

Australian Television Repeats And Residuals Agreement 2004 (ATTRA 2004)

This DEED is effective as at and from 1 January 2004 between the Screen Producers' Association of Australia of Level 7, 235 Pyrmont Steet, Pyrmont, 2009, of the one part and the Media Entertainment and Arts Alliance of 245 Chalmers St, Redfern, 2016, of the other part.

WHEREAS:

- A. Representatives of SPAA have conferred with representatives of the Media, Entertainment and Arts Alliance from time to time with the view of reaching agreement as to:-
 - (a) The circumstances in which Repeat Fees, Australian Ancillary Usage Fees and Residual Fees are to be paid to members of the Alliance and the amount of such fees.
 - (b) The circumstances in which fees in respect of Ancillary Usage of Programs are to be paid to members of the Alliance and the amount of such fees; and
 - (c) Various related matters.
- B. SPAA and the Alliance have previously reached agreement in relation to Programs produced before 1 January 2004 and have recorded the terms of their agreement in the form of the following deeds:
 - (a) deed in relation to Programs produced prior to 14 February 1982;
 - (b) deed in relation to Programs produced between 14 February 1982 and before 1 January 1997;
 - (c) deed in relation to Programs produced between 1 January 1997 and 27 February 2000 (inclusive);
 - (d) deed dated 28 February 2000 in relation to Programs produced between 28 February 2000 and 31 December 2003 (inclusive) ('ATTRA 2000' which expression includes any variations agreed by SPAA and the Alliance). a copy of the deed is attached to this agreement as Attachment A.

The terms of the deeds referred to in paragraphs (a) – (c) above are confirmed in Attachment A.

- C. Representatives of the parties have reached agreement in their conferences in relation to Programs produced on and from 1 January 2004.
- D. It is the intention of the parties that the terms of their aforesaid agreement shall be binding on and observed by them jointly and severally and their members both present and future.
- E. The parties have agreed to name the agreement 'Australian Television Repeats and Residuals Agreement 2004' ('ATTRA 2004').
- F. The parties have further agreed to record the terms of their agreement in the form of a Deed.

NOW THIS DEED WITNESSETH that the terms of the aforesaid agreement between the parties are as follows:-

The Producer will pay Repeat Fees, Australian Ancillary Usage Fees and Residual Fees to

Performers in all Programs produced on or after 1 January 2004 in accordance with this agreement.

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, including the Recitals, unless the context otherwise requires:

'agreement' means this Deed.

'ATPA' means the Actors Television Programs Agreement, 2004 as varied to the date of this agreement and any award or industrial agreement made pursuant to the Workplace Relations Act 1996, varying, rescinding or replacing ATPA.

'Adjusted Distributor's Foreign Gross' means the total sum of:

- (a) Distributor's Foreign Gross;
- (b) all Distribution Advances and Distribution Guarantees:
 - (i) contributed towards the budgeted cost of the Program;
 - (ii) paid to any lender in repayment of any loan contributed towards the budgeted cost of the Program, where the security for such loan is the proceeds of the Distribution Advance or Distribution Guarantee; and/or
 - (iii) paid to an investor in the Program to recoup the investor's investment in the budget of the Program (prior to and in priority of any other investors recouping their investment in the Program), where a condition of such investment is the investor's entitlement to the proceeds of the applicable Distribution Advance or Distribution Guarantee.

'Ancillary Usage' means the usage of a Program arising from the exploitation of the copyright of the Program by the owner of that copyright for any or all purposes, excluding Free Television, associated community antenna reception installations, Australian Pay Television and theatrical purposes, and including but not limited to usage in ships at sea, aircraft, buses, or hotels and for usage on home video, foreign pay television, closed circuit television, video cassettes, video cartridges, video discs, linear webcasting, wire transmissions including:

- (a) A service (including a teletext service) that provides no more than data, or no more than text (with or without associated images); or
- (b) A service that makes programs available on demand on a point to point basis, including a dial up service,

and

any other form of mechanical and/or electronic reproduction now known or hereafter devised.

'Alliance' means the Media, Entertainment and Arts Alliance, an organisation of employees registered under the Workplace Relations Act 1996.

'Australia' means the Commonwealth of Australia and its territories.

'Australian Ancillary Usage Gross Receipts' means, with respect to the Ancillary Usage within Australia of a Program:-

- (a) The absolute gross income (in money or money's worth) received by the licensor from the licensing of the Program for Ancillary Usage within Australian; and

- (b) The absolute gross income realised by the Producer in sponsorship, advertising or other revenue from the linear webcasting of the Program; and
- (c) The absolute gross income realised by the owner of the copyright in a Program from the outright assignment of the owner's right, title and interest in respect of the Ancillary Usage of the Program within Australia to a bona fide assignee for value but not including any income realised by the assignee; and

In respect of such assignment the following provisions shall apply:

- (i) The Producer shall advise the Alliance in writing of any such assignment specifying the name and address of the assignee;
- (ii) If at any time the Alliance considers that the assignment is not a bona fide assignment for value it shall so advise the Producer in writing specifying the ground or grounds for its view;
- (iii) Upon receipt by the Producer of the notice referred to in (ii), the Producer and the Alliance shall promptly confer for the purpose of reaching agreement;
- (iv) If the Producer and the Alliance do not then agree and if either requests the other, both parties shall promptly appoint a person to determine by arbitration, whether or not the assignment is a bona fide assignment for value for the purposes of this agreement. The decision of the arbitrator shall be final and binding on both parties and any costs payable to the arbitrator and any costs related to the arbitration, such as venue, transcript or reporter's fees, shall be shared equally by the parties.

The phrase 'absolute gross income' shall not include:-

- (i) Sums realised or held by way of deposits or securities until and unless earned, other than such sums as are non returnable;
- (ii) Sums required to be paid as tax, as in the nature of turnover taxes, sales tax, value added tax or similar taxes which are based on the actual receipts from the Ancillary Usage of the Program or on any money to be remitted to or by the licensor but there shall not be excluded from the Ancillary Usage Gross Receipts any net income tax, franchise tax or excess profit tax or similar tax payable by the licensor on that net income for the privilege of doing business.

'Australian Ancillary Usage Fee' means the payment due to a Performer in respect of the Ancillary Usage in Australia of a Program in which the Performer was employed.

'Australian Control' means that key decisions relating to (but not limited to) story line, casting, direction and other aspects of production are made by resident Australian managerial personnel and companies.

'Basic Negotiated Fee' and **'BNF'** means the sum total of the minimum rate of pay prescribed by ATPA for work performed by a Performer in any Program plus the Performer's personal margin, if any, but shall not include Repeat Fees, Residual Fees, fees for Ancillary Usage or any payments or allowances for penalties, overtime, or any other allowances.

'Best-Of Program' means any compilation or special program substantially made up of footage from one or more episodes of the Program, including anniversary specials and retrospectives but excludes any Special Sketch Comedy Program.

'Broadcast' means delivering programs to persons having equipment appropriate for receiving that service whether the delivery uses the radio frequency, cable, optical fibre, satellite or any other means or a combination of those means but does not include:

- (a) A service (including a teletext service) that provides no more than data, or no more than text (with or without associated images); or
- (b) A service that makes programs available on demand on a point to point basis, including a dial up service.

'Children's Program' having regard to sub-clause (e) hereof means a Program:-

- (1) Which is made specifically for viewing by children up to 16 years of age and which, except for a children's Pay TV Broadcast, is produced for telecasting before 6.00 pm. on any day; or
- (2) Which the Producer of the Program and the Alliance agree to be a Children's Program.

In respect of a Children's Program the following provisions will apply:-

- (a) The Producer shall provide the Alliance in writing with such information as the Producer considers appropriate in support of the proposed classification;
- (b) If the Alliance considers the Program is not a Children's Program for the purposes of this agreement it shall so advise the Producer in writing within 14 days of the date of service on the Alliance of the notice referred to in (a) specifying the ground or grounds for its view;
- (c) Upon receipt by the Producer of the notice referred to in (b) the Producer and the Alliance shall promptly confer for the purpose of reaching agreement;
- (d) If the Producer and the Alliance do not then agree and if either requests the other, both parties shall promptly appoint a person to determine by arbitration whether or not the Program is a Children's Program for the purposes of this agreement. The decision of the arbitrator shall be final and binding on both parties and any costs payable to the arbitrator and any costs related to the arbitration such as hire of venue, transcript or reporters fees shall be shared equally by the parties;
- (e) For the purpose of this agreement a Children's Program as defined herein shall be such if:-
 - (i) the Alliance accepts such classification by the Producer; or
 - (ii) the Alliance does not notify the Producer in terms of paragraph (b) herein; or
 - (iii) Following a conference or conferences referred to in paragraph (c), representatives of the Producer and the Alliance so agree; or
 - (iv) An arbitrator acting in terms of paragraph (d) so rules.

(NOTATION: See Clause 3.2. for provisions applicable when a Program telecast as a Children's Program is subsequently telecast in circumstances other than those applicable to a Children's Program.)

'Distributor's Advance' means the amount that a distributor agrees to pay to the Producer on a particular date(s) in advance of and on account of the future income

received by the distributor from the exploitation of the rights in the Program outside Australia granted to the distributor.

'Distributor's Foreign Gross' shall mean, with respect to any Program:-

- (a) The absolute gross income (in money or money's worth) received by the distributor from the licencing of the Program for television exhibition outside Australia and Ancillary Usage of the Program outside Australia; and
- (b) Where the right, title and interest in respect of the use of the Program outside Australia is irrevocably assigned to a bona fide assignee for value, the absolute gross income realised by the assignor from such outright assignment but not any income realised by the assignee;

In respect of such assignment the following provisions shall apply:-

- (i) The Producer shall advise the Alliance in writing of any such assignment specifying the name and address of the assignee;
- (ii) If at any time the Alliance considers that the assignment is not a bona fide assignment for value it shall so advise the Producer in writing specifying the ground or grounds for its view;
- (iii) Upon receipt by the Producer of the notice referred to in (ii), the Producer and the Alliance shall promptly confer for the purpose of reaching agreement;
- (iv) If the Producer and the Alliance do not then agree if either requests the other, both parties shall promptly appoint a person to determine by arbitration, whether or not the assignment is a bona fide assignment for value for the purposes of this agreement. The decision of the arbitrator shall be final and binding on both parties and any costs payable to the arbitrator and any costs related to the arbitration, such as venue, transcript or reporters' fees, shall be shared equally by the parties;
- (c) Income expressed in Clause 7.1(b)(iii) and 7.2(b) of this agreement to form part of the Distributor's Foreign Gross;
- (d) All such income derived from sales for overseas exhibition of the Program whether:-
 - (i) Such income is received prior to the completion of the Program (understood in the industry as a 'pre-sale'); or
 - (ii) Such income is received after the completion of the Program;

but excluded from Distributor's Foreign Gross are such sums invested in the production.

The phrase 'absolute gross income' shall not include:-

- (i) Sums realised or held by way of deposits or security, until and unless earned, other than such sums as are non-returnable;
- (ii) Sums required to be paid or withheld as taxes, in the nature of turnover taxes, sales taxes or similar taxes based on the actual receipts from the Program or in respect of ancillary rights of such Program or on any money to be remitted to or by either the distributor or the Producer, but there shall not be excluded from Distributor's Foreign Gross any net income tax, franchise tax or excess profit tax or similar tax payable by either the distributor or the

Producer on their net income for the privilege of doing business;

- (iii) Frozen foreign currency until the distributor or Producer shall have either the right to use such foreign currency in or to transmit such foreign currency from the country or territory where it is frozen. In the event such currency may be utilised or transmitted as aforesaid, it shall be taken into account in the calculation to be made for payment of Residual Fees in this agreement in the reporting period which is current at the time such right to use or transmit accrues;
- (iv) The sums realised by either the distributor or the Producer from any Program televised on a US Network;
- (v) Income which in Clause 7.1(b)(i) and (ii) is expressed not to form part of the Distributor's Foreign Gross.

Distributor's Foreign Gross realised in any foreign currency in any Reporting Period shall be deemed to be converted to Australian dollars at the prevailing free market rate of exchange at the close of each Reporting Period.

'Distributor's Gross Receipts' means the balance of Adjusted Distributor's Foreign Gross after deduction of commissions and expenses equal to 35% of Adjusted Distributor's Foreign Gross.

'Distributor's Guarantee' means the amount that a distributor agrees to pay to the Producer on particular date(s) where, if that amount has not been achieved from actual income received by the distributor by those date(s) from the exploitation of the rights in the Program outside Australia granted to the distributor, then the distributor will have to pay the shortfall, and includes so-called 'minimum guarantees'.

'Exhibition Day' means in relation to Pay Television any number of Broadcasts of a Program during a sequential twenty-four (24) hour period, commencing from the first Broadcast of the Program.

'Flashback' means a segment from a previous Program of the same Program serial/series which does not exceed 2 minutes in duration.

'Free Television' means Broadcasting a program free to the general public and includes associated community antenna reception.

'New Format' means a new version of a Program re-edited in a new format from:

- (a) a mini-series format (not exceeding a total of 8 commercial hours duration) to a telemovie or other episodic format (where each episode is not less than a commercial half hour); or
- (b) a telemovie or a telemovie-length format to an episodic format (where each episode is not less than a commercial half hour), whether or not included as part of a mini-series, series or serial.

'New Program' means a Program re-edited to create a new form of the same Program or the same Program series with the same Broadcast length as the Program for contemporaneous exploitation but excludes any New Format and any Special Sketch Comedy Program.

'Original Sketch Comedy Program' means a single series of episodes of a Program produced at the same time in a sketch comedy format;

'Pay Television' means Broadcasting a program by means of a service that:

- (a) provides programs that, when considered in the context of the service being provided, appear to be intended to appeal to the general public;
- (b) are made available to the general public but only on payment of subscription fees (whether periodical or otherwise).

'Performer' means an employee to whom ATPA applies other than:-

- (a) A 'double' being an employee who takes the place of a Performer but who does not speak dialogue used in the production and is not photographed in a manner in which enables recognition; and
- (b) An 'extra' being an employee who does not speak dialogue individually or perform individually as directed and who does not mime; and
- (c) A 'stand-in' being an employee who replaces another employee for the purposes only of rehearsal and/or technical set up such as lighting, camera angles etc.

'Play' means:-

- (a) In relation to Free Television:
 - (i) an analogue Broadcast of the Program;
 - (ii) a digital Broadcast of the Program; or
 - (iii) a simultaneous Broadcast of the Program by means of analogue and digital transmissions.
- (b) In relation to Pay Television:
 - (i) an analogue Broadcast of the Program;
 - (ii) a digital Broadcast of the Program;
 - (iii) a simultaneous Broadcast of the Program by means of analogue and digital transmissions on ten (10) Exhibition Days in a two year period.

'Producer' means a person or company who employs a Performer to work in a Program.

'Producer's Investment' means all monetary payments by the Producer to third parties toward the cost of production of the Program (which are made at arms length, are verifiable and are at no greater than market costs) actually expended by the Producer from the Producer's own funds and which are not recovered by the Producer from the budget of the Program. Producer's Investment includes overages and payments to a related body corporate of the Producer where that related body corporate is the sub-producer of the Program but does not include payments to any individual producer or relative of any individual producer or other related body corporate of the Producer.

'Program' means any material content of a specific duration made for television and includes an episode or episodes in a serial, drama or comedy and a series, drama or comedy.

NOTATION: In applying the definition of 'Program' in this agreement, reference must be made to Clause 2, Scope and Parties Bound, below.

'Repeat Fee' means the payment (other than in respect of Ancillary Usage of a Program) due under this agreement to a Performer in respect of the Broadcasting in any television area in Australia for the second or any subsequent Play of a Program in which the Performer was employed.

'Residual Fee' means the payment due under this agreement to a Performer in respect of either or both of the Broadcasting outside Australia or the Ancillary Usage outside Australia of a Program in which the Performer was employed.

'Reporting Period' means the six monthly periods ending on the 30th June and 31st December in each calendar year.

'Serial Drama' and **'Serial Comedy'** means a dramatic production for television comprising episodes of specific duration which are not self contained but which form part of a series of such episodes and which have a continuing theme.

'Series Drama' and **'Series Comedy'** means a dramatic production for television comprising episodes of specific duration each of which is self contained and uses the same leading fictional characters.

'SPAA' means the Screen Producers Association of Australia, an organisation of employers registered under the Workplace Relations Act, 1996.

'SPAA Members' means those persons who are members of SPAA at any time during the term of this agreement, and who presently comprise the persons described as 'SPAA Members' under the signature clause for this agreement.

'Special Sketch Comedy Program' means an Original Sketch Comedy Program of no more than 60 minutes in duration re-edited using sketches solely taken from the Original Sketch Comedy Program to create a new form of the Original Sketch Comedy Program and which excludes, for the avoidance of doubt, any new form of the Original Sketch Comedy Program:

- (a) of more than 60 minutes in duration; or
- (b) containing sketches or segments from programs not forming part of the Original Sketch Comedy Program, including, without limitation, from any programs forming part of any past or subsequent series to that of the Original Sketch Comedy Program.

'US Network' means the aggregate of stations known and recognised as the N.B.C. Network, C.B.S. Network, A.B.C. Network or FOX Network and a telecast on a U.S. Network shall be a telecast over the full facilities of one of the N.B.C., C.B.S., A.B.C. or FOX Networks.

1.2 In the interpretation of this agreement unless the context requires otherwise:

- (a) the singular includes the plural and expressions referring to the male sex include the female sex and visa versa;
- (b) clause headings will be disregarded;
- (c) where a word or phrase is given a defined meaning, its other grammatical forms have a corresponding meaning;
- (d) the word 'person' includes a natural person, the estate of a natural person, a company, a government, statutory or other authority, an association or joint venture (incorporated or unincorporated), a partnership and a trust;
- (e) a reference to any person or to any party includes that person's or party's executors, administrators, successors or permitted assigns;
- (f) references to any 'party,' 'clause,' 'schedule,' 'annexure,' 'appendix' or 'attachment' are references to a party, clause, schedule, annexure, appendix or attachment of or to this agreement and a reference to this agreement includes any and all schedules, annexures and appendices;
- (g) the word 'includes' in any form is not a word of limitation.

2. SCOPE AND PARTIES BOUND

A. This agreement shall apply to SPAA and SPAA Members from time to time, and the Alliance and its members from time to time who are Performers.

B. This agreement shall apply in respect of Programs the production of which:-

(a) is commenced after the date of operation of this agreement and in which Performers are employed by a member of SPAA and which are Serial Drama, Serial Comedy, Series Drama and Series Comedy (other than variety), pilots and single drama or comedy Programs for television exhibition; and

(b) (i) The Producer is an Australian citizen or permanent resident of Australia and/or company registered in Australia and the Program is subject to total Australian Control; or

(ii) Key creative decisions relating to the story line, casting, direction and other aspects of production are shared by Australian and overseas managerial personnel or companies. For the purpose of this definition, key creative decisions do not include the exercise of customary rights of approval.

'Customary rights of approval' will apply where a Producer submits to an overseas source of financing (by way of investment, loan, negative pick-up, presale or other advance distribution agreement) the following elements for approval:

- (a) major cast;
- (b) heads of department, such as director of photography, editor and art director;
- (c) final shooting script;
- (d) production budget and production plans.

During the making of the production, the overseas source of financing shall have the right to have a representative visit the set and to view rushes, assemblies and fine cuts of the production.

C. (i) Where a Program is not otherwise covered by this agreement it shall be subject to separate negotiations between the Producer and the Alliance. The position of the Alliance and SPAA in relation to rates of pay and conditions of employment for Performers appearing in such Programs is set out in the Annexure hereto identified as ATRRA Appendix 8.

(ii) Where an overseas resident Performer is proposed for an engagement in a Program, the Producer shall notify the Alliance of that proposal. Schedule A hereto (identified as ATRRA Appendix 9) sets out the terms of an agreement between SPAA and the Alliance regarding the entry of overseas artists into Australia to perform work in certain Programs.

(iii) If there is a dispute between the Producer and the Alliance as to the application of Clauses 2B(b) and 2C(i) to any Program, both parties shall promptly appoint a person to settle the dispute by arbitration. The decision of the arbitrator shall be final and binding on both parties and any costs related to the arbitration such as hire of venue, transcript or reporter's fees shall be shared equally by the parties.

The following shall be regarded as factors which may be relevant in making a determination as to whether a Program is within Clause 2B(b)(ii):

1. Joint ownership of the copyright in the original works involved in the completed Program;
2. Joint ownership of the copyright in the completed Program;
3. Shared production/executive producer/producer credits;
4. Shared creative control;
5. Shared responsibility for any legal action that may arise from the exhibition or other exploitation of the Program, eg. defamation, copyright;
6. Shared income (excluding normal distribution commissions) derived from, or sharing of territories for the exploitation of the Program.

It is agreed that other factors may also be relevant in particular cases.

It is understood that a question of whether there is shared creative control for the purpose of definition can arise in relation to a single Australian incorporated company which has overseas shareholders, personnel or other overseas elements involved.

3. REPEAT FEES

(Except in respect of Programs of the kind referred to in Clause 2B(b)(ii) as to which see Clause 10).

The Repeat Fees set out in this clause are payable for Broadcast of the Program in Australia whether on Free Television or Pay Television.

3.1 Programs Other Than Children's Programs

The amount of the Repeat Fee due to a Performer shall be determined by calculating according to the number of Plays of the Program set out in column 1 below the percentage set out adjacent to that Play in column 2 below of the BNF paid to the Performer for the Performer's work in the Program.

COLUMN 1 (Number of Plays of Program)	COLUMN 2 (Percentage of Performer's BNF for Program)
Second Play (first repeat) (Free Television or Pay Television)	35%
Third Play (second repeat) (Free Television or Pay Television)	25%
Fourth Play (third repeat) (Free Television or Pay Television)	10%
Fifth Play and each subsequent Play (fourth and each subsequent repeat): Free Television:	15%
Pay Television:	2.5%

(See Clause 4.3 for procedure of payment).

3.2 Children's Programs

- (a) The amount of the Repeat Fee due to a Performer shall be determined by calculating according to the number of Plays of the Program set out in column 1 below the percentage set out adjacent to those Plays in column 2 below of the BNF paid to the Performer for the Performer's work in the Program.

COLUMN 1 (Number of Plays of Program)	COLUMN 2 (Percentage of Performer's BNF for Program)
Second and third Plays (Free Television or Pay Television)	35%
Fourth, fifth and sixth Plays (Free Television or Pay Television)	35%
Seventh, eighth and ninth Plays and subsequent	

group of three Plays:	
Free Television:	30%
Pay Television:	5%

(See Clause 4.3 for procedure of payment for seventh and subsequent Plays)

- (b) Where a Program has been telecast as a Children's Program and thereafter is telecast in circumstances other than those applicable to a Children's Program Repeat Fees shall, unless the Alliance agrees to the contrary, be paid in accordance with Clause 3.1 to the extent that Repeat Fees paid for the telecasting of the Program as a Children's Program when converted to the equivalent of Repeat Fees under Clause 3.1 do not satisfy the entitlement of Clause 3.1.

4. PAYMENT OF REPEAT FEES

- 4.1 The Repeat Fees prescribed in Clauses 3.1 and 3.2 for the respective Play numbers of a Program specified in Column 1 in those clauses shall become due on the first occasion a Program is Played or where the one Repeat Fee is payable for a number of Plays of a Program, when the first of such number of Plays is Played, in any television area in Australia.

- 4.2 (a) Payment of Repeats Fees up to and including the payment for a fourth Play prescribed by Clause 3.1 and the payment for the fourth, fifth and sixth Plays prescribed in Clause 3.2(a) may be made when the Performer is employed to work in the Program for which the Repeat Fee is payable or at any time before the completion of the employment for that Program.

- (b) Plays acquired pursuant to Clause 4.2(a) will be available for exploitation by the Producer for the period required by the commissioning broadcaster(s) of the Program, including, without limitation, any commissioning Free Television or Pay Television broadcasters (collectively the 'Licence Period') PROVIDED THAT:

- (i) the Producer must endeavour to negotiate the shortest possible Licence Period(s) with the commissioning broadcaster(s);
- (ii) the Licence Period must not be more than seven years from the date of the first transmission of the Program, subject to Clause 4.2(c);
- (iii) for Programs with both a commissioning Free Television broadcaster and a commissioning Pay Television broadcaster, the Licence Period will be as long as is necessary to accommodate the collective requirements of those broadcasters as long as the Licence Period is not more than seven years from the date of first transmission of the Program, subject to Clause 4.2(c);

- (c) Payment of Repeat Fees for the following Pay Television Plays, in addition to the maximum number of Plays that may be acquired pursuant to Clause 4.2(a), may be made at the point of engagement of the Performer on the following basis:

- (i) for Programs other than Children's Programs, two additional Pay Television Plays may be acquired for the relevant Repeat Fees prescribed in Clause 3.1 and all six Plays acquired may be used at any time in any sequence within the Licence Period without incurring any further payment obligations to Performers PROVIDED THAT Licence Period is not more than six years from the date of first transmission of the Program;
- (ii) for Children's Programs, three additional Pay Television Plays may be acquired for the relevant Repeat Fees prescribed in Clause 3.2(a) and all nine Plays acquired may be used at any time in any sequence within the Licence Period without incurring any further payment obligations to Performers PROVIDED THAT the Licence Period is not more than six years from the date of first transmission of the Program;

- (d) For Programs with a commissioning Free Television broadcaster only, where a Pay Television Play is licensed before or after the end of the Licence Period, that one Pay Television Play only may continue after the expiration of the Licence Period until its expiration PROVIDED THAT the date of expiration of the licence for that one Pay Television Play is not more than seven years from the date of first transmission of the Program.
- (e) Despite anything to the contrary in this Clause 4.2, in the case of a Children's Program SPAA may seek an extension of the maximum Licence Period described in Clauses 4.2(b) or 4.2(c) (as the case may be) for an individual Program where the above limitations causes hardship for a Producer with respect to the Program;
- (f) the Alliance may request and the Producer will provide relevant information, on a commercial in confidence basis, to confirm the Licence Period.
- (g) Further repeats may not be contracted at point of engagement or at anytime before the completion of the Program.

4.3 Payments of Repeat Fees for the fifth and any subsequent Play of a Program prescribed by Clause 3.1 or for the seventh, eighth and ninth Plays and any subsequent group of Plays of a Program prescribed by Clause 3.2(a) shall not be made at any time when a payment prescribed by Clause 4.2(a) may be made but may be made at any time thereafter provided that no such payment shall be made at any one time for more than a total of four subsequent Plays of Programs referred to in Clause 3.1 or a total of six subsequent Plays of Programs referred to in Clause 3.2(a).

4.4 No Repeat Fee shall be paid later than the date of the first Play in respect of which the Repeat Fee is paid.

5. AUSTRALIAN ANCILLARY USAGE FEES

(Except in respect of Programs of the kind referred to in Clause 2B(b)(ii) as to which see Clause 10).

5.1 There shall be no Ancillary Usage of a Program in Australia until that Program has been Broadcast once in a television area in Australia.

5.2 Programs of not more than 1 hour duration

- (a) The amount of the fee payable to a Performer in respect of the Ancillary Usage of a Program of not more than 1 hour duration in Australia shall be determined by calculating the percentage of the BNF which the Performer received for the Performer's work in the Program and the amount of the Australian Ancillary Usage Gross Receipts for the Program as set out in the table below, subject always to Clause 5.2(b).

	1	2	Australian Ancillary Usage Gross Receipts	
			Programs of not more than 1/2 hour	Programs of more than 1/2 hour but not more than 1 hour
	% of BNF	Cumulative BNF	\$A	\$A
1st Payment	2.5%	(2.5%)	-	--
2nd Payment	2.5%	(5%)	2,000	4,000
3rd Payment	2.5%	(7.5%)	4,000	8,000
4th Payment	2.5%	(10.5%)	6,000	12,000
5th Payment	2.5%	(12.5%)	8,000	16,000

6th Payment	2.5%	(15%)	10,000	20,000
7 th Payment	2.5%	(17.5%)	12,000	24,000
8 th Payment	2.5%	(20%)	14,000	28,000
Each Subsequent Payment	An additional 2.5%	(An additional 2.5% for each Subsequent Payment)	For each additional 2,000	For each additional 4,000

- (b) Despite Clause 5.2(a) but subject to the Alliance's auditing rights described in Clauses 13.4 and 13.5, where the Producer nominates to the Alliance at the time of the first release of any product created pursuant to the Ancillary Usage ("Ancillary Usage Product") in Australia the intention to recoup the verifiable cost of production of the Ancillary Usage Product, the 9th and subsequent payments of Australian Ancillary Usage Fees may be made after recoupment of the verifiable cost of production of the Ancillary Usage Product apportioned to Australia in accordance with clause 5.7 PROVIDED THAT when the verifiable cost of production of the Ancillary Usage Product apportioned to Australia in accordance with clause 5.7 is recouped the Producer will pay each Performer 3% of the Performer's BNF:

- (i) for each \$2,000 of Australian Ancillary Usage Gross Receipts exceeding \$14,000 for Programs of not more than half hour duration; and
- (ii) for each \$4,000 of Australian Ancillary Usage Gross Receipts exceeding \$28,000 for Programs of more than half hour but less than one hour duration.

5.3 Children's Programs of more than 1 hour duration

- (a) The amount of the fee payable to a Performer in respect of the Ancillary Usage of a Children's Program of more than 1 hour duration in Australia shall be determined by calculating the percentage of the BNF which the Performer received for the Performer's work in the Children's Program and the amount of the Australian Ancillary Usage Gross Receipts for the Children's Program as set out in the table below, subject always to Clause 5.3(b).

	1	2	Australian Ancillary Usage Gross Receipts
	% of BNF	Cumulative BNF	\$A
1st Payment	2.5%	(2.5%)	
2nd Payment	2.5%	(5%)	6,000
3rd Payment	2.5%	(7.5%)	12,000
4th Payment	2.5%	(10.5%)	18,000
5th Payment	2.5%	(12.5%)	24,000
6th Payment	2.5%	(15%)	30,000
7 th Payment	2.5%	(17.5%)	36,000
8 th Payment	2.5%	(20%)	42,000
Each Subsequent Payment	An additional 2.5%	(For each additional 2.5%)	For each additional 6,000

- (b) Despite Clause 5.3(a) but subject to the Alliance's auditing rights described in Clauses 13.4 and 13.5, where the Producer nominates to the Alliance at the time of the first release of an Ancillary Usage Product in Australia the intention to recoup the verifiable cost of production of the Ancillary Usage Product, the 9th and subsequent payments of Australian Ancillary Usage Fees may be made after recoupment of the verifiable cost of production of the Ancillary Usage Product apportioned to Australia in accordance with clause 5.7 PROVIDED THAT when the verifiable cost of production of the Ancillary Usage Product apportioned to Australia in accordance with clause 5.7 is recouped the Producer will pay each Performer 3% of the Performer's BNF for each \$6,000 of Australian Ancillary Usage Gross Receipts exceeding \$42,000.

5.4 Programs (Other than Children's Programs) of more than 1 hour duration

The amount of the fee payable to a Performer in respect of the Ancillary Usage of a Program (Other than a Children's Program) of more than 1 hour duration in Australia shall be determined by calculating the percentage of the BNF which the Performer received for the Performer's work in the Children's Program and the amount of the Australian Ancillary Usage Gross Receipts for the Children's Program as set out in the table below or the proportion of the Ancillary Usage Gross Receipts as set out after the table below (as the case may be).

	1	2	Australian Ancillary Usage Gross Receipts
	% of BNF	Cumulative BNF	\$A
1st Payment	2.5%	(2.5%)	up to 6,000

and if the amount of Australian Ancillary Usage Gross Receipts reaches \$6,000 all Performers in the aggregate shall be paid 16.67% of the balance of any further Australian Ancillary Usage Gross Receipts after deduction of commissions and expenses equal to 35% of such further Australian Ancillary Usage Gross Receipts, with such further Australian Ancillary Usage Fees payable out of such further Australian Ancillary Usage Gross Receipts received by the Producer and to be shared amongst all the Performers in a manner determined in accordance with Clause 11.

5.5 Conditions for payment of the fees due under Clauses 5.2, 5.3 and 5.4 shall be as follows:-

- (a) The initial payment of 2.5% may be made at any time from the date of engagement of the Performer but in any event no later than the first Ancillary Usage of the Program in Australia;
- (b) The second or subsequent payment shall be made when the Ancillary Usage Gross Receipts reach the respective levels of the table set out in 5.2, 5.3 or 5.4 (as the case may be) or at any time after the completion of the Performer's engagement in a Program.

5.6 Where a performance is communicated to the public via the internet pursuant to the rights of the Producer in this Clause 5 to do so, the Producer will use all reasonable endeavours (and will use all reasonable endeavours to require others to do so) to prevent users from making copies of the performance (other than temporary copies made in the technical course of communication). However, the Producer does not warrant that the technical means used will not be able to be circumvented.

5.7 Where an Ancillary Usage Product is intended to be released both in and outside Australia, then the Producer must apportion the verifiable cost of production of the Ancillary Usage Product between Australia and the rest of the world using a reasonable method of apportionment. The Producer will notify the Alliance in writing of the method of apportionment used by the Producer. If the Alliance contends that the method of apportionment is not reasonable, it will notify the Producer in writing specifying the grounds for its view. Upon receipt by the Producer of the Alliance's notice, the Producer and the Alliance will promptly use all reasonable efforts to resolve any disagreement by discussion between them. If the Producer and the Alliance remain in disagreement after such discussions and at the request of either party, both parties will promptly appoint a person to determine by arbitration, whether or not the method of apportionment is reasonable. The decision of the arbitrator shall be final and binding on both parties and any costs payable to the arbitrator and any costs related to the arbitration, such as venue, transcript or reporter's fees, shall be shared equally by both parties.

6. LIABILITY FOR PAYMENT OF AUSTRALIAN ANCILLARY USAGE FEES AND REPEAT FEES

The employer of a Performer shall be liable to pay any Repeat Fee and Ancillary Usage fee to which that Performer becomes entitled under this agreement.

7. RESIDUAL FEES

7.1 U.S. Network Prime Time

Except in respect of Programs of the kind referred to in clause 2B(b)(ii) as to which see Clause 10.

- (a) The amount of the Residual Fee payable to a Performer in respect of a Program televised on a US Network shall be determined by calculating according to the number of Plays of the Program set out in column 1 below the percentage set out adjacent to those Plays in column 2 below of the BNF paid to the Performer for the Performer's work in the Program.

COLUMN 1	COLUMN 2
Number of Plays of Program	Percentage of Performer's BNF
First Play	100%
Second Play	100%
Each subsequent Play	25%

7.2 U.S. Network Non Prime Time

(Except in respect of Programs of the kind referred to in Clause 2B(b)(ii) as to which see Clause 10).

- (a) The amount of the Residual Fee payable to a Performer in respect of a Program televised on a U.S. Network shall be determined by calculating according to the number of Plays of the Program set out in column 1 below the percentage set out adjacent to those Plays in column 2 below of the BNF paid to the Performer for the Performer's work in the Program;

COLUMN 1	COLUMN 2
Number of Plays of Program	Percentage of Performer's BNF Program
First and second Play	100%
Each subsequent Play	25% of the payment for the first two Plays

- (b) Notwithstanding any other provision in this agreement:-

- (i) A Program regarding which payment of 100% of the BNF has been made in respect of the first and second Play on a U.S. Network under paragraph (a) of this sub-clause, may, if that Program has not been Played on that U.S. Network, be televised or licenced for Ancillary Usage anywhere in the world (except on a U.S. Network) without any further Residual Fee being paid to any Performer in that Program and income received in respect of such televising or licencing of the Program shall not form part of the Distributors Foreign Gross defined in this agreement;
- (ii) Where a payment of 100% of the BNF has been made in respect of the first and second Play of a Program on a U.S. Network under paragraph (a) of this sub-clause and the Program in respect of which that payment has been made has not been Played a second time on that U.S. Network, one Play of the Program, if sold as one Play and not as part of the sale of more than one Play, may be sold to each television area in the USA (including any other U.S. Network) without any further Residual Fee being paid to any Performer in that Program and income received in respect of such sales shall not form part of the Distributors Foreign Gross;
- (iii) Plays of a Program additional to those mentioned in 7.1(b)(ii) may be sold to the same television area to which that one Play was sold (either with the consent of the Alliance and within six months of the date of the sale of that

one Play or after six months of the date of such sale) and income received in respect of the sale of such further Plays of that Program shall form part of the Distributors Foreign Gross as defined in this agreement.

7.3 New Zealand

(Except in respect of Programs of the kind referred to in Clause 2B(b)(ii) as to which see Clause 10)

- (a) Where the first sale of any Program or the first licencing of a Program for Ancillary Usage overseas, other than to a U.S. Network, is for Playing or Ancillary Usage in New Zealand, the amount to be paid to the Performer as a Residual Fee in respect of that Program shall be 2.5% of the Performer's BNF in that Program, which payment shall be deducted from any payment to which the Performer may subsequently be entitled to under Clause 7.4 of this agreement in respect of that Program.
- (b) Receipts from any such Playing or licencing in New Zealand shall form part of the Distributor's Foreign Gross of that Program.

7.4 Elsewhere

(Except in respect of Programs of the kind referred to in Clause 2B(b)(ii) as to which see Clause 10).

(a) Programs of not more than 1 hour duration

- (i) The amount of any Residual Fee payable to a Performer in respect of a Program of not more than 1 hour duration televised other than as provided for in Clause 7.1 and 7.2 and in respect of the Ancillary Usage of the Program outside Australia shall be determined by calculating the percentage set out in column 1 below of the Performer's BNF for that Program according to the length of the Program and the amount of the Distributor's Foreign Gross for the Program which are also set out in the table below, subject always to Clause 7.4(a)(ii).

	1	2	Distributor's Foreign Gross	
			Not more than 1/2 hour	More than 1/2 hour but not more than 1 hour
	% of BNF	Cumulative BNF	\$A	\$A
1st Payment	15%	(15%)	-	-
2nd Payment	15%	(30%)	10,000	20,000
3rd Payment	10%	(40%)	15,000	30,000
4th Payment	10%	(50%)	25,000	50,000
5th Payment	7.5%	(57.5%)	35,000	70,000
6th Payment	7.5%	(65%)	45,000	90,000
7th Payment	5%	(70%)	55,000	110,000
8th Payment	5%	(75%)	65,000	130,000
9th Payment	5%	(80%)	75,000	150,000
10th Payment	5%	(85%)	85,000	170,000
11th Payment	5%	(90%)	95,000	190,000
Each Subsequent Payment	An additional 3.75%	(An additional 3.75% for each Subsequent Payment)	For each additional 10,000	For each additional 20,000

- (ii) Despite Clause 7.4(a)(i) but subject to clause 7.6 and to the Alliance's auditing rights described in Clauses 13.4 and 13.5, where the Producer nominates to the Alliance at the time of production of the Program the intention to recoup the Producer's Investment, the 12th and subsequent payments of the Residual Fees may be made after such recoupment PROVIDED THAT when the Producer's

Investment is recouped, the Producer will pay each Performer 5% of the Performer's BNF:

- (A) for each \$10,000 of Distributor's Foreign Gross exceeding \$95,000 for Programs of not more than half hour duration; and
- (B) for each \$20,000 of Distributor's Foreign Gross exceeding \$190,000 for Programs of more than half hour but less than one hour duration.

(b) Children's Programs of more than 1 hour duration

- (i) The amount of any Residual Fee payable to a Performer in respect of a Children's Program of more than 1 hour duration televised other than as provided for in Clause 7.1 and 7.2 and in respect of the Ancillary Usage of the Children's Program outside Australia shall be determined by calculating the percentage set out in column 1 below of the Performer's BNF for the Children's Program and the amount of the Distributor's Foreign Gross for the Children's Program which are also set out in the table below, subject always to Clause 7.4(b)(ii).

	1	2	Distributor's Foreign Gross
	% of BNF	Cumulative BNF	\$A
1st Payment	15%	(15%)	-
2nd Payment	15%	(30%)	30,000
3rd Payment	10%	(40%)	45,000
4th Payment	10%	(50%)	75,000
5th Payment	7.5%	(57.5%)	105,000
6th Payment	7.5%	(65%)	135,000
7th Payment	5%	(70%)	165,000
8th Payment	5%	(75%)	195,000
9th Payment	5%	(80%)	225,000
10th Payment	5%	(85%)	255,000
11th Payment	5%	(90%)	285,000
Each Subsequent Payment	An additional 3.75% for each Subsequent Payment	(An additional 3.75% for each Subsequent Payment)	For each additional 30,000

- (ii) Despite Clause 7.4(b)(i) but subject to clause 7.6 and to the Alliance's auditing rights described in Clauses 13.4 and 13.5, where the Producer nominates to the Alliance at the time of production of the Program the intention to recoup the Producer's Investment, the 12th and subsequent payments of the Residual Fees may be made after such recoupment PROVIDED THAT when the Producer's Investment is recouped the Producer will pay each Performer 5% of the Performer's BNF for each \$30,000 of Distributor's Foreign Gross exceeding \$285,000.

(c) Programs (Other Than Children's Programs) of more than 1 hour duration

The amount of any Residual Fee payable to a Performer in respect of a Program (other than a Children's Program) of more than 1 hour duration televised other than as provided for in Clause 7.1 and 7.2 and in respect of the Ancillary Usage of the Program outside Australia shall be determined by calculating the percentage set out in column 1 below of the Performer's BNF for the Program according to the amount of the Distributor's Gross Receipts for that Program which are also set out below or the proportion of Distributor's Gross Receipts as set out after the table below (as the case may be).

	1	2	Distributor's Gross Receipts
	% of BNF	Cumulative BNF	\$A
1st Payment	15%	(15%)	

2nd Payment	15%	(30%)	Up to 45,000
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and if the amount of Distributor's Gross Receipts reaches \$45,000 all Performers in the aggregate shall be paid 16.67% of any further Distributor's Gross Receipts, payable out of Distributor's Gross Receipts received by the Producer (after recoupment of any Distributor's Advance and Distributor's Guarantee) and to be shared amongst all the Performers in a manner determined in accordance with Clause 11.

For the avoidance of doubt, the 16.67% of Distributor's Gross Receipts payable to the Performers under this Clause 7.4(c):

- (i) is calculated on the amount of Distributor's Gross Receipts exceeding \$45,000;
- (ii) continues to accrue during the period the distributor(s) are recouping any Distributor's Advance and/or Distributor's Guarantee;
- (iii) is payable from all Distributor's Gross Receipts following recoupment of any Distributor's Advance and Distributor's Guarantee.

7.5 Limit on Residual Payments

(Except in respect of Programs of the kind referred to in Clause 2(B)(b)(ii) as to which see Clause 10.)

Except where a payment is made to a Performer under Clause 7.1 then the following shall apply:

- (a) Limit to Second Payment if paid up front:

The Producer shall be limited to no more than second payment (30% of BNF) of 7.3 if wishing to attain these rights at the time of engagement of the Performer. Any further payments for overseas television and Ancillary Usage rights may be made subsequent to the completion of the Program but prior to the liability occurring within the terms of this agreement;

- (b) No further payment shall be made to a Performer in respect of any Program where that Performer has been paid an amount being 90% of the Performer's BNF for that Program calculated in accordance with the table referred to in Clause 7.3.

7.6 The Producer shall recoup the Producer's Investment at the earliest available opportunity, and in the event that it is not recouped at the time that a Performer's Residual Fees reach the 11th payment described in Clauses 7.4(a) or (b) above (as the case may be) then the Producer may suspend further Residual Fee payments to the Performers until recoupment of the Producer's Investment PROVIDED THAT the Alliance was alerted in writing within one month of completion of the final cost report of the Program to the amount and components of the Producer's Investment. All such information will be provided on a commercial in confidence basis and may not be disclosed by the Alliance, its members or officials, to any party. All monies paid to the Producer for its own use and benefit from the exploitation of the Program including all ancillary rights (prior to the deduction of any third parties entitled to participate in those monies) shall be deemed to be applied towards recoupment of the Producer's Investment.

Despite the foregoing, the Alliance has the right to require a review of the application of clauses 7.4(a), 7.4(b) and this clause 7.6 to a Producer or Producers (that is, the right to recoup the Producer's Investment) if the Alliance is of the opinion that the Producer or Producers are abusing this provision in relation to sums being claimed to form part of the Producer's Investment, including but not limited to such sums that are not true 'arm's length' transactions on usual commercial terms, and in such event (despite the foregoing confidentiality provisions) the Alliance may disclose the details of the specific Producer's Investment(s) (including the name of the Producer(s) and the name of the Program(s) to which such Producer's Investment relates) to SPAA for its attention and action. SPAA

and the Alliance may agree to exclude the Producer or Producers from the application of this provision in relation to the relevant Program or Producers. If there is a dispute between SPAA and the Alliance, both parties will promptly appoint a person to settle the dispute by arbitration. The decision of the arbitrator will be final and binding on both parties and any costs related to the arbitration such as hire of venue, transcript or reporter's fees must be shared equally by the parties.

8. LIABILITY FOR PAYMENT OF RESIDUAL FEE PAYMENTS

- 8.1 The employer of a Performer shall be liable to pay any Residual Fees to which that Performer becomes entitled under this agreement.
- 8.2 Nothing in this agreement shall prevent an employer paying a Performer all or any part Residual Fees at any time prior to the liability to pay such fee occurring provided that wherever any such payment is made it shall be calculated in accordance with the provisions of Clause 7 hereof.

9. RATES OF PAY AND ADDITIONAL LOADINGS FOR CLAUSE 2B(b)(ii) PROGRAMS NOT SUBJECT TO TOTAL AUSTRALIAN CONTROL

- 9.1 A Performer who works in a Program which falls within Clause 2B(b)(ii) shall be paid a loading of 90% of that Performer's BNF for the Program.
- 9.2 A Performer who is not required to speak more than six lines of dialogue, and in any case not more than fifty words in any single Program or episode, and who shall not be required to mime will be paid a category loading of 25% of that Performer's BNF for a Program which falls within Clause 2B(b)(ii).

10. RESIDUAL FEES AND ANCILLARY USAGE FEES FOR CLAUSE 2B(b)(ii) PROGRAMS

- 10.1 The following Residual Fees and Ancillary Usage fees will be paid on Programs which fall within Clause 2B(b)(ii):

Type of Residual Fees/Ancillary Usage fees	Percentage of Performer's BNF for Program
	70%
Australian Television (Free Television and Pay Television)	as per Clause 3.1
Australian Ancillary Usage	20%
US Network run (prime-time)	100%
For subsequent runs:	
2 nd run	80%
For each subsequent run	80%
For each subsequent run:	80%
2 US Network runs (non-prime-time)	50%
For subsequent runs:	
3rd	40%
4th	25%
5th	25%
6th	25%
7th through 10th (each)	15%
11th through 12th (each)	10%
13th and each succeeding run requires payment equal to 5% (in perpetuity)	
US syndication (buy-out for all runs)	40%
Elsewhere (ie. rest of world)	
including PBS in US	40%
US Ancillary Usage	12.5%

- 10.2 Payment under 10.1 for "Elsewhere (ie. rest of the world) including PBS in the US" may only be made subsequent to the completion of the Program.

11. PAYMENT BY THE PRODUCER OF CERTAIN AUSTRALIAN ANCILLARY USAGE FEES AND RESIDUAL FEES TO PERFORMERS

11.1 The Producer shall allocate the Australian Ancillary Usage Fees payable under Clause 5.4 and Residual Fees payable under Clause 7.4(c) to each Performer as follows:

Units will be assigned to each Performer entitled to participate on the following basis:

(a) Time units

With respect to each Performer, units for Time Worked, as defined, shall be computed as follows:

Each day = 1/5th unit

Each week = 1 unit.

No more than 5 time units may be credited to any Performer.

(b) Salary units

With respect to each Performer, units for Total Compensation received from the Program shall be credited as follows:

(i) Day Performer: each multiple of daily scale = 1/5th unit.
A fraction of daily scale, when more than one half, shall be credited as another 1/5th unit.

(ii) All other Performers:
each multiple of weekly scale = 1 unit.
A fraction of a multiple, when more than one half of weekly scale, shall be credited as another weekly unit.

(iii) No more than 10 salary units may be credited to any Performer.

(c) Computation

Each Performer shall be credited with the sum of time and salary units as computed above, and each Performer will receive that rateable proportion of the monies, as the Performer's number of units, bears to the total number of units for the entire cast.

11.2 Within 6 weeks following the end of production of the Program, the Producer shall furnish to the Alliance a report which details:

- (a) a complete list of all Performers engaged on the Program (including all foreign cast);
- (b) Alliance/JUST numbers for all Australian cast;
- (c) the number of days/weeks each cast member worked (including overtime and other calls defined as Time Worked);
- (d) the Total Compensation for each cast member;
- (e) the Total Applicable Minimum Salary for each cast member;
- (f) the daily/weekly BNF for each cast member.

The Producer will thereafter furnish a revised or final list where necessary.

11.3 In this agreement the following terms have the following meanings:

- (a) 'Time Worked' means the total time worked or contracted for, whichever is the greater and includes (without otherwise limiting this clause):
- (i) rehearsals;
 - (ii) travel (up to 8 hours per day);
 - (iii) fittings prior to first call;
 - (iv) lay days;
 - (v) pick-ups, re-takes and post-synchronisation;
 - (vi) overtime;
 - (vii) pre-production stills and pre-recordings; and
 - (viii) make-up, hairdressing and wardrobe.
- (b) 'Total Applicable Minimum Salary' means the total minimum salary applicable for the period of time worked or contracted for, whichever is the greater, excluding all overtime, personal loadings, allowances, penalties and premiums.
- (c) 'Total Compensation' means the total salary received by a Performer including personal loading, overtime, all penalties and premiums and annual leave, but excluding superannuation.

12. REPORTING AND PAYMENT PROCEDURES FOR AUSTRALIAN ANCILLARY USAGE FEES AND RESIDUAL FEES

- 12.1 Any person liable in any Reporting Period to pay a fee for Ancillary Usage of a Program in Australia or a Residual Fee under this agreement in respect of a Program shall within two months of the end of the Reporting Period in which that liability arose inform the Alliance of the name of the Program and that Residual Fee payments will be made to Performers in that Program. Such reports shall be conveyed to the Alliance in the form of ATRRA appendices Numbers 4, 5 and 6. Unless requested by the Alliance, the Producer is not required to deliver such reports to the Alliance in relation to a Reporting Period if there is no liability to pay any fees to Performers during the Reporting Period.
- 12.2 Payment of Australian Ancillary Usage Fees and Residuals Fees shall be made within three months of the end of the Reporting Period in which the liability to make the payments occurred and shall be made as follows:-
- (a) The employer shall send the payment by certified mail addressed to the Performer at the Performer's address last known to the employer.
 - (b) If the employer is notified by the post office of the non-receipt of the letter sent to the Performer within twenty eight days of it having been posted as specified in (a), the employer will then send the payment to the Alliance under cover of an explanatory letter.
 - (c) On receipt of a payment referred to in (b) the Alliance shall pay or send it promptly to the Performer. If the Alliance is unable to make the payment by reason of being unable to locate or communicate with the Performer, the payment shall be paid into a trust account established for that purpose by the Alliance.

- (d) Compliance with the above requirements in respect of a payment to a Performer by the party to whom the requirements attach shall discharge that party from any liability to the Performer in respect of that payment and, so far as that party is concerned shall constitute payment to the Performer.

- 12.3 Any underpayment of an Australian Ancillary Usage Fee or a Residual Fee shall be paid immediately and any overpayment of such fees may be deducted from future payments.
- 12.4 All reports shall be expressed in Australian dollars and all payments shall be made in Australian dollars.
- 12.5 The Performer shall be provided with particulars, in accordance with ATRRA Appendix 7, of all payments of Australian Ancillary Usage Fees and all Residual Fees paid to him under this agreement.
- 12.6 An inadvertent failure by an employer to comply with the reporting provisions of this section shall in no event constitute default by the employer or breach of this agreement provided such failure is remedied promptly after notice thereof from the Alliance or the Performer.

13. AUDITING OF RESIDUAL FEE PAYMENTS AND PAYMENTS OF AUSTRALIAN ANCILLARY USAGE FEES

- 13.1 Within 12 weeks of the end of each Reporting Period, a Producer liable under this agreement to make a payment to a Performer shall in respect of such payment and the Program to which it relates, send the Alliance statements in or to the effect of the Schedule to this agreement.
- 13.2 Where a Producer with respect to any Program in any Reporting Period has not provided a report to the Alliance pursuant to Clause 13.1 the Alliance may arrange for the audit of relevant Producer's records relating to the compliance by that Producer with its obligations under this agreement to make Residual Fee payments pursuant to Clauses 5, 7 and 10 of this agreement with respect to a particular Program or Programs. Such audit to be conducted by an independent accounting firm.
- 13.3 The cost of any audit pursuant to Clause 13.2 of this agreement will be borne by the Alliance except where the audit reveals an underpayment by the Producer pursuant to its obligations under this agreement of greater than 10% in the calculation of such Residual Fee payments.
- 13.4 Where a Producer is claiming the cost of production of the Ancillary Usage Product or the Producer's Investment in accordance with this agreement, the Alliance may arrange for the audit of the Producer's records relating to the cost or recoupment of production of the Ancillary Usage Product or the Producer's Investment claimed by the Producer. Any such audit shall be conducted by an independent accounting firm.
- 13.5 The cost of any audit undertaken pursuant to Clause 13.4 of this agreement will be borne by the Alliance unless the audit reveals an overestimation of the amount claimed by the Producer of greater than 10%.

14. NOTICES

- 14.1 For the Purpose of this agreement a notice shall be served if it is sent by certified mail or delivered:-
 - (a) To the Alliance at it's registered office which is presently 245 Chalmers St, Redfern, 2016.
 - (b) To a Producer at the Producer's registered office or other address as the Producer

may in writing advise the Alliance.

- (c) To SPAA at its registered office which is presently at Level 7, 235 Pyrmont Street, Pyrmont, 2009.

14.2 The party required to serve any notice shall have the onus of proving service.

14.3 If a notice is posted by certified mail it shall be deemed to have been served on the second day after the date of posting.

15. EDITING OR OTHERWISE SEGMENTING OF PROGRAM

15.1 Editing or Otherwise Segmenting a Program (Other Than Special Sketch Comedy Programs)

- (a) All footage featuring the performance of a Performer in the production of a Program ('Footage') shall be used only as part of the Program for which the Performer was originally engaged. No Footage shall be used in any other production, edited or otherwise joined with segments from other Programs, without the written approval of the Performer, which approval shall not be unreasonably withheld. Nothing in this clause shall prevent the Producer from using any Footage for promotional purposes, in a historical or biographical documentary about the film or television industry, or in any industry 'Awards' Program without the prior written approval of the Performer. For the purposes of calculating payments due to the Performer for use of the Footage under this clause 15.1, the Performer's BNF shall be the aggregate of the BNF originally paid to that Performer for those Programs or episodes (whichever the case maybe) from which the Footage has been extracted and used in the creation of the new form of Program, including any New Format and any New Program.
- (b) Despite Clause 15.1(a), the Producer shall be entitled to edit a Program without the prior written approval of the Performer where the Program is re-edited for the purpose of:
 - (i) creating a New Program, in which case the Performer will be entitled to the Repeat Fees, Australian Ancillary Usage Fees and Residual Fees provided for in this agreement for the New Program (regardless of whether the Performer appears in the New Program);
 - (ii) creating a New Format, in which case each use of the New Format will constitute a further use of the original Program (and not as a New Program) under this agreement (regardless of whether the Performer appears in the New Format); or
 - (iii) creating a Special Sketch Comedy Program, in which case the provisions of clause 15.2 shall apply.
- (c) Flashbacks may be incorporated in a Program without the prior written approval of the Performer provided that the cumulative total does not exceed 2 minutes in any one episode and that any single segment of Flashback does not exceed 2 minutes in length. Payment shall be at 3% of the Performer's Basic Negotiated Fee applicable for the originating episode for each minute of the Flashback or part thereof.
- (d) The Producer is entitled to acquire all rights to use the Footage in a Best-Of Program for a payment of 15% (to be shared by all the Performers appearing in the Footage used in a manner determined by the Alliance and its members on a case by case basis) of all income received by the Producer:

- (i) from the commissioning broadcaster for the exploitation of the Best-Of Program; or
- (ii) from the exploitation of the Best-Of Program by means of DVD, VHS and like technologies, if the Best-Of Program is commercially released direct to DVD, VHS and like technologies,

PROVIDED THAT the Producer has received the written approval of the Performer or the Alliance to use the Footage in the Best-Of Program, which consent may not be unreasonably withheld.

- (e) If the Producer seeks the written approval of the Performer to use any Footage in any other production or to edit or otherwise join the Footage with segments from another program, the Producer will negotiate appropriate consideration for the Performer having regard to the following which the Producer must specify in writing:
 - (i) the other production or program in which the Footage will be used and the nature of that new program;
 - (ii) the maximum duration of the Footage to be used;
 - (iii) the means (including the rights required from the Performer and the media) by which the Footage will be exploited by means of the other production or program;
 - (iv) the territories in which the other production or program will be exploited;
 - (v) the way in which the Footage will be used.

For the avoidance of doubt, this Clause 15.1(e) does not apply to Footage used in New Programs, New Formats, Best-Of Programs, Special Sketch Comedy Programs or as Flashbacks in accordance with Clause 15.1(c).

- (f) The written approval of a Performer for the use of any Footage in so called "bloopers" or "outtake" programs shall not be sought by the Producer as a condition of engagement of the Performer.

15.2 Special Sketch Comedy Programs

- (a) Clause 15.1 does not apply to Special Sketch Comedy Programs.
- (b) Where a Producer uses a segment from an Original Sketch Comedy Program in the Special Sketch Comedy Program, the segment used must comprise the entire sketch.
- (c) Each separate sketch from an Original Sketch Comedy Program when Played in Australia by means of the Special Sketch Comedy Program will constitute a Play of the Original Sketch Comedy Program for which Repeat Fees were previously paid by the Producer under Clause 3 and, once all such Plays are used, no further Plays of either the Original Sketch Comedy Program or the Special Sketch Comedy Program will occur unless the Producer pays additional Repeat Fees to the Performer in respect of the Original Sketch Comedy Program in accordance with Clause 3.
- (d) For the purpose of calculating payments due under Clauses 5 and 7 of this agreement, the Special Sketch Comedy Program will be deemed to be a new Program exploited in the relevant territory and the BNF for each episode of the Special Sketch Comedy Program will be the average BNF paid to the Performer in the episodes of the Original Sketch Comedy Program from which the sketches are

drawn.

- (e) The Producer agrees to provide the Alliance with detailed records of the sketches included in each Special Sketch Comedy Program and the number of times such sketches have been repeated in the Special Sketch Comedy Program in addition to the other reporting requirements of this agreement.

16. STANDARD CONTRACTS OF ENGAGEMENT, REPORTS

The standard form of engagement for Performers shall be:
ATRRA Appendix 1 ('ATRRA Performers Standard Contract');
ATRRA Appendix 1A ('ATRRA Performers (Lenders) Standard Contract');
ATRRA Appendix 2 (A), (B), (C), (D) - Schedule A;
ATRRA Appendix 3 ('Schedule B - General Conditions').

The standard form of reports in accordance with Clause 10 shall be: Appendices 4, 5, 6 and 7.

Appendices 1, 2, 3, 4, 5, 6, 7, 8 and 9 shall form part of this agreement as if those documents were written herein.

17. ADDITIONAL USAGE FOR RIGHTS NOT CONTRACTED

A Producer who wishes to exercise rights to additional usage beyond those already contracted may do so within the terms of ATRRA provided the agreement of cast members is obtained through the offices of the Alliance.

18. ALLIANCE ADMINISTRATIVE SERVICE

A Producer may elect to negotiate with the Alliance in relation to engaging the Alliance to receive and distribute monies due to Performers in respect of a Program under this agreement.

19. OPERATIVE DATE, DURATION AND FAVOURED NATIONS

- 19.1 This agreement shall operate on and from the 1 January 2004 and shall remain in force for a period of 2 years thereafter. On expiry of that period of 2 years the agreement shall continue in operation until such time as it is varied or replaced by agreement of the parties or until such time as it is terminated by SPAA giving the Alliance not less than 12 weeks notice in writing that the agreement is to terminate, or the Alliance giving SPAA not less than 12 weeks notice in writing that the agreement is to terminate.

- 19.2 The parties will commence negotiations in good faith as soon as practicable after the date of this agreement in an endeavour to reach an agreement to vary this agreement with respect to fees paid to Performers for:

- (a) animation Programs, with any such agreed variations to apply prospectively from the date that they are agreed by the parties;
- (b) Programs (including animation Programs) produced as co-productions, with any such agreed variations to apply prospectively from the date that they are agreed by the parties.

Despite anything in this agreement and ATRRA 2000 to the contrary, unless and until such variations in relation to animation Programs are negotiated and agreed by the parties, then the provisions of ATRRA 2000 shall continue to apply to animation Programs produced on or after 1 January 2004.

- 19.3 The parties will consult in relation to the definition of US Network in the event of any

change to the identity of the stations forming part of US Network determined by the US Federal Communications Commission.

- 19.4 In the event that the Alliance enters into an agreement with an employer who is not a member of SPAA on terms that are more favourable to the employer than the terms provided herein, the Alliance will disclose to SPAA the terms of such agreement and the Alliance will give SPAA the opportunity to replace this agreement with such other agreement.

SIGNATORIES

for and on behalf of the MEDIA ENTERTAINMENT & ARTS ALLIANCE

Signature:

Name:

Position:

Date:

for and on behalf of the SCREEN PRODUCERS ASSOCIATION OF AUSTRALIAN AND ITS MEMBERS

Signature:

Name:

Position:

Date:

SPAA MEMBERS (as at the date of this agreement)

[to be listed]

ATTRA APPENDIX 1

**PERFORMER'S STANDARD CONTRACT
for Australian Television Drama Programs
under the
AUSTRALIAN TELEVISION REPEATS & RESIDUAL AGREEMENT
(A.T.R.R.A)**

PRODUCTION TITLE _____
(hereinafter known as "Program")

PRODUCER _____
(hereinafter known as "Producer")

of _____

Phone No: _____

PERFORMER _____
(hereinafter known as the "Performer")

of _____

Phone No: _____

JUST 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

*Please note: If engaged for a **serial**, daily engagements apply to work in **one** episode only. If appearing in more than one episode, then the applicable half hour episode rate must be paid, except where the provisions of sub clause 10(B)(a) of the ATPA (defined in the General Conditions set out in Schedule B) apply.*

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. GENERAL CONDITIONS

The terms and conditions agreed to between the Screen Producers' Association of Australia and Media Entertainment And Arts Alliance and known as the Australian Television Repeats and Residuals Agreement ('A.T.R.R.A.') 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.

G. SUPERANNUATION

The Producer shall contribute to JUST Super on behalf of the Performer, an amount equivalent to 9% of the Total Fee (10% from 1 January 2006). This percentage will increase from time to time in line with clause 40 of the ATPA.

H. 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

.....
(signature)

.....
(signature)

Witnessed by:

.....
(signature)

.....
(print name)

PRODUCER

.....
(signature)

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

Witnessed by:

.....
(signature)

.....
(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.)

ATTRA APPENDIX 1A

**PERFORMER'S (LENDER'S) STANDARD CONTRACT
for Australian Television Drama Programs**
under the
**AUSTRALIAN TELEVISION REPEATS & RESIDUAL AGREEMENT
(A.T.R.R.A)**

PRODUCTION TITLE _____
(hereinafter known as "Program")

PRODUCER _____
(hereinafter known as "Producer")

of _____

_____ Phone No: _____

LENDER'S NAME _____
(hereinafter known as "Lender")

of _____ Phone No: _____
(Registered Office)

PERFORMER _____
(hereinafter known as the "Performer")

of _____ Phone No: _____

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 Lender of the second part and the abovementioned
Performer of the third part.

A. THE PRODUCER has agreed with the Lender to engage the Performer and the Performer has accepted the
engagement to perform the role of: in the Program.

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 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

*Please note: If engaged for a **serial**, daily engagements apply to work in **one** episode only. If appearing in
more than one episode, then the applicable half hour episode rate must be paid, except where the provisions
of sub clause 10(B)(a) of the ATPA (defined in the General Conditions set out in Schedule B) apply.*

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. The Lender is entitled to the exclusive services of the Performer throughout the period of this agreement.

F. 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 Lender and the Performer have notified the Producer in writing to the contrary. The parties note that where a GST obligation arises the Lender Company will provide the Producer with a GST invoice that meets lawful requirements.

G. GENERAL CONDITIONS

The terms and conditions agreed to between the Screen Producers' Association of Australia and Media Entertainment And Arts Alliance and known as the Australian Television Repeats and Residuals Agreement (A.T.R.R.A.) 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.

H. SERVICE AGREEMENT

The Performer is and will be throughout this agreement under a contract of service to the Lender which shall not be varied during the course of this agreement without the prior consent of the Producer.

I. SPECIAL CONDITIONS (if any)

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

Year Month..... Day

LENDER

PRODUCER

.....
 (signature)

.....
 (signature)

PERFORMER

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

.....
 (signature)

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.)

ATTRRA APPENDIX 2 (A)

**(A.T.R.R.A)
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 A.T.R.R.A.

	Weekly	Daily/Hourly (delete one)	
Award Minimum			
Personal Margin			
Basic Negotiated Fee			
Australian Repeats – Free Television OR Pay Television Number of Repeats..... -% of BNF (No more than 3 repeats for 70% of BNF) Payment for repeats is as follows: First repeat 35% Second repeat 25% Third repeat 10% 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 2004 - 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 period prescribed in clause 4.2(b) of ATTRRA 2004 from first on air date in accordance with clause 4.2(b) of ATTRRA 2004.

Producer

Please initial

Performer

Please initial

ATTRA APPENDIX 2 (B)

**(A.T.R.R.A)
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 A.T.R.R.A.

	Weekly	Daily/Hourly (delete one)	
Award Minimum			
Personal Margin			
Basic Negotiated Fee			
Australian Repeats – Free Television OR Pay Television Number of Repeats..... - ...% of BNF (No more than 5 repeats or 70% of BNF) Payment for repeats is as follows: First & Second repeat 35%, Third, Fourth and Fifth repeat 35%			
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 2004 - 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 period prescribed in clause 4.2(b) of ATTRA 2004 from first on air date in accordance with clause 4.2(b) of ATTRA 2004.

*

Producer

Please initial

Performer

Please initial

ATTRA APPENDIX 3

**(A.T.R.R.A.)
PERFORMERS STANDARD CONTRACT
SCHEDULE "B"
GENERAL CONDITIONS**

1. This agreement incorporates and includes all the terms and conditions of the Actors Television Programs Agreement, 2004 as varied or as replaced ("ATPA") and of the Australian Television Repeats and Residuals Agreement (hereinafter called "A.T.R.R.A.") as if those terms and conditions were written herein. In the event of any inconsistency between the terms of this Agreement and the provisions of A.T.R.R.A. or the ATPA then A.T.R.R.A. and/or the ATPA shall prevail.
2. The Performer shall perform in good faith and to the best of his ability all of the services to be rendered by him for which he is engaged and as required by the Producer and he shall comply with all of the Producer's reasonable directions and requests.
3. The Performer warrants that he has no obligations which now or in the future will prevent or inhibit the performance and observance by him of his obligations hereunder.
4. The Performer hereby agrees and undertakes that during the period of engagement under this agreement he will:
 - (a) Make himself available at all such times and places as he 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 him 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 and 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 he 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 his 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 his 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 visa versa and the masculine shall include the feminine gender and visa 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. (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 A.T.R.R.A.
- (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 A.T.R.R.A.
12. The Performer warrants that he/she is a financial member of Media Entertainment and Arts Alliance prior to commencement of engagement.
13. The ordinary rules of law relating to contracts shall apply to this agreement.

Producer

Please initial

Performer

Please initial

ATTRRA APPENDIX 4

REPORT TO ALLIANCE

(NAME OF PRODUCER)

Statement of Cumulative Plateaux Percentages relating to Distributors' Foreign Gross (D.F.G.) and Australian Ancillary Usage Gross Receipts (A.A.U.G.) for the six months ending

Program	Duration	Ep. Nos (hrs)	Plateau D.F.G.	Percentages A.A.U.G.
Crocodile	1	1 - 13	50%	-
	1	14 - 26	40%	-
	1	27 - 39	30%	-
	1	40 - 52	1%	-
Flying Doctor	1/2	1 - 26	30%	-
	1/2	27 - 52	15%	-
	1/2			
Crocodile (telemovie)(b)1	1/2	1 - 26	30%	7.5%
(1) ANZAC	2		100%	-
(2) Ned Kelly (telemovie)	2	1 - 4	40%	-
(3) Happy Valley (Children's Series)	1/2	1 - 26	2.5%	-

Notes (Where Applicable)

- (1) USA Network sale
- (2) Calculations based on 8 x 1 hours
- (3) New Zealand distribution only

Crocodile (telemovie) rights assigned irrevocably under subclause (B) of definition of D.F.G. and/or A.A.U.G.* to

NAME:

ADDRESS:

* Delete whichever is inapplicable

ATTRRA APPENDIX 5

REPORT TO ALLIANCE

Certificate to ALLIANCE from Principal Accounting Officer to the Producer

The Federal Secretary
Media Entertainment & Arts Alliance
245 Chalmers Street
Redfern NSW 2016

I,..... the Principal Accounting Officer

of(name of Producer) certify that:-

1. The calculations in ATTRRA Appendix 4 have been correctly made in accordance with the provisions of the ATTRRA agreement.
2. The payments to which individual performers are entitled having regard to the plateaux in ATTRRA Appendix 4 have been correctly calculated.
3. The basis of the calculation of DFG is as follows:
4. The basis of the calculation of AAUGR is as follows:
5. Cheques for the payments referred to in 2 above were posted by certified mail at(name and address of post office) on20....., together with the statement required showing details of the calculation of those entitlements.

Enclosed herewith is a certificate from our Auditors regarding the matters in paragraphs 1 and 2.

.....
Principal Accounting Officer
(Name of Producer)

ATTRRA APPENDIX 6

REPORT TO ALLIANCE

Report from the Producer's Auditor

.....

 (Producer's Name and Address)

Dear Sir/Madam

In accordance with the provisions of ATTRRA agreement we report as follows:

1. The information set out in ATTRRA Appendix 4 is in accordance with the accounts and record of (name of Producer).
2. The calculations in ATTRRA Appendix 4 are correct and are in accordance with the relevant terms of the ATTRRA agreement.
3. The basis of calculation of DFG is as follows:
4. The basis of calculation of AAUGR is as follows:
5. We have test checked on a sampling basis the calculations of entitlements due to individual performers having regard to the plateaux referred to in ATTRRA Appendix 4 and have found such calculations to be correct.

.....
 AUDITORS
 (Name of Producer)

ATTRA APPENDIX 7

REPORT TO PERFORMER

STATEMENT OF RESIDUAL FEES AND AUSTRALIAN ANCILLARY USAGE FEES

.....Limited

(Name of person/Company liable for payment)

STATEMENT FOR THE SIX MONTHS ENDED

ADDRESS:.....

PERFORMER:.....

1.	Program	PRISONER	PRISONER	CROCODILE
2.	Episode Number	7	17	Telemovie
3.	BNF			
4.	Residual % Payable	30%	35%	30%
5.	Ancillary Usage % Payable			
6.	Total % Payable (4+5)			
7.	Total Payment Due to Date	328.00	214.00	615.00
8.	Previously Paid	275.00	152.00	486.00
9.	Balance Payable	53.00	62.00	129.00

GROSS AMOUNT DUE: 244.00

ATTRA APPENDIX 8

This Agreement is entered into by the Alliance and the Screen Production Association of Australia (SPAA) as an integral part of the settlement of all matters in dispute between those parties in Dispute No. C5485 of 1987.

In this Agreement:

"ATTRA" means the Australian Television Repeats and Residuals Agreement as varied from time to time and any agreement or Award replacing that Agreement.

"ATPA" means the Actors Television Programs Agreement, 2004 as varied from time to time and any Award replacing that Award.

In entering this Agreement, each party acknowledges the policy position of the other as to the matters which are the subject of this Agreement - namely "Category E" programs being programs not otherwise covered by ATTRA.

- * SPAA maintains its firm position that rates of pay and conditions as to the class of program to which this Agreement applies should be established in an Australian industrial relations context and in particular:
 1. Where in the case of such a program there is an Australian who receives an on-screen credit as Executive Producer, Producer or Co-Producer and who is a full member of the Feature Film or Television Division of the Screen Production Association of Australia, the minimum rate of pay for Performers as defined in the ATPA who are employed in the program should be 175% additional to the ATPA rate for Performers as defined in the ATPA and that conditions in the ATPA should apply;
 2. That in respect of any other "Category E" program, the minimum rates for Performers as defined in the ATPA who are employed in the program should be greater than that referred to in 1 and that conditions in the ATPA should apply; and
 3. SPAA does not accept that the "better rates" policy as espoused by the **ALLIANCE** (see below) operates, but, in any event, rejects the policy as inappropriate in an Australian context.
- * Equity [now the **ALLIANCE**] maintains its firm position that programs of the class to which this Agreement applies should attract for its members rates of pay and conditions within the **ALLIANCE's** "better rates" policy.

The **ALLIANCE** argues that the better rates principle has been applied to a significant number of off-shore productions which have been made in Australia since 1981. The **ALLIANCE** contends that the better rates principle reflects the spirit of the Actors Feature Film Agreement 2003 and ATTRA, which provides for a lower payment structure for actors employed on productions where total creative control is held by Australians.

Nevertheless, in the interests of resolving all the issues between them in Dispute C No. 5485 of 1987, and thereby enhancing the development of the film industry in Australia, each party has accepted that its respective interests would be advanced if the Agreement were entered into.

In so doing, the parties respect each other's policy positions from which neither resiles. Their common attitude to this Agreement is that its terms represent the point below which there can be no bargaining between the **ALLIANCE** and a company coming within its terms.

The parties have agreed that this Agreement should be associated with ATTRA though not forming part of it. To this end they are agreed that the Agreement will be known as "The Category E Annexure" and be printed with ATTRA as Appendix 8.

The parties are agreed that any dispute about the terms of this Agreement may be referred to the Australian Industrial Relations Commission; they are agreed that they will make their best endeavours to resolve any such dispute by conciliation with the assistance of the Commission. Should conciliation fail to resolve any dispute, it may be arbitrated by the Commission. The parties reserve their position in regard to any such arbitration.

The parties agree that they will review the operation of the Agreement twelve months from the date of its being entered into.

ATTRA APPENDIX 9

Agreement between SPAA and the **ALLIANCE** regarding the entry of overseas artists into Australia to perform work in television Programs within the scope of the Actors Television Programs Award and feature films made wholly or largely in Australia.

1. SCOPE

The provisions of this agreement apply to feature films and television programs (the subject of this agreement) subject to the limitation that overseas artists will not be permitted to replace Australians previously cast to play a particular role. ("Cast" means a firm commitment or offer made to an actor and accepted by that actor. Evidence of a firm commitment or offer will include a contract, deal memo or written offer; public announcement by the Producer; conferences on character interpretation with the director, other than for casting sessions; wardrobe calls.)

2. PROVISIONS APPLICABLE TO VARIOUS TYPES OF PRODUCTIONS / PROGRAMS

A. Productions subject to Australian creative control

This covers films which come under Categories A, B & C of the Actors Feature Films Award and TV programs which are subject to Clause 2B(b)(i) of ATTRA and which are programs of the following kind:

- (a) telemovies;
- (b) mini-series;
- (c) high-budget quality television series or serials (meaning series or serials which have production budgets of \$700,000 per hour or more, excluding fees payable to any overseas artist). In determining whether a high-budget quality television series or serial has a budget of \$700,000 for the purpose of this clause, only bona fide components (for example, producer fees set in the light of usual current practice) shall be taken into account.

(i) **Government-assisted projects**

This provision will apply only to productions made with existing forms of Government assistance, excluding script and project development. If new forms of assistance are introduced, the agreement can, after review by the parties, be terminated by either party on 12 weeks' notice.

A Producer shall make every reasonable effort to cast a role from the ranks of Australian actors. Notwithstanding that requirement, a Producer may import one overseas artist for a production with a budget of \$2,250,000 or above for a feature film or \$1,250,000 or above for a telemovie or \$500,000 per hour or above for a mini-series (a mini-series being a self-contained series of up to 12 episodes) where the use of the artist is a condition precedent to the conclusion of a substantial overseas distribution agreement or agreements (substantial meaning more than one-third of the budget).

A Producer also has the right to argue on a one-off basis that one further overseas artist be granted entry to play a supporting role in a feature film with a budget of more than \$7,500,000 or a mini-series with a budget of more than \$900,000 per hour, subject to the same overseas distribution requirement. In this paragraph, "right to argue" means that the Producer will have the right to ask the **ALLIANCE** to agree to the entry of an additional actor and the **ALLIANCE** will reach a decision on the request using an open mind and objective criteria. It is noted that the **ALLIANCE** is more likely to agree to a request which is for a cameo role. the **ALLIANCE's** decision regarding any such request will be final and cannot be challenged by the Producer.

(ii) **Non-Government-assisted projects**

(A) Films, mini-series & telemovies

A Producer may import one overseas artist for a leading role and another overseas artist for a supporting role, where the use of the artist(s) is a condition precedent to the conclusion of a substantial distribution agreement(s) or of an agreement(s) for substantial overseas financing by way of investment, loan or other arrangement (substantial meaning more than one-third of the budget) provided that Australian actors are not thereby precluded from playing two out of three of the most important roles.

Where a film has a budget of more than \$7,500,000 or where a mini-series has a budget of more than \$900,000 per hour, the Producer shall either (a) have the right to import an additional artist for a cameo role or (b) have the right to argue for the entry of an additional artist for a proper role, precedent to the conclusion of a substantial distribution agreement(s) or of an agreement(s) for substantial overseas financing. In this paragraph, "right to argue" means that the Producer will have the right to ask Equity to agree to the entry of an additional actor and Equity will reach a decision on the request using an open mind and objective criteria. If no agreement is reached either party may refer the matter to private

arbitration pursuant to Clause 7 hereof.

(B) Series & serials

In high-budget quality television series or serials, Producers shall be permitted from time to time to cast an overseas artist for a guest appearance.

B. Productions with shared Australian/overseas creative control

This applies to Category D of the Actors Feature Film Agreement and Clause 2B(b)(ii) of ATRRA.

A number of overseas artists will be allowed in such productions. The actual number will be determined by the demands of the script, the level of foreign money which is provided to the production by way of investment, loan, negative pick-up, presale or other advance distribution agreement and the need to provide significant employment opportunities for Australian actors.

C. Productions subject to overseas control (including Category E in the Actors Feature Film Agreement and programs referred to in Clause 2C(i) of ATRRA).

A reasonable number of overseas artists will be permitted in these productions. The actual number will be affected by the demands of the script and the provision of significant employment opportunities for Australian actors.

3. Special Circumstances

There may be cases which fall outside the criteria set out in Clause 2 where special circumstances alone will justify the entry into Australia of an overseas artist. "Special circumstances" arise where, following agreed procedures between the SPAA and the **ALLIANCE** (see "Casting Guidelines": Attachment A), an actor cannot be cast in Australia due to:

- (a) racial and ethnic grounds;
- (b) unusual physical characteristics;
- (c) specialised skills required.

Overseas artists allowed into Australia under this provision will not affect the numbers allowed under cl.2.

4. A Producer who has imported an actor for a telemovie with a budget between \$1,250,000 and \$2,250,000 shall not sell into or license the theatrical distribution of that telemovie without the agreement of either the **ALLIANCE** and every Performer (as defined in the Actors Feature Film Agreement and the Actors Television Programs Award) whose performance is part of the completed telemovie or of the Alliance. The **ALLIANCE** will consider applications under this clause in a bona fide way according to their merits.
5. This agreement shall be an annexure to ATRRA and the Actors Feature Film Agreement.
6. Traditional Australian characters: A Producer will avoid casting overseas artists in roles as traditional Australian characters. Because of difficulties of definition, each case will be considered on its merits. In extraordinary circumstances, such as the casting of Meryl Streep as Lindy Chamberlain in "Evil Angels", an overseas artist may be considered in what is agreed to be a traditional Australian role.
7. Disputes arbitration: The arbitration in this Agreement means a panel of three arbitrators agreed on by the parties, except when urgent circumstances make the summoning of a panel of three impracticable in which case the arbitration will be by a single arbitrator agreed on by the parties.

In the event of a dispute arising from the application of these guidelines (with the exception of matters subject to "right to argue" in Clause 2A(i) of this Schedule), the matter may be referred to arbitration as provided in this clause. The procedures to be applied in such an arbitration shall be determined by the arbitrator(s).

The arbitrator or arbitrators are to give an undertaking of confidentiality in a form acceptable to the parties to the arbitration.

8. The money amounts referred to in this agreement will be reviewed annually (from the date of operation of the agreement) by the parties.
9. This agreement shall operate for a period of one year from 19th April, 1988. Thereafter it shall continue in operation until terminated by either party giving the other twelve weeks' notice in writing there first being a conference between the parties where the matter of intended termination is discussed. If such a conference is requested by one party and rejected by the other the proviso shall not operate.

ATTACHMENT A**CASTING GUIDELINES**

(To be used where there are "special circumstances" as defined in Clause 3 of the Agreement regarding overseas artists).

1. A character breakdown of any role being cast is to be forwarded by the Producer to all drama agents in Australia (on a list to be agreed between SPAA and the **ALLIANCE** from time to time) with a request for suggestions.
2. The Producer shall engage a recognised casting director and all of the actors recommended for consideration by the casting director will be given readings and where recommended screen tests or such other method of assessment as the director of the production reasonably requires. A reasonable number of screen tests will be involved.
3. Actors recommended are to receive adequate preparation time and in particular will be sent adequate excerpts of the script and a full character synopsis relating to any role(s) for which they have been recommended (and/or, if possible, a full script) at least one week before an audition for a straight role and two weeks before an audition for a role requiring an accent but precise compliance with this condition will not invalidate the casting effort if it can be demonstrated that strict compliance is impractical.
4. The casting director shall specify precisely the role(s) for which the actor has been recommended and the actor shall be given the opportunity to audition for each role for which the actor has been recommended.
5. Readings will be conducted with a professional actor of the appropriate sex acting as "reader".
6. The "reader" will not in the course of the reading be considered to be auditioning for a role. This does not prevent the reader being given a separate audition for any role as per the above guidelines.
7. Screen tests and auditions shall be conducted in conducive surroundings.
8. Where the casting director recommends, make-up and costume shall be provided for any screen test to be conducted.
9. The Producer shall notify the **ALLIANCE** when casting commences on any role which may be the subject of an import application because of "special circumstances".
10. Where any role to be cast requires a foreign accent and where the casting director recommends, access to a dialogue coach shall be provided during the short-listed actors' preparation time.

ATTACHMENT A: ATRRA 2000

[to be attached]