

SPA MEAA ATRRA MOU 2016

MEMORANDUM OF UNDERSTANDING

This memorandum is made on the 11th day of July 2016 (“**Commencement Date**”)

BETWEEN

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

AND

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

(“**the Parties**”)

THE PARTIES AGREE AS FOLLOWS:

INTRODUCTION

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

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

1. DEFINITIONS

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

ATPA means the agreement known as the Actors Television Programs Agreement 2013 (as amended by this Deed).

ATRRA means the agreement known as Australian Television Repeats and Residuals Deed 2000 as amended by the document known as Australian Television Repeats and Residuals Agreement 2004 Terms of Settlement (“2004 Terms”), both as amended by this Deed.

- Free Online Service** means an online service owned or controlled by the domestic broadcaster of the Program where no charge is made for access to the service (other than fees related to the purchase or rental of any necessary reception equipment, any fee or taxes levied by government agencies or ISPs or, in the case of an authorised third party, the lowest available tier of any subscription or fee charged by that third party).
- Free Streaming Rights** means the right to communicate the Program (including by means involving temporary, impermanent reproduction or caching of data files in the course of such communication only but excluding any means that allows the Program or parts of it to otherwise be permanently downloaded or stored) to the public by any Free Online Service, and the right to authorise third parties to communicate the Program in delivering such Free Online Services, including scheduled, on demand, catch-up, binge, series stacking, and any other system of delivery of a Free Online Service and whether before or simultaneously with any Play, including the first Play, of the FTA Television Rights.
- Gross Licence Fee** means the absolute gross income (in money or moneys worth) without deduction of any kind (other than the arms-length costs of creating specific deliverables for the licence, if any) for the subsequent licensing of the Free Television, Pay Television or SVOD rights in a Program after the Initial Licence Period, which rights may include the Free Streaming Rights. The Gross Licence Fee shall be negotiated at arms-length and for market rates and paid to Performers on receipt by the Producer.
- Initial Licence Period** means three years from the earlier of first Broadcast of the Program or six (6) months from the delivery acceptance date of the Program, which period shall be extended to four years if a subsequent season of the Program is produced by the Free Television commissioning broadcaster (or in the case of an SVOD commissioned Program, the SVOD commissioning service) within the initial three year period.
- Online Program** means any material content of a specific duration made for exploitation by means of the Online Rights, including through handheld devices, and excluding for the avoidance of doubt, SVOD, and includes an episode or episodes in a serial, drama or comedy and a series, drama or comedy.
- Pre-School Program** means a Children's Program which is made primarily for viewing by children up to 5 years of age.
- Online Rights** means the right to communicate the Program worldwide (including by means involving temporary, impermanent reproduction or caching of data files in the course of such communication only but excluding any means that allows the Program or parts of it to otherwise be permanently downloaded or stored) to the public by any online service, including where accessible by mobile or handheld devices, where no charge is made for access to the service (other than fees related to the purchase or rental of any necessary reception equipment,

any fee or taxes levied by government agencies or ISPs or, in the case of an authorised third party, the lowest available tier of any subscription or fee charged by that third party) and includes AVOD but excluding SVOD.

SVOD

means a service that gives users access to a wide range of programs for a subscription payment/fee. The users can decide when to start the Program within the catalogue provided by the service and made available to the user.

2. CHANGES TO ATRRA

- 2.1 The Repeat Fees set out in this clause replace and add to those payable under clause 3 of ATRRA for Broadcast of the Program commissioned for initial broadcast on Free Television in Australia. Subject to clause 6.3(c), the terms of ATRRA relating to payment of Repeat Fees for Programs commissioned for initial broadcast on Pay Television in Australia shall continue to apply. This MOU shall not apply to Serials, and the terms of ATRRA shall continue to apply to Serials.

3.1 Programs Other Than Children's Programs

- (a) Payment of 70% of the Performer's BNF for the Program purchases 7 Plays within the Initial Licence Period. For the avoidance of doubt, the BNF purchases one Play, making a total of 8 Plays.
- (b) Additional Free Television Plays may be purchased during the Initial Licence Period on payment to the Performer of a Repeat Fee of 10% for each Play, and additional Pay Television Plays shall be acquired and paid under ATRRA.
- (c) After the Initial Licence Period, 20% of the Gross Licence Fee shall be paid to the Performers to be shared between them in accordance with the allocation process agreed by MEAA with its members.
- (d) Each Play includes 14 days catch up (but does not include pre-transmission or simultaneous streaming rights).

3.2 Children's Programs

- (a) Payment of 70% of the Performer's BNF for the Program purchases 11 Plays within the Initial Licence Period. For the avoidance of doubt, the BNF purchases one Play, making a total of 12 Plays.
- (b) Additional Free Television Plays may be purchased during the Initial Licence Period on payment to the Performer of a Repeat Fee of 10% for each group of 4 Plays, and additional Pay Television Plays shall be acquired and paid under ATRRA.

- (c) After the Initial Licence Period, 20% of the Gross Licence Fee shall be paid to the Performers to be shared between them in accordance with the allocation process agreed by MEAA with its members.
- (d) Where the Program is a Pre-School Program, Play shall mean a Broadcast of the Program on three (3) Exhibition Days
- (e) Each Play includes 14 days catch up (but does not include pre-transmission or simultaneous streaming rights).

3.3 Free Streaming Rights

- (a) In respect of the Programs in clauses 3.1 and 3.2, the payment of a fee of 10% of the Performer's BNF shall purchase the Free Streaming Rights for the Initial Licence Period. The extension to the Initial Licence Period upon commissioning of a subsequent season of the Program shall only apply to the Free Streaming Rights if the payment of the 10% fee is made to the Performer prior to delivery of the Program to the commissioning Free Television broadcaster.
- (b) After the Initial Licence Period, as extended if applicable, the Free Streaming Rights may be licensed as part of the Free Television, Pay Television or SVOD rights and included in the Gross Licence Fee for such rights, or may be licensed as the Australian Ancillary Usage.
- (c) It is acknowledged between the parties that the 10% of BNF payment for the Free Streaming Rights is in recognition of a new usage of the Performer's image arising since the ATRRA. For this reason it is acknowledged that the intention is that 10% payment will constitute a real increase for Performers and will positively impact upon the market rate.
- (d) The 10% payment for the Free Streaming Rights may not be paid at the time of engagement of the Performer, but may be acquired upon payment directly by the Producer to the Performer of 10% of the Performer's BNF on the Program at any time after the completion of the Performer's engagement on the Program and prior to the exercise of those rights.
- (e) The Producer will report to MEAA the actual monetary amount paid to Performers for the Free Streaming Rights of the Program. If the reporting discloses that the monetary amount paid to Performers is less than 10% of the aggregate BNFs on the Program, SPA agrees to, on notice from MEAA, raise the issue with its member Producer and advise the Producer of the intentions of the parties under this agreement. If the matter cannot be resolved by SPA, MEAA reserves its rights under the dispute resolution procedure.

3.4 SVOD Programs Other than Children's Programs

- (a) Where SVOD is the commissioning platform, payment of 70% of the Performers BNF purchases the right to exhibit the Program on SVOD within the Initial Licence Period together with 2 Plays for a Free Television or Pay Television broadcaster who is co-commissioning the Program provided that such Plays may not be broadcast until 6

months after the initial launch of the Program on SVOD. The BNF purchases the right to broadcast on SVOD for a period of one year.

- (b) Additional Free Television Plays may be purchased during the Initial Licence Period on payment of a Repeat Fee of 15% for each Play to the Performer. Additional Pay TV Plays shall be paid under the ATRRA.
- (c) After the Initial Licence Period, as extended if applicable, 20% of the Gross Licence Fee paid by a Free Television or Pay Television broadcaster or SVOD service for the licensing of the Program shall be paid to the Performers to be shared between them in accordance with the allocation process agreed by MEAA with its members.

3.5 SVOD Children's Programs

- (a) Where SVOD is the commissioning platform, payment of 70% of the Performers BNF purchases the right to exhibit the Program on SVOD within the Initial Licence Period together with 4 Plays for a Free Television or Pay Television broadcaster who is co-commissioning the Program provided that the Plays may not be broadcast until 6 months after the initial launch of the Program on SVOD. The BNF purchases the right to broadcast on SVOD for a period of one year.
- (b) Additional Free Television Plays may be purchased during the Initial Licence Period on payment of a Repeat Fee of 10% for each group of 4 Plays to the Performer. For Pre-School Programs a Play means three (3) Exhibition Days. Additional Pay TV Plays shall be paid under the ATRRA.
- (c) After the Initial Licence Period, 20% of the Gross Licence Fee shall be paid to the Performers to be shared between them in accordance with the allocation process by MEAA with its members.

3.6 Online Programs

- (a) Where the Program's premiere and primary exploitation is intended to be via Online Rights, the Online Rights may be purchased as follows:
 - (i) 57.5% of the Performer's BNF purchases the right to exploit the Program via Online Rights for a period of three (3) years commencing on the first exhibition of the Program. The BNF includes the first two payments (30%) for Elsewhere pursuant to clause 7.3 of ATRRA; or
 - (ii) The BNF provides for 6 months online usage. 12% of the Performer's BNF purchases the right to exploit the Program via Online Rights for each period of 6 months up to a maximum period of three years.
- (b) Commencing 12 months after the first exploitation of the Program by the Online Rights, the Performers shall be paid 10% of gross revenue received by the Producer with respect to the exploitation of the Online Rights in the Program, including from the sale of advertising space or sponsorship in or around the Program ("Gross Revenue"), to be shared between the Performers in accordance with the allocation process agreed by MEAA with its members.
- (c) Provided the Producer has acquired upfront the right to exploit the Program for no less than the full three year period under 3.6(a)(i) above, the Producer may acquire

Australian broadcast plays or SVOD exploitation, Australian Ancillary Usage (other than the Online Rights), and Elsewhere exploitation (other than the Online Rights) in accordance with ATRRA.

(d) The provisions of ATPA shall apply to the engagement of Performers in an Online Program.

2.2 In respect of the Free Streaming Rights to be exercised in any Program to which ATRRA applies, the Parties shall agree terms in good faith having regard to current practice.

3. TERMS OF ENGAGEMENT

Performers will be engaged for Programs and Online Programs on the Standard Contracts at Appendix 1 (Program employee version), Appendix 2 (Program lender version), Appendix 3 (SVOD employee version), Appendix 4 (SVOD lender version), Appendix 5 (Online Program employee version), or Appendix 6 (Online Program lender version).

4. ATPA AND ATRRA TO OTHERWISE APPLY

4.1 With the exception of those terms and conditions of employment specifically provided for herein, the terms and conditions in all other respects contained in ATPA or ATRRA shall apply to the engagement of all employees in respect of the Program. Where any provision of this Deed duplicates or differs from any provision contained in ATPA or ATRRA then the said provision of this MOU shall prevail.

4.2 The residuals arrangements in force for Australian ancillary usage (clause 5 of ATRRA) and Rest of World (television and ancillary) usage (clause 7.4 of ATRRA) continue to apply provided that the parties agree to continue negotiations in good faith to investigate moving to a simpler back end set of formula that is as fair as possible to both Performers and Producers. SPA agrees, subject to MEAA respecting reasonable confidentiality provisions, to provide sufficient financial information on an agreed representative sample of programs to enable joint modelling on the options considered. Subject to the foregoing, the Parties agree to undertake this exercise in an open and transparent manner so that both Parties are able to consider a range of options in an informed way.

5. TERM OF AGREEMENT AND REVIEW

5.1 The parties will undertake a review of the ATRRA 2016 three years after the Commencement Date, taking into account whether the ATRRA 2016 adequately addresses the changed technological landscape and whether a fair outcome for both parties has been reached. The parties agree to conduct the review in an open and transparent manner, including by using all reasonable endeavours to disclose and/or facilitate access to information which is relevant to the review. The parties then agree to commence good faith negotiations for any changes to the ATRRA 2016 having regard to this review.

5.2 The parties shall meet regularly, and at least on an annual basis, to monitor the operation of this MOU. This regular monitoring and assessment process is to ensure that the MOU is being applied in a manner consistent with the spirit and intent of the MOU, as well as the actual wording. The parties will, as part of these discussions, assess whether the new agreed forms and procedures contained in the new reporting requirements are fit for purpose and shall negotiate and reach agreement in good faith on amendments in form or process which may be necessary to give effect to this MOU.

5.3 Without limiting the generality of clause 5.1 and 5.2, the parties will review the operation of clause 2.1 (3.3) and the information arising from the Producers' statements regarding the applicable percentages of the BNF as part of their annual review of the ATRRA 2016 to determine whether

these provisions are operating as intended to provide a genuine increase in remuneration for Performers, including a positive impact on the market rate, and if not, MEAA reserves the right to negotiate with SPA an alternative means to apply the 10% fee for the Free Streaming Rights.

6. EFFECTIVE DATE AND GRANDFATHER CLAUSE

- 6.1 This MOU and the ATRRA 2016 shall commence on the Commencement Date, and will apply prospectively to all Programs except those grandfathered in this clause.
- 6.2 For the avoidance of doubt, all Performers' contracts entered into before the Commencement Date are exempt from the provisions of the ATRRA 2016 and will be contracted on the current ATRRA, unless otherwise agreed with the Producer, the Performers and MEAA.
- 6.3 After the Commencement Date, the following Programs will also be exempt from ATRRA 2016 and be grandfathered as continuing to operate on the current ATRRA, unless otherwise agreed in writing between the Producer and MEAA in consultation with Performers:
- (a) For a period of 12 months after the Commencement Date Programs that:
- (i) have been granted development or production funding; or
 - (ii) have signed financing documents; or
 - (iii) have a commitment from a financier or broadcaster.

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

- (b) Subsequent series for an existing Program contracted under the current ATRRA;
- (c) Programs commissioned by Pay Television broadcasters, until 31 December 2016. MEAA has agreed to consider further proposals from SPA about how the ATRRA 2016 will apply to Programs commissioned by Pay TV broadcasters.

7. CHANGES TO RESIDUALS AND TERMS OF SETTLEMENT 2004

- 7.1 The current residuals arrangements for Australian ancillary usage (clause 5 of ATRRA) and Rest of World (television and ancillary) usage (clause 7.4 of ATRRA) shall continue to apply.
- 7.2 Clauses 11 and 12 and Appendices 4, 5, 6 and 7 of ATRRA are deleted and replaced by the provisions and Appendices in Schedule 7.
- 7.3 The parties agree to continue negotiations in good faith to investigate moving to a simpler back end residuals formula that is as fair as possible to Performers and Producers. SPA agrees, subject to MEAA respecting reasonable confidentiality provisions, to provide sufficient financial information on an agreed representative sample of programs to enable joint modelling on the options considered. The parties agree to undertake this exercise in an open and transparent manner so that both parties are able to consider the options in an informed way.

7.4 MEAA acknowledges SPA's position that the 2004 Terms expired on December 2006, and the Parties have been continuing, and will subject to clause 7.5 below continue, to operate under 2004 Terms in good faith.

7.5 SPA's position is that either party may terminate the 2004 Terms upon three months notice in writing to the other party.

8 DISPUTES IN RELATION TO THIS MOU

8.1 SPAA and MEAA agree to work together in good faith in relation to the operation of this MOU.

8.2 Should any dispute arise in relation to this MOU the parties agree that the dispute procedure contained in the ATPA shall apply as though the terms of this MOU were incorporated into the ATPA.

EXECUTED as a deed on ... 11TH DAY OF JULY 2016

Executed by)
MEDIA ENTERTAINMENT)
AND ARTS ALLIANCE)
By authority)

PAUL MURPHY - CEO

(Print name and title)

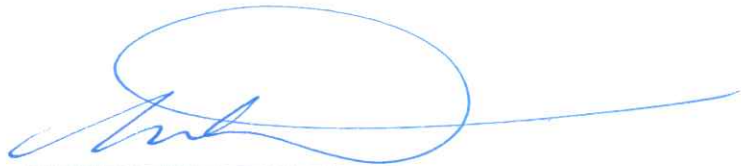


(Director/Secretary)

Executed by)
SCREEN PRODUCERS ASSOCIATION)
OF AUSTRALIA)
By authority)

Matthew Deane - CEO

(Print name and title)



(Director/Secretary)

APPENDIX 1

ARTIST STANDARD CONTRACT (TELEVISION EMPLOYEE VERSION)

ATRRA APPENDIX 1

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

PRODUCTION TITLE _____
(hereinafter known as "Program")

PRODUCER _____
(hereinafter known as "Producer")

of _____
_____ Phone No: _____

PERFORMER _____
(hereinafter known as the "Performer")

of _____
_____ Phone No: _____

MEDIA SUPER NUMBER: _____

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

of _____
_____ Phone No: _____

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

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

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

C. PRODUCTION TYPE

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

D. PERIOD OF ENGAGEMENT

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

D1. Weekly

(a) The Performer is engaged on a weekly basis commencing from & terminating on (inclusive dates)

If not engaged continuously specify further periods below:

from & terminating on (inclusive dates)

from & terminating on (inclusive dates)

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

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

D2. Daily

The Performer is engaged on a daily basis for days

On the following dates (please specify each day required)

D3 Hourly

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

The Performer is engaged on an hourly basis commencing:

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

Minimum 4 hours

E. FEE

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

F. FREE STREAMING RIGHTS

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

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

G. GENERAL CONDITIONS

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

incorporated herein.

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

H. SUPERANNUATION

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

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

PERFORMER

PRODUCER

.....
(signature)

.....
(signature)

.....
(print name)

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

Witnessed by:

Witnessed by:

.....
(signature)

.....
(signature)

.....
(print name)

.....
(print name)

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

PERFORMER

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

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

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

SCHEDULE "A"

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

	Weekly	Daily/Hourly (delete one)
Agreement Minimum		
Personal Margin		
Basic Negotiated Fee		
Australian Repeats – Free Television Number of Repeats 7 - 70% of BNF		
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 Initial Licence Period in accordance with ATRRA.

Producer
Please initial

Performer
Please initial

**ATRRA APPENDIX 1
SCHEDULE A(2)**

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

SCHEDULE "A"

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

	Weekly	Daily/Hourly (delete one)
Agreement Minimum		
Personal Margin		
Basic Negotiated Fee		
Australian Repeats – Free Television Number of Repeats 11 - 70% of BNF		
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 Initial Licence Period in accordance with ATRRA.

Producer
Please initial

Performer
Please initial

**ATRRA APPENDIX 1
SCHEDULE B****(ATRRA)
PERFORMERS STANDARD CONTRACT
SCHEDULE "B"
GENERAL CONDITIONS**

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

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

5. Wardrobe:

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

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

7. Termination of Engagement

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

8. Service of Notices etc.

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

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

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

11. Where a lender company is engaged by a producer to provide the services of a performer the Total Fee payable to that lender company will not be less than the total of the Total Fee, annual leave and superannuation contribution that would have been payable had the performer been engaged by the producer without the lender company at the Agreement Rate.

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

13. Assignment

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

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

Producer

Please initial

Performer

Please initial

APPENDIX 2

ARTIST STANDARD CONTRACT (TELEVISION LENDER VERSION)

APPENDIX 3

ARTIST STANDARD CONTRACT (SVOD EMPLOYEE VERSION)

APPENDIX 4

ARTIST STANDARD CONTRACT (SVOD LENDER VERSION)

APPENDIX 5

ARTIST STANDARD CONTRACT (ONLINE EMPLOYEE VERSION)

APPENDIX 6

ARTIST STANDARD CONTRACT (ONLINE LENDER VERSION)

APPENDIX 7

Reporting Requirements

12. Reporting and payment requirements for residuals

- a) Each year, within 90 days of a date to be specified by the Producer, the Producer shall provide to the Media, Entertainment & Arts Alliance (MEAA) a **Residuals Statement** detailing agreed financial information for the preceding year in respect of the Program.
- b) The parties agree that the agreed financial information to be provided is subject to the Producer having received the information from the distributor and includes at least the following in relation to the Program: the amount remaining to be recouped of any distribution advance invested in production, the total monies received from gross receipts during that period, the monetary amount paid to Performers for Free Streaming Rights and any amounts received by the Producer for re-licensing the Program.
- c) The Residuals Statement shall take the Form contained in the attached ATRRA **Appendix X** (which shall be completed in its entirety, with non-applicable components identified as such). Attached to the Residuals Statement shall be a signed declaration (as specified at **Appendix XX**) from the Producer's accounting officer or auditor attesting to its correctness. By agreement between MEAA and the Producer on a case by case basis, the Producer may provide the Producer's Distributor's Report on a given Program in place of the Appendix X Form.
- d) MEAA undertakes to treat all of the particulars of the information contained in the Residuals Statement on a strictly confidential basis (provided that MEAA may share the information with a Performer, their agent and SPA also on a strictly confidential basis) and, unless otherwise agreed with the Producer, will only use the information for the purpose of ensuring compliance with the ATRRA.
- e) The Residuals Statement shall be sent electronically to MEAA at residuals@meaa.org (proof of receipt shall be retained by the Producer) together with the current contact details for a representative of the Producer should questions arise. MEAA may request further information in relation to the Residuals Statement and the Producer shall in good faith supply the requested information provided it is reasonable and relevant to enable MEAA to be satisfied in relation the Producer's liabilities under the ATRRA.
- f) The obligation on the Producer to pay any residual, usage or re-licence fee owing under this agreement, falls within 90 days of the date specified by the Producer under clause 12(a) for the preceding year during which a right to receive a residual, usage or re-licence fee arises under this agreement.
- g) The Producer shall appoint the MEAA as disbursement agent for the disbursement of residuals derived from the Program. During the term of such appointment:
 - i) The MEAA shall undertake the Producer's responsibilities and obligations in respect of residuals under Clauses 5 and 7, or as otherwise required under the disbursement administration agreement (DAA) between the Producer and the MEAA. The DAA shall take the Form contained in the attached ATRRA **Appendix XXX**;
 - ii) The MEAA shall indemnify the Producer against liability for payment of residuals provided the Producer is not in breach of this Agreement;
 - iii) Clauses 5 and 7 shall be superseded by the DAA and disbursement governed by the terms of the DAA;

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- iv) To the extent of any inconsistency between this Agreement and the DAA in relation to the disbursement of residuals, the terms of the DAA shall prevail;
 - v) The Producer will pay the amounts owing under ATRRA to MEAA to disburse to Performers. The first time this payment is made, the Producer will also provide to MEAA (if not already provided) requisite information including contact details and wages received (both BNF and gross salary) for each Performer in the cast on the Program, sufficient to enable MEAA to calculate each Performer's share of residuals. This time and wages information shall take the Form contained in the attached ATRRA **Appendix XXXX**.
 - vi) The Producer discharges its obligation in relation to payment of residuals to a Performer at the time the Producer transfers the correct amount of residuals owing to the full cast to MEAA for disbursement to each Performer. If MEAA is unable to make a payment by reason of being unable to locate or communicate with the Performer, the payment shall be held in a trust account established for that purpose by MEAA.
- h) Any underpayment by the Producer of amounts owing under this agreement shall be paid immediately and any overpayment may be deducted from future payments or repaid within 14 days of receiving a written notice from the Producer. All reports shall be expressed in Australian dollars and all payments shall be made in Australian dollars.
 - i) An inadvertent failure by the Producer to comply with the reporting provisions of this section shall not constitute default by the Producer or breach of this agreement provided such failure is remedied within 14 days of receiving notice from MEAA.
 - j) Where a Producer does not provide a Residuals Statement or omits to report in relation to the Program or MEAA has a reasonable concern regarding the Producer's reporting or possible non-payment or under-payment, MEAA may arrange for an audit of the Producer's records relating to the Program. The audit will be conducted by an independent accounting practitioner. The reasonable cost of any audit will be borne by MEAA 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 fees owing. In this instance, the Producer will be liable for the cost of the audit, provided that and the extent to which the cost is reasonable.

ATRRA APPENDIX X

**RESIDUALS STATEMENT
REPORT TO MEDIA, ENTERTAINMENT & ARTS ALLIANCE
(INSERT NAME OF PRODUCER)**

Residuals Statement for yearly period ending [*insert date*] (**reporting period**) in relation to commercial release of each program produced by the producer under ATRRA.

Program name:
Total BNF:

Australian broadcast / premier window	
Commencement date of licence period	
Expiry date of licence period	
Has subsequent series been commissioned?	
Amount of re-licence fee received	
Australian Ancillary Residuals	
Amount remaining before clearance of the initial first buy – Australian ancillary	
Monetary amount paid in free streaming	
Web production – gross receipts since 12 months after first release (specify date)	
Total AAUGR monies received this period	
AAUGR residuals payable on the above receipts	
DFG Residuals	
Costs claimed (applies only to telemovies)	
Amount remaining to be recouped of advance at commencement of period	
Amount remaining to be recouped of advance at conclusion of period	
Amount remaining before clearance of the initial first buy – Distributor’s Foreign Gross	
US network	
Web production – gross receipts since 12 months after first release (specify date)	
Subtotal DFG monies received by territory or platform if known (optional)	
Total DFG monies received for the period	
DFG residuals payable on the above receipts	

Specify whether any rights have been irrevocably assigned

Rights assigned to [ABN]

Address

.....

Contact name email:

**ATRRA APPENDIX XX
DECLARATION OF PRODUCER**

**Residuals Statement Declaration
By the Principal Accounting Officer to the Producer**

I,..... the Principal Accounting Officer of
..... (name of Producer) certify that:

1. I have read the information contained in the Residuals Statement/s for the yearly period ending
[insert date]
which relates to the following program/s
.....
.....
2. The Producer has fully and accurately disclosed all gross receipts received from the commercial release of the program/s.
3. The amount declared as the amount the amount invested in the production budget against distribution rights, referred to in the ATRRA as the distributor's advance is correct.
4. The amount stated as the amount remaining to be recouped of the distributor's advance at the commencement of the reporting period and the amount remaining to be recouped at the conclusion of the reporting period are both accurately stated.
5. The amount of any re-license fee received by the Producer is accurately stated.
6. During the reporting period specified above, payment was made in the following manner and on the following date/s:

Electronic funds transfer:
Account details:
Date transfer:

.....
[signature]

.....
[date]

