as those occasions where a Performer is appearing in, or about to appear, in any film, television program, theatre, nightclub, concert, dance performance, circus, hotel, or studio setting; and/or where a Performer is promoting him/her self in the current release of a book, record, video, or compact disc. The Performer shall execute a waiver form (per Appendix X) which shall be provided by Citytv to the Performer in advance of the appearance, and which will be filed with the local ACTRA office.

Article 38: Insurance and Retirement Plan

Article 3806: Deductions from Performer's Fees – Dues

New:

Citytv shall deduct 1.75% of the Gross Fees (inclusive of Use Fees) paid each Performer who is an ACTRA member, and shall remit monthly such amount deducted to the local ACTRA office. During the life of this Agreement, ACTRA may amend the percentage of this deduction.

Article 39: Fees

Article 3902: Citytv Use Entitlement

Deleted.

Article 41: Distribution, Residual Fees and Prepaid Use Fees

Deleted.

Explanation:

The existing *Citytv Use Entitlement* and *Distribution, Residual Fees and Use Fees* language does not reflect the conditions of the current market. The language has been replaced by an amended version of Article 41, including its sub-articles. These changes bring the proposed Citytv Agreement more into line with the *1999-2001 Independent Production Agreement*.

Article 41: Declared Use, Distribution Rights, Prepayment and Advance Options

Article 4101: Citytv Use Entitlement

Upon payment to Performers of the minimum fees per program provided in this Agreement, Citytv shall be entitled to one of the following Declared Uses. At the time of contracting, Citytv must declare the intended Use of the Production. All other Uses beyond the Declared Use shall require additional Use payments as specified in this Agreement:

Free TV: 1 year Use in Canada
Cable: 3 years Use in Canada
Video: 2 years Use in Canada
Educational: 4 years Use in Canada

Article 4102: Use on a Single Ontario Television Station

New:

Citytv may apply a discount of 10% to the minimum performance fees provided in this Agreement for programs produced for Use on a single Ontario television station for 1 year's use only. Upon payment of the minimum performance fees, Citytv will be entitled to produce a program for Use on a single Ontario television station for 4 year's Use only.

Formerly:

Citytv was previously entitled to apply a discount of 20% to the minimum performance fees for use on a single Ontario television station.

Article 4103: Window of Shared Programming

New:

There will be a 20 consecutive day window of shared programming on CHUM-owned and operated free and cable channels.

Article 4104: Prepayment Option

New:

Upon payment at the time of production to Performers of the following percentages of gross fees earned during the production of a program, Citytv may acquire unrestricted Use rights (specified below) for a period of four (4) consecutive years from the date of first release in any residual market. Citytv shall declare and specify the Media Uses of the program for which prepayment is being made in the individual contract of the Performer. Prepaid Use payments must be paid to Performers at the time of production of a program.

Media Uses	Canada	US	Foreign	World
Free TV (4 years)	25%	45%	20%	60%
Pay TV (4 years)	15%	30%	30%	45%
Cable (4 years)	15%	20%	20%	35%
Compact Devices (4 years)	15%	20%	20%	35%
Educational Use (4 years)	10%	15%	15%	20%

Media Uses	Canada	US	Foreign	World
All Use for 4 years (except theatrical)	40%	65%	30%	105%

After the initial 4-year term, Use Fees will be payable to Performers based on participation in the Distributor's Gross Revenue as outlined in Article 4112 of this Agreement.

Article 4105: Advance Option

New:

As an alternative to the Prepayment Option, Citytv may choose any one of the following four (4) Advance Options if there is only one exclusively Canadian pre-sale in one media as of the first day of principal photography of the Production, which pre-sale includes one of the Declared Uses as defined in Article 4101. Unless the Production pre-sale fulfils these conditions, Citytv shall not be entitled to exercise any of the following Advance Options.

Option Number	Non-Refundable Advance (% of Net Fees)	Participation in Distributors' Gross Revenue
1	100.0%	3.6%
2	75.0%	4.6%
3	50.0%	5.6%
4	25.0%	6.6%

Article 4106: Selection of Prepayment or Advance Options

New:

The election made by Citytv under this Article shall be the same for each Performer engaged in the Production. Citytv shall either elect to prepay all Performers as set out in Article 4104 or, elect the Advance Option listed above. For clarity, if Citytv elects to prepay Performers as set out in Article 4104, all Performers engaged in respect of the Production shall be entitled to receive the same percentage of fees as a Prepayment. On the other hand, if Citytv elects to make Advance payments as set out in Article 4105, Citytv must select the same percentage of the Advance and thus provide for the identical rate of participation in the Distributors' Gross Revenue for each Performer on the Production.

Article 4107: Advance Option - Participation in Gross

New:

If Citytv elects to pay an Advance as set out in Article 4105, the Performers shall be paid as Use Fees an aggregate amount equal to the applicable percentage of Distributors' Gross Revenue, provided that no amounts shall be paid until such time as the Aggregate Advance, as defined in Article 4108, is recouped from the Distributors' Gross Revenue.

Article 4108: Limit on Individual Advance

New:

The parties acknowledge that the maximum amount of an individual Performer's Advance shall be 50% of the Gross Fees payable to such Performer in respect of the Production.

Article 4109: Calculation of Aggregate Advance

New:

The Aggregate Advance shall be, for the purposes of calculating additional Use Fees, the total of all the Advance payments paid to Performers in a Production.

Article 4110: Payment of Use Fees

New:

Use Fees shall be payable to the ACTRA PRS and shall be distributed to Performers pursuant to the provisions of Article 4114. Although individual Advance payments in excess of the limitations specified in Articles 4107 and 4108 payable to individual Performers may not be credited to the Aggregate Advance, the ACTRA PRS shall have the right to take into account such excess Advance payment to an individual Performer when determining the allocation that will be made to the said Performer under Article 4114.

Article 4111: Distributors' Gross Revenue

New:

Distributors' Gross Revenue shall mean all monies derived in any manner whatsoever from the distribution of the Production, including the sale, license, or other like means of distribution of the Production, and shall be calculated before or simultaneously with any other gross participants from first dollar, without deductions of expenses of any kind. In the case of animated Productions, Distributors' Gross Revenue shall include only revenues from licenses of the English-language version of the productions. For greater certainty:

- a) monies derived through the exploitation of ancillary, allied and underlying rights and like rights, such as merchandising, novelization and sequel rights, shall not be included in Distributors' Gross Revenue
- b) Distributors' Gross Revenues shall also mean all monies received by those Distributors with which Citytv has entered into a Distribution Agreement, (the "Head Distributor") in respect of the production. The Distributors' Gross Revenues shall include all monies received by sub-distributors which:
 - (i) Are related to, or which do not have an arm's length relationship with, Citytv or the Head Distributor, or,
 - (ii) Have an obligation to report and remit Revenue directly to Citytv or Head Distributor;
- c) Pre-sale revenues shall be included in Distributors' Gross Revenue. A pre-sale means the grant of a license or rights to utilize a Production prior to production, to an end user, for consideration. Distribution Advances, i.e. payments received by Citytv from a Distributor, shall not be included in Distributors' Gross Revenue for

the purpose of triggering the payment of Use Fees to Performers; however, a Distributor shall not be entitled to deduct the amount of the Distributors' Advance from the Distributors' Gross Revenues for the purpose of calculating Use Payments.

- d) Notwithstanding the foregoing, Distributors' Gross Revenue derived from the sale or rental of Compact Devices, provided that in the event that the wholesale selling price is at or less than the typical sell-through price to wholesalers (currently \$30.00 per unit), the deemed Distributors' Gross shall be 10%.
- e) Citytv, at the time of production, will make a reasonable allocation of revenues for the purposes of determining which portion thereof is attributable to the Declared Use and/or prepayment and which portion thereof is attributable to the Distributors' Gross Revenue upon which Use Payments are based, subject to the right of ACTRA to refer any difference to Arbitration, pursuant to Article 12. If, as a result of this allocation, Use Fees become payable from the Distributors' Gross Revenue, the said fees shall be paid to the ACTRA PRS at the time of production.
- f) **Packaging.** It is acknowledged by the parties that distributors may seek to diversify their risks by packaging more successful and less successful Productions. Where Productions are packaged together for the purposes of distribution, the parties shall allocate the revenue attributable to each individual Production, subject to the right of ACTRA to refer any difference to Arbitration under Article 12.

Article 4112 Reporting to ACTRA

New:

Where Citytv selects any of the Advance Options listed at Article 4105, Citytv shall deliver to ACTRA:

- (i) The calculation of the total amount of Advance payments, certified by the Production Accountant or Controller and the back-up material in this regard;
- (ii) The first report that is due to the ACTRA PRS pursuant to;
- (iii) The information, and Use Fees, if any, payable pursuant to 4111 (e).

Article 4113: Reporting and Payment Procedure

New:

- a) Citytv shall deliver to ACTRA PRS reports setting forth the amount of Distributors' Gross Revenues in respect of the Production derived in the applicable accounting period. Each report shall be delivered to ACTRA PRS in the same manner and frequency as Citytv reports to government agencies and/or other financiers, but it shall be no less than semi-annually for the first two years following the first report filed hereunder and annually thereafter. The first report shall be due 60 days following the last date of the first reporting period and the ensuing reports shall be due in the frequency provided above. The first reporting period is the period immediately following the delivery of the Production to the Distributor. The reports will be

accompanied by the aggregate Use Payments payable to Performers and an outline of the method of calculation of the said payment.

- b) At the request of ACTRA PRS Citytv will consent to the release of true copies of the reports dealing with Distributors' Gross Revenue filed with the government agencies and/or other financiers, subject to the right of the Distributor to edit the reports on the grounds that they contain confidential information.
- c) Citytv (or Distributor) shall be deemed to hold the aggregate Use Payments in trust for the Performers, from the time that Gross Revenues are recognized, until the disbursement of same to ACTRA PRS on the due date, i.e. the date that each report is due. In the enforcement of this Article, ACTRA, subject to its rights as a creditor, shall agree to not hold any employee of Citytv (or Distributor) liable for negligence, provided the said employee acts in a bona fide fashion. The Distributors' Gross Revenues shall be recognized when a contract for the sale or conveyance of any rights in a Production is made, but Use payments shall only be payable when the reports are due under Article 4113 a).
- d) If the currency of the Distributors' Gross Revenues is other than the Canadian Dollar, the Use payment shall be calculated at the exchange rate for the said currency, on the basis of the established practice of Citytv or Distributor, which practice shall be disclosed in writing to ACTRA PRS upon request. If the practice is amended at any time such amendment shall be disclosed to ACTRA PRS.
- e) Payments shall be made to ACTRA PRS, a corporation without share capital, in trust for the Performers concerned. ACTRA PRS shall be entitled to make a claim of interest on payments received after the due date as provided herein, i.e. the date the reports are due to be filed, at the Prime rate of interest, as of the due date, plus 3%, calculated monthly, which claim shall be enforceable under the terms of this Agreement.

Article 4114: Distribution of Payments

New:

Use payments shall be distributed to Performers through the ACTRA PRS on the following basis:

- a) Units will be assigned to Performers as follows: 1 unit shall be defined as the minimum fee payable to the lowest rated residual category for one day of work.

Performers shall receive units according to the Gross Fee paid to that Performer for the production of the Production to a maximum of 20 units per Performer.

- b) For each Production, the total revenue will be divided by the total units accumulated by all Performers with respect to the Production involved and therefore a dollar value will be assigned to each unit. The distribution made

to each individual Performer will be based on the number of units he has accumulated and the dollar value calculated in the preceding sentence.

Article 4115: Fair Market Value

New:

Citytv and/or Distributor shall meet with ACTRA PRS to determine the fair market value for distribution of a Production should such Production be distributed for Use by means of barter, or exchange, or other means for which no charge is made or a nominal fee is charged, or as part of a package of Productions. The Use Fees payable to Performers shall be based on such agreed fair market value or as determined under Articles 11 and 12.

Article 4116: Right of Audit

New:

Citytv agrees that, for the purposes of verifying the propriety of payments made under this Agreement, ACTRA or the ACTRA PRS, shall have full access to and shall be entitled to examine and audit at annual intervals upon five (5) business days' notice all books, records, accounts, receipts, disbursements and any other relevant documents related to the Production and its distribution. The audit will take place at Citytv's normal place of business and during normal business hours.

Article 4117: Other Uses Not Provided Herein

New:

Any Use not specifically provided for in the Agreement shall require Citytv to secure from ACTRA permission to use the program and the Use fee to be paid to Performers.