

SPA MEAA ATRRA MOU 2016

MEMORANDUM OF UNDERSTANDING
PAY TELEVISION ADDENDUM

This memorandum is made on the 15th day of January 2017 (“**Commencement Date**”)

BETWEEN

Screen Producer Association of Australia (ABN 46 091 470 324) of Suite 2, Level 1, 36 Fitzroy Street, Surry Hills NSW 2010 (“**SPA**”)

AND

Media, Entertainment & Arts Alliance (ABN 84 054 775 598) having its registered offices at 245 Chalmers Street, Redfern NSW 2016 (“**MEAA**”)

(“**the Parties**”)

THE PARTIES AGREE AS FOLLOWS:

INTRODUCTION

- A. SPA and MEAA have previously reached agreement about (i) changes to the Repeat Fees, free streaming and usage for Programs commissioned for Free Television to be provided to Performers engaged under ATPA; (ii) introducing Repeats Fees and usage requirements for Programs commissioned for SVOD to be provided to Performers engaged under ATPA; (iii) changes to the reporting procedures in ATRRA; and (iv) terms of engagement and Repeat Fees and usage requirements for Performers engaged on Online Programs.
- B. SPA and MEAA have reached agreement about changes to Repeat Fees, free streaming and usage for Programs commissioned for Pay Television to be provided to Performer’s engaged under ATPA.
- C. This agreement applies to and is binding upon SPA and its members and MEAA and its members.
- D. The parties intend this MOU to create a legally binding agreement between them.
- E. This MOU shall be read in conjunction with the ATRRA 2016.

NOW THIS DEED WITNESSES that the terms of the Deed between the parties are as follows:

1. DEFINITIONS

In this Deed, including the Introduction, unless the context requires otherwise, words and expressions used in the Deed that are defined in ATPA and ATRRA and that are not separately defined in this Deed have the same meanings as in ATPA and ATRRA (as applicable).

Extended Initial Licence Period	means five years from the earlier of first Broadcast of the Program or six (6) months from the delivery acceptance date of the Program.
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Initial Licence Period	means three years from the earlier of first Broadcast of the Program or six (6) months from the delivery acceptance date of the Program, which period shall be extended to four years if a subsequent season of the Program is produced by the Pay
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Television commissioning broadcaster within the initial three year period.

2. CHANGES TO SPA MEAA ATRRA MOU 2016

2.1 The SPA MEAA ATRRA MOU 2016 is amended by adding a new clause 2.3 as follows:

“2.3 The Repeat Fees set out in this clause replace and add to those payable under clause 3 of ATRRA for Broadcast of the Program commissioned for initial broadcast on Pay Television in Australia. This MOU shall not apply to Serials, and the terms of ATRRA shall continue to apply to Serials.

3.7 Programs Other Than Children's Programs

- (a) Payment of 70% of the Performer's BNF for the Program purchases 3 Plays within the Initial Licence Period or 5 Plays within the Extended Initial Licence Period, as the case may be. For the avoidance of doubt, the BNF purchases one Play, making a total of 4 Plays within the Initial Licence Period or 6 Plays within the Extended Initial Licence Period, as the case may be.
- (b) Additional Pay Television Plays during the Initial Licence Period or the Extended Initial Licence Period, as the case may be, shall be acquired and paid under ATRRA.
- (c) After the Initial Licence Period, or the Extended Initial Licence Period, as the case may be, 20% of the Gross Licence Fee shall be paid to the Performers to be shared between them in accordance with the allocation process agreed by MEAA with its members.
- (d) Each Play includes 14 days catch up (but does not include pre-transmission or simultaneous streaming rights).

3.8 Children's Programs

- (a) Payment of 70% of the Performer's BNF for the Program purchases 5 Plays within the Initial Licence Period or 8 Plays within the Extended Initial Licence Period, as the case may be. For the avoidance of doubt, the BNF purchases one Play, making a total of 6 Plays within the Initial Licence Period or 9 Plays within the Extended Licence Period.
- (b) Additional Pay Television Plays during the Initial Licence Period or the Extended Initial Licence Period, as the case may be, shall be acquired and paid under ATRRA.

- (c) After the Initial Licence Period, or the Extended Initial Licence Period, as the case may be, 20% of the Gross Licence Fee shall be paid to the Performers to be shared between them in accordance with the allocation process agreed by MEAA with its members.
- (d) Each Play includes 14 days catch up (but does not include pre-transmission or simultaneous streaming rights).

3.9 Free Streaming Rights

- (a) In respect of the Programs in clauses 3.7 and 3.8, the payment of a fee of 10% of the Performer's BNF shall purchase the Free Streaming Rights for the Initial Licence Period or the Extended Initial Licence Period, as the case may be. The extension to the Initial Licence Period, if applicable, upon commissioning of a subsequent season of the Program shall only apply to the Free Streaming Rights if the payment of the 10% fee is made to the Performer prior to delivery of the Program to the commissioning Pay Television broadcaster.
- (b) After the Initial Licence Period (including any extension), or the Extended Initial Licence Period, as the case may be, the Free Streaming Rights may be licensed as part of the Free Television, Pay Television or SVOD rights and included in the Gross Licence Fee for such rights, or may be licensed as the Australian Ancillary Usage.
- (c) It is acknowledged between the parties that the 10% of BNF payment for the Free Streaming Rights is in recognition of a new usage of the Performer's image arising since the ATRRA. For this reason it is acknowledged that the intention is that 10% payment will constitute a real increase for Performers and will positively impact upon the market rate.
- (d) The 10% payment for the Free Streaming Rights may not be paid at the time of engagement of the Performer, but may be acquired upon payment directly by the Producer to the Performer of 10% of the Performer's BNF on the Program at any time after the completion of the Performer's engagement on the Program and prior to the exercise of those rights.
- (e) The Producer will report to MEAA the actual monetary amount paid to Performers for the Free Streaming Rights of the Program. If the reporting discloses that the monetary amount paid to Performers is less than 10% of the aggregate BNFs on the Program, SPA agrees to, on notice from MEAA, raise the issue with its member Producer and advise the Producer of the intentions of the parties under this agreement. If the matter cannot be resolved by SPA, MEAA reserves its rights under the dispute resolution procedure.

3.10 Pay Television Extended Licence Period

- (a) In respect of the Programs in clauses 3.7 and 3.8, where the Producer makes a payment of a fee of 10% of the Performer's BNF, the Initial Licence Period in clauses 3.7, 3.8 and 3.9 above, shall be replaced by the Extended Initial Licence Period and the number of Plays shall increase to 5 in the case of

programs other than children's programs and 8 in the case of children's programs.

- (b) The 10% payment for the Extended Initial Licence Period may not be paid at the time of engagement of the Performer, but may be acquired upon payment directly by the Producer to the Performer of 10% of the Performer's BNF on the Program at any time after the completion of the Performer's engagement on the Program and prior to the delivery of the Program to the Pay Television broadcaster.
- (c) The Producer will report to MEAA the actual monetary amount paid to Performers for the Extended Initial Licence Period. If the reporting discloses that the monetary amount paid to Performers is less than 10% of the aggregate BNFs on the Program, SPA agrees to, on notice from MEAA, raise the issue with its member Producer and advise the Producer of the intentions of the parties under this agreement. If the matter cannot be resolved by SPA, MEAA reserves its rights under the dispute resolution procedure.

3. TERMS OF ENGAGEMENT

Performers will be engaged for Programs commissioned for Pay Television on the Standard Contracts at Appendix 7 (Pay Television Program employee version) and Appendix 8 (Pay Television Program lender version).

4. ATRRA 2016 TO OTHERWISE APPLY

- 4.1 With the exception of those terms and conditions of employment specifically provided for herein, the terms and conditions in all other respects contained in ATPA or ATRRA or SPA MEAA ATRRA MOU 2016 shall apply to the engagement of all employees in respect of the Program. Where any provision of this Deed duplicates or differs from any provision contained in ATPA, ATRRA or the SPA MEAA ATRRA MOU 2016, then the said provision of this MOU shall prevail.
- 4.2 The residuals arrangements in force for Australian ancillary usage (clause 5 of ATRRA) and Rest of World (television and ancillary) usage (clause 7.4 of ATRRA) continue to apply provided that the parties agree to continue negotiations in good faith to investigate moving to a simpler back end set of formula that is as fair as possible to both Performers and Producers. SPA agrees, subject to MEAA respecting reasonable confidentiality provisions, to provide sufficient financial information on an agreed representative sample of programs to enable joint modelling on the options considered. Subject to the foregoing, the Parties agree to undertake this exercise in an open and transparent manner so that both Parties are able to consider a range of options in an informed way.

5. EFFECTIVE DATE AND GRANDFATHER CLAUSE

- 5.1 This MOU shall commence on the Commencement Date, and will apply prospectively to all Programs except those grandfathered in this clause.
- 5.2 For the avoidance of doubt, all Performers' contracts for Program commissioned for Pay Television entered into before the Commencement Date are exempt from the provisions of the ATRRA 2016 and will be contracted on the current ATRRA, unless otherwise agreed with the Producer, the Performers and MEAA.
- 5.3 After the Commencement Date, the following Programs commissioned for Pay Television will also be exempt from ATRRA 2016 and be grandfathered as continuing to operate on the current ATRRA,

unless otherwise agreed in writing between the Producer and MEAA in consultation with Performers:

- (a) For a period of 6 months after the Commencement Date Programs commissioned for Pay Television that have:
- (i) been granted development or production funding; or
 - (ii) signed financing documents; or
 - (iii) a commitment from a financier or broadcaster.

Provided that, if requested, the Producer will provide sufficient evidence to the satisfaction of SPA and MEAA that there is an expectation to use the current ATRRA.

- (b) Subsequent series for an existing Program commissioned for Pay Television contracted under the current ATRRA.

6. DISPUTES IN RELATION TO THIS MOU

- 6.1 SPA and MEAA agree to work together in good faith in relation to the operation of this MOU.
- 6.2 Should any dispute arise in relation to this MOU the parties agree that the dispute procedure contained in the ATPA shall apply as though the terms of this MOU were incorporated into the ATPA.

EXECUTED as a deed on SIXTH DAY OF MARCH 2017

Executed by
**MEDIA ENTERTAINMENT
AND ARTS ALLIANCE**

By authority

PAUL MURPHY, CEO

(Print name and title)

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)
)
)


(Director/Secretary)


Executed by
**SCREEN PRODUCERS ASSOCIATION
OF AUSTRALIA**

By authority

Matthew Deane, CEO

(Print name and title)

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(Director/Secretary)

APPENDIX 7

ARTIST STANDARD CONTRACT (PAY TELEVISION EMPLOYEE VERSION)

ATRRA APPENDIX 7

PERFORMER'S STANDARD CONTRACT
for Australian Drama Programs
under the
AUSTRALIAN TELEVISION REPEATS & RESIDUAL AGREEMENT
(ATRRA 2016)

PRODUCTION TITLE _____
(hereinafter known as "Program")

PRODUCER _____
(hereinafter known as "Producer")

of _____

Phone No: _____

PERFORMER _____
(hereinafter known as the "Performer")

of _____

Phone No: _____

MEDIA SUPER NUMBER: _____

PERFORMER'S AGENT _____
(hereinafter known as "Performer's Agent")

of _____

Phone No: _____

AGREEMENT DATED BETWEEN THE
ABOVEMENTIONED PRODUCER OF THE FIRST PART AND THE ABOVEMENTIONED
PERFORMER OF THE SECOND PART.

A. THE PRODUCER hereby engages the **Performer** and the **Performer**, in consideration of the payments provided for in Schedule "A" hereto, agrees to perform the role of in the Program specified above on the terms and conditions herein.

B. This contract is made and is subject to the Laws of Australia.

C. PRODUCTION TYPE

If serial, specify minimum guaranteed production half-hour included in fee:episodes per week.

D. PERIOD OF ENGAGEMENT

(WHERE THE ENGAGEMENT IS ON A DAILY, WEEKLY OR HOURLY BASIS, SPECIFY THE DATES OF ENGAGEMENT)

D1. Weekly

(a) The Performer is engaged on a weekly basis commencing

from & terminating on (inclusive dates)

If not engaged continuously specify further periods below:

from & terminating on (inclusive dates)

from & terminating on (inclusive dates)

OR (b) The Performer is engaged on a weekly basis for the run of the production or 48 weeks whichever is the sooner

commencing on.....

Provided always that, in the event of termination of production, the Producer may terminate this contract by giving the Performer notice of seven (7) weeks.

D2. Daily

The Performer is engaged on a daily basis for days

On the following dates (please specify each day required)

.....

D3 Hourly

*(Performers may only be engaged on an hourly basis if appearing in **one** episode and speaking less than 6 lines or 50 words of dialogue).*

The Performer is engaged on an hourly basis commencing:

On (Date)	Commencing At	Concluding At
.....
.....
.....

Minimum 4 hours

E. FEE

Fees payable under this Agreement are as set in Schedule "A" hereto and shall be paid to the Performer's Agent (if any) unless the Performer has notified the Producer in writing to the contrary.

F. FREE STREAMING RIGHTS

Will free streaming rights be acquired? Circle: YES / NO

An additional fee of 10% of BNF will be paid to the Performer after engagement and prior to the exercise of free streaming rights in accordance with the ATRRA for exploitation of these rights.

G. EXTENDED INITIAL LICENCE FEE

Will a longer licence of five years be acquired? Circle: YES / NO

An additional fee of 10% of BNF will be paid to the Performer after engagement and prior to the exercise of free streaming rights in accordance with the ATRRA for exploitation of these rights.

H. GENERAL CONDITIONS

The terms and conditions agreed to between the Screen Producers' Association of Australia ("SPA") and Media Entertainment & Arts Alliance ("MEAA") and known as the Australian Television Repeats and Residuals Agreement 2004 as amended by the Memorandum of Understanding between SPA and MEAA ATRRA 2016 ("ATRRA"), form part of this contract as if the terms were incorporated herein.

The General Conditions set out in Schedule "B" hereto shall form part of this Agreement as if these terms were written herein.

I. SUPERANNUATION

The Producer shall contribute to MEDIA Super on behalf of the Performer, an amount equivalent to 10.5% of the Total Fee. This percentage will increase from time to time in line with clause 40 of the ATPA.

J. SPECIAL CONDITIONS (if any)

IN WITNESS WHEREOF the parties have affixed their signature on the day and year first hereby written:

Year Month..... Day

PERFORMER**PRODUCER**

.....
(signature)

.....
(signature)

.....
(print name)

.....
(print name and title of person signing for the Producer)

Witnessed by:

Witnessed by:

.....
(signature)

.....
(signature)

.....
(print name)

.....
(print name)

NB Unless the Agent produces proof of a Power of Attorney, this contract must be signed by the Performer.

PERFORMER

(For information only I certify that I am of nationality.)

**ATRRA APPENDIX 7
SCHEDULE A(1)**

**(ATRRA)
PERFORMERS STANDARD CONTRACT
(PROGRAMS OTHER THAN CHILDREN'S PROGRAMS)**

SCHEDULE "A"

The total negotiated fee agreed to be paid to the Performer for performance in accordance with the terms of this Agreement is as set out hereunder and Repeat Fees, Residual Fees and Ancillary Usage of the Program are calculated in accordance with ATRRA.

	Weekly	Daily/Hourly (delete one)
Agreement Minimum		
Personal Margin		
Basic Negotiated Fee		
Australian Repeats – Pay Television Number of Repeats 5 - 70% of BNF (subject to acquiring licence extension otherwise 3 Repeats) Australian Ancillary Rights First payment only - 2.5% of BNF Overseas Residuals US Network Prime Time 1 transmission 100% Non-Prime Time 2 transmission 100% Elsewhere -% of BNF (not to exceed 30% of BNF) Overtime paid in advance		
TOTAL FEE		

Note 1: **Payment of Annual Leave** is calculated on the Performer's total earnings - see Actors Television Programs Agreement 2013 - clause 18

Note 2: Percentage calculations are based on Basic Negotiated Fee.

Note 3: Rights not purchased at point of contract may be purchased by the Producer at any later time.

Note 4: Australian Plays purchased at time of engagement may only be used for the Initial Licence Period in accordance with ATRRA.

Note 5: An additional fee will be payable under clauses F and G after engagement subject to this contract.

Producer

Please initial

Performer

Please initial

**ATRRA APPENDIX 7
SCHEDULE A(2)**

**(ATRRA)
PERFORMERS STANDARD CONTRACT
(CHILDREN'S PROGRAMS)**

SCHEDULE "A"

The total negotiated fee agreed to be paid to the Performer for performance in accordance with the terms of this Agreement is as set out hereunder and Repeat Fees, Residual Fees and Ancillary Usage of the Program are calculated in accordance with ATRRA.

	Weekly	Daily/Hourly (delete one)
Agreement Minimum		
Personal Margin		
Basic Negotiated Fee		
Australian Repeats – Pay Television Number of Repeats 8 - 70% of BNF (subject to acquiring licence extension otherwise 5 Repeats) Australian Ancillary Rights First payment only - 2.5% of BNF Overseas Residuals US Network Prime time 1 transmission 100% Non-Prime time 2 transmission 100% Elsewhere -% of BNF (not to exceed 30% of BNF) Overtime paid in advance		
TOTAL FEE		

Note 1: **Payment of Annual Leave** is calculated on the Performer's total earnings - see Actors Television Programs Agreement 2013 - clause 18

Note 2: Percentage calculations are based on Basic Negotiated Fee.

Note 3: Rights not purchased at point of contract may be purchased by the Producer at any later time.

Note 4: Australian Plays purchased at time of engagement may only be used for the Initial Licence Period in accordance with ATRRA.

Note 5: An additional fee will be payable under clauses F and G after engagement subject to this contract.

Producer

Please initial

Performer

Please initial

**ATRRA APPENDIX 7
SCHEDULE B****(ATRRA)
PERFORMERS STANDARD CONTRACT
SCHEDULE "B"
GENERAL CONDITIONS**

1. This agreement incorporates and includes all the terms and conditions of the Actors Television Programs Agreement 2013 as varied or as replaced ("ATPA") and of the Australian Television Repeats and Residuals Agreement as amended by the SPA MEAA ATRRA MOU 2016 (hereinafter called "ATRRA") as if those terms and conditions were written herein. In the event of any inconsistency:
 - (a) between the terms of this Agreement and the terms of ATRRA then the terms of ATRRA shall prevail, but in such event the terms of this Agreement shall be limited only to the extent necessary to permit compliance with the terms of ATRRA;
 - (b) between the terms of this Agreement and the terms of the ATPA, then the terms of ATPA shall prevail, but in such event the terms of this Agreement shall be limited only to the extent necessary to permit compliance with the terms of the ATPA;
 - (c) between the terms of ATRRA and the terms of the ATPA, then the terms of ATRRA shall prevail, but in such event the terms of the ATPA shall be limited only to the extent necessary to permit compliance with the terms of ATRRA.
2. The Performer shall perform in good faith and to the best of their ability all of the services to be rendered for which they are engaged and as required by the Producer and shall comply with all of the Producer's reasonable directions and requests.
3. The Performer warrants that they have no obligations which now or in the future will prevent or inhibit the performance and observance by the Performer of their obligations hereunder.
4. The Performer hereby agrees and undertakes that during the period of engagement under this agreement they will:
 - (a) Make themselves available at all such times and places as may be directed by the Producer or the Director of the Program or their authorised representatives to attend production conferences, rehearsals, recording and filming sessions in relation to the said production.
 - (b) Not to perform or appear in the character or in any impersonations of the character played by them in the Program or in any other character in the Program or any impersonation thereof in any performance or production of whatever nature and for whatever purpose (including any film or any other television Broadcast including advertisements) and whether theatre, club or other medium without the prior consent in writing of the Producer. The Performer is hereby notified by the Producer that each and every television station televising the Program retains the right to decline to televise any advertisement in which the Performer appears within the telecast of the Program or any episode thereof.
 - (c) Co-operate in the promotion of the production and be available during normal working hours of the production for the taking of still photographs to be used by the Producer for publicity purposes for the Program and at such other times and places and upon such terms as are mutually acceptable to the Producer and the Performer and the Producer may use the Performer's name, likeness, photograph or biographical material (such biographical material to be approved by the Performer) to publicise, promote, advertise and generally exploit, other than by merchandising, the Program and the Performance of the Performer.
 - (d) Not divulge the story line or lines of the Program or any part thereof and that the Performer will not grant or give any interviews or make or issue any statement, information or expression of opinion or material for publicity or press purposes, whether verbal, documentary photographic or in the nature of illustration or otherwise in relation to the Program without the prior consent in writing of the Producer.
 - (e) Keep the Producer's Production Office and the assistant director/floor manager of the Program advised as to where the Performer may be contacted by telephone without reasonable delay.
 - (f) In relation to pilots, single plays and mini-series (programs with a fixed limited number of episodes) the Performer shall not take part in any hazardous or dangerous sport, pastime, stunt, activity or action which is not part of the Performer's normal activities and which may expose the Performer to unusual or unnecessary risk of personal injury without the written consent of the Producer having

been first sought and obtained. The Producer shall not unreasonably withhold such permission unless it nullifies the Producer's indemnity policy for the Program.

5. Wardrobe:

- (a) All properties, wigs, footwear and articles of clothing not possessed by the Performer and any article of clothing or footwear peculiar to any trade, calling occupation or sport shall be provided by the Producer.
- (b) Should the Producer desire the Performer to wear footwear and/or civilian dress of a type which is customarily worn by civilians of the present day in Australia the Performer may provide such wardrobe etc., if it is already in their possession. In the event that such wardrobe etc. is not in the Performer's possession, it shall be provided by the Producer.
- (c) All wardrobes etc. supplied by either the Producer or Performer shall be maintained in a satisfactory and hygienic condition by the Producer. Any damage to wardrobe etc. supplied by the Performer shall be the responsibility of the Producer who shall fully compensate the Performer for such damage.
- (d) All make-up shall be supplied by the Producer.

6. Insurance: The Producer agrees to insure the Performer for the duration of their engagement in accordance with the relevant Workers Compensation Act.

7. Termination of Engagement

- (a) An engagement for a fixed term shall terminate on the date specified in D.1 or D.2 or D.3.
- (b) Notwithstanding the provisions in Clause 7(a) any engagement of a Performer under this agreement may be terminated by the Producer without notice for negligence or misconduct.

8. Service of Notices etc.

- (a) Any notice, letter or other document required to be given hereunder by the Producer to the Performer shall be sufficiently given if handed personally to the Performer or posted by prepaid ordinary post in an envelope addressed to the Performer at the address specified in this Agreement or any change thereof notified in writing to the Producer.
- (b) Any notice, letter or other document required to be given hereunder by the Performer to the Producer shall be sufficiently given if handed to the Producer or the On-Line Producer or posted by prepaid ordinary post in an envelope addressed to the Producer at the address specified in this Agreement or any change thereof notified in writing to the Performer by the Producer.

9. Sex and Plurality: Where applicable for the purpose of this agreement, the singular shall include the plural and vice versa and the masculine shall include the feminine gender and vice versa.

10. The Performer authorises and empowers the Performer's Agent (if any) to deal with the Producer on the Performer's behalf on all matters arising out of this Agreement unless the Producer has been advised by the Performer in writing to the contrary.

11. Where a lender company is engaged by a producer to provide the services of a performer the Total Fee payable to that lender company will include an amount in compensation for the annual leave and superannuation contribution that would have been payable had the performer been engaged by the producer without the lender company at the Agreement Rate.

12. Where a Performer is entitled to residual payments pursuant to clause 5 or clause 7 of ATRRA, the Performer agrees that MEAA will act as his/her agent in the calculation, collection and distribution of those residual payments

13. Assignment

- (a) The Performer hereby assigns to the Producer all the rights set out herein and acknowledges that the Producer has the sole and exclusive right, title and interest in any and all recording of whatever nature of any work performed by the Performer in or in connection with the production and the Producer acknowledges that he is bound by and must observe the provisions of the ATRRA.
- (b) The Producer shall not assign or otherwise transfer any right of usage of the Program other than such rights of usage as are provided in this Agreement and in ATRRA.

14. The ordinary rules of law relating to contracts shall apply to this agreement.

Producer

Please initial

Performer

Please initial

APPENDIX 8

ARTIST STANDARD CONTRACT (PAY TELEVISION LENDER VERSION)