

Memorandum of Settlement

Between the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA) and the Institute of Communication Agencies (ICA) and the Association of Canadian Advertisers (ACA) (known collectively as "the Parties") with respect to the 2011-2014 National Commercial Agreement (NCA)

1. Term and Rates
Three year agreement commencing upon ratification and expiring on June 30, 2014.
Effective as of date of ratification – 2.5% general increase in minimum fees;
July 1, 2012 – 2.5% general increase in minimum fees;
July 1, 2013 – 2.5% general increase in minimum fees.
2. Article 506 Equal Opportunity Policy
(b) The Engager shall cast Performers in accordance with this policy, in all types of roles and work categories, so that the composition of Canadian society may be portrayed realistically. **Commercials should reflect the wide spectrum of Canadian life, portraying men and women of various ages, backgrounds and appearances actively pursuing a wide range of interests, sports, hobbies and business, as well as home-centered activities.**
3. Article 705 Work Permits for Canadian Non-members
Subclauses (a), (c), (d) and (e) are unchanged. See new Article 706, Employees of the Advertiser
4. Article 706 (new) **Exclusions**
The following persons shall be excluded from the terms and conditions of the NCA, except for the provisions of Article 1220 Accident on Set Insurance, where applicable.
 - (a) **Employees of the Advertiser**
 - (i) **Executive officers of companies, such as Chief Executive Officer, President, Chairperson of the Board or other equivalent title, when they appear as themselves in a commercial for their company. Such officers shall be identified.**
 - (ii) **Employees at their usual place of business, engaged in their regular employment, where it would be considered unsafe to replace them with an ACTRA member.**
 - (iii) **Employees specifically making or representing a claim, such as, "I work for (company name) and I care because I own the company."**
 - (b) **Lottery/Contest Winners, and members of their immediate family (partner and children) whose winnings exceed 10 times the session**

fee. (\$7500) for a Principal Performer, pursuant to Article 1202. This exclusion shall be used for one commercial only.

5. **Article 707** (was Article 706) Violations of Section 7
A violation of the intent of any of these Articles may be referred for disposition to the Joint Standing Committee under Section 34.
6. Article 1215 Rest Periods
There shall be a paid rest period of not less than fifteen (15) minutes ... for the duration of the rest period. **Seating shall be available to performers during rest periods in a smoke-free environment.**
7. Article 1406 Dressing Rooms, Rehearsal Facilities and Sanitary Provisions
 - (e) **A supply of potable drinking water shall be provided and available at all times during production.**
 - (f) **When craft services and food catering are provided to Performers, every effort shall be made to provide a clean environment. For example, caterers shall wear clean latex or rubber gloves, a hat, net or cap, clean clothes. Clothing shall not be used to wipe or dry hands.**
8. **Article 1508 Environmental Conditions On Set** (new)
Engagers shall take every precaution to protect all Performers from the adverse effects of
 - (a) **Extreme Weather**
During intemperate or inclement weather, Performers shall be given adequate rest periods where the Engager shall provide appropriate shelter from the elements;
 - (b) **Airborne Special Effects**
Whenever fire, fog, smoke, or other airborne special effects are used, the Engager shall make best efforts to provide a room or space where Performers may breathe clean air when they are not required on the set.
9. Article 1606 Work Day and Rest Periods
 - (d) For Minors 16 to 17 years of age, the additional work time (Article 1208) and overtime (Article 1209) provisions shall apply. **The work day shall not exceed twelve (12) hours per day, excluding meal periods, unless permission to extend the day is granted by the Minor's Parent or Chaperon.**

10. Article 1609 Infants
 - (e) Infants under the age of ± 2 years will not be kept on set for longer than six (6) hours.
 - (f) An infant under the age of six (6) months shall be handled only by his/her Parent, Chaperon or trained medical personnel when not in front of the camera.**
11. Article 1610 Dangerous Work
 - (b) (New) A minor may be asked to perform unusual physical, athletic or acrobatic activity or stunts, provided that the minor and the parent represent that the minor is fully capable of performing such activity and the parent grants prior written consent thereto. In such situation the local ACTRA office shall be notified. In no event shall the activity or stunt take place unless the Stunt Coordinator is satisfied that the minor is properly rehearsed and prepared to execute the activity or stunt.**
 - (e) (New) Personnel certified in emergency medical intervention shall be required to be on set until the Minor(s) work session is wrapped.**
12. **Article 1707 Stunt Safety**

In order to ensure the safety of all Performers, a requirement has been added that the Stunt Coordinator **and personnel certified in emergency medical intervention** be present on set until the performance of all stunts is complete.
13. **Article 1708 Stunt Doubling (new)**

Where a Stunt Performer doubles for a Role that is identifiable as female and/or a visible minority and/or Aboriginal and/or has a disability, and these characteristics are also identifiable when the stunt is being performed, every effort shall be made to cast a qualified Performer with these characteristics. Where the stunt performed does not reveal the Role's characteristics, the Engager shall use best efforts to increase the employment of Performers who are women, visible minorities, Aboriginal and/or have a disability, for such stunts.
14. Articles 1804 and 1805
ACTRA and ACA/ICA commit to study the proper implementation of population changes on Market Units, and to report and discuss such issue through the Joint Committee. In the interim, effective as of the date of ratification, a 1.5% increase in Market Unit Rates for Wild Spot and Network use will apply.
15. **Article 1810 French/English Commercials**
 - (d) Double-Language Commercials

- (i) **The casting breakdown will be written in English for all auditions requiring ACTRA Performers. The Engager may not audition ACTRA Performers for Background categories unless the Engager has notified ACTRA in advance of such requirement. As well, such notification shall be given on the casting breakdown.**

16. 1811 Other Languages

The Parties agree to establish a joint committee to monitor and research, as appropriate, developments as they pertain to this agreement. Accident on Set Insurance is payable on the Voice-Over session for commercials transformed into languages other than English and French.

No Contract Service Fees shall be payable for commercials produced under this pilot project. Terms and conditions of the NCA will apply to all other fees.

- (a) **The union jurisdiction applicable to commercials produced in a language other than English or French (e.g., Italian, German, Greek, etc.) for use in Canada shall be determined by the Reciprocal Agreement between ACTRA and Uda.**
- (b) **Performers engaged in commercials under the jurisdiction of ACTRA shall be qualified, contracted and paid in accordance with this Agreement. When a commercial is dubbed into another language(s) version, the on-camera performers shall be compensated, regardless of the number of additional languages, for one additional session fee and one additional residual fee as per the grid below. Performers providing the additional language voicing shall be permitted and contracted as per the grid below for each language.**
- (c) **When a commercial produced under the terms of this Agreement is transformed into another language version (other than French) through the addition of a Voice-Over in that language, the Silent On Camera Performers in the commercial shall be paid additional residual fees in accordance with the unit value of the additional markets, if any, in which the commercial is used. Performers providing the additional language voicing shall be permitted and contracted as per the grid below for each language.**

Session and Use Fees are payable per Addendum 1, Local and Regional Television and Radio Commercials, Category 3. Session and residual fees include up to 2 language versions per commercial.

If it is not possible to secure the talent required by the Engager from among the members of ACTRA, the work permit fees for Apprentice Members and non-ACTRA Performers shall cost, per commercial, \$43.75 for Apprentice Members and \$52.50 for non-ACTRA Performers.

17. Article 1818 Television Commercials Used in Other Media

(a) Commercials Used in Other Media When television commercials made under the jurisdiction of this Agreement for use on television are also used in the following media:

- (i) movie theatres
- (ii) fairs and exhibitions
- (iii) mobile displays
- (iv) in-store monitors
- (v) shopping centres
- (vi) closed-circuit television in hotels
- (vii) in-flight exhibition
- (viii) stadia, arenas and similar public places,

no additional payment is due to the Performers, provided the commercial is currently in cycle. If the commercial is not concurrently receiving television exposure, Performers shall receive residual payments according to Article 1804, Table A, for ~~1-5~~ **10** units for each thirteen (13)-week cycle. This payment shall cover use in all of the above-noted media.

18. Article 1819 Specialty and Cable Television Use

Performers engaged in commercials produced specifically for specialty and cable television use shall be paid the session fee prescribed in Article 1202 of this Agreement. Other production-related fees (such as, but not limited to, hourly work time, additional work time, overtime, etc.) shall be as provided for in the respective sections of this Agreement. Performers shall receive residual payments according to Article 1804, Table A, for ~~1-5~~ **10** units. One (1) additional unit shall be payable for each additional specialty service on which the commercial is used. Where material produced originally for specialty and cable television use is used on conventional television, appropriate step-up fees shall be paid to compensate for the additional use. The total fees payable shall be equal, whether a specialty and cable television commercial is used on conventional television or vice versa, when the same markets are involved.

(i) and (ii) unchanged

(iii) where the commercial is running, but not in all markets covered by specialty and cable television use, no additional payment shall be required, provided at least ~~17~~ **24** units are paid for.

19. Article 1820 New Media

(a) Commercials Produced for New Media

~~In order to stimulate growth and employment opportunities in this new and rapidly evolving medium, the Parties agree to a pilot project expiring 6 months prior to the end of the Agreement. The Parties agree to establish a~~

~~joint committee to monitor and research, as appropriate, developments in New Media as they pertain to this Agreement. The joint committee will meet quarterly to report on the progress of this pilot project, which commences with the effective date of this Agreement. The pilot project may be extended by the mutual agreement of the Parties.~~

The Parties agree that the New Media pilot project shall expire on June 30, 2013; but may be extended by mutual agreement of the Parties. (See Side Letter #4, Letter of Understanding Relative to the New Media Pilot Project, attached.)

~~Rates proposed for this pilot project are exempt from any increases provided for elsewhere in this Agreement.~~ **Performers engaged in New Media commercials shall be paid 50% of the applicable session fees per Articles 1202 and 2101. The number of work hours in the applicable basic work session shall be 50% of the hours provided for in Articles 1202 and 2101. All New Media rates are subject to general increases (per item #1 above).**

No contract service fees shall be payable for commercials produced under this pilot project.

Members of the Public Waiver Permit The Engager shall pay for a waiver permit in the amount of \$100 for the use of members of the public to appear in one commercial made for New Media. At least 2 business days prior to the production of a commercial in which the Engager wishes to shoot undirected/unscripted street scenes, the idea or outline for the commercial shall be provided to ACTRA. Provided that one of the criteria outlined below is met, the waiver for use of members of the public shall be considered "automatic". Only one commercial shall be made from material recorded at an event where ACTRA has granted such a waiver permit. No subsequent waivers shall be provided.

Criteria:

- (i) Undirected background scenes, per Article 2204(a); or**
- (ii) Undirected/Unscripted Street Scenes. Such scenes can include members of the public reacting to an event, provided that the event is not staged for the purposes of making a commercial. Members of the public shall not be notified in advance that a commercial is being made. At the time of the event, members of the public may be notified that the event is being recorded.**

If the waiver permit application does not meet one of the above criteria, the Engager may still apply for a waiver pursuant to Article 106 Extraordinary Circumstances.

- (b) Broadcast Commercials Used in New Media (Moveover)
- (iii) **Prepaid Option** At the time of engagement, the Engager may contract Performers for use of a commercial in broadcast and New Media. In addition to the television session and residual fees payable for broadcast use, Performers in residual categories shall be paid not less than 2 Session Fees, per Articles 1202 and 2101, as use fees for one year on unlimited platforms and/or websites. The Prepaid Option must be identified on the original engagement contract. The Prepaid Option payment is guaranteed and is due when the Session Fee is paid. This payment entitles the advertiser to three hundred and sixty-five (365) days' use from the date that the commercial is made available on any New Media platform.
- This Prepaid Option is not renewable.**
- (iv) [was (iii)]

20. **Article 1902** Alternate Versions

A commercial may be edited to make three (3) additional versions of that commercial, provided the material added was shot at the original session. The footage added must not materially change the **nature or setting of the** original commercial **message**. A soundtrack may be recorded to fit such a commercial for timing and synchronization purposes. **However, a** Performer required to record such additional soundtrack **at a separate work session** shall be paid an additional session fee. Re-performance ... Performers shall receive cycle payments for two (2) commercials.

21. **Article 1907** Payment for Allowable Changes

(c) If a Performer is required to do more than ~~twenty (20)~~ **twenty-five (25)** changes for the same commercial at the same session, additional changes beyond the ~~twenty (20)~~ **twenty-five (25)** shall not be paid for. Should the session exceed eight (8) hours for on-camera Performers or four (4) hours for off-camera Performers, the appropriate hourly work time, additional work time or overtime rate shall be paid.

22. **Article 2003** Disclosure – Residual Category

If a Performer has been engaged in a residual category ... obligated to disclose information on any performance ~~twelve (12) months~~ **nine (9) months** after its last air-date. Any Performer subject to a finding of the Joint Standing Committee.

23. Article 2602 Payment Time Requirements

Payments to each Performer shall be made as follows:

- (a) Session Payments All payments for services rendered for each television or radio commercial, including session fees, preproduction rehearsal fees and other incidental fees such as for auditions, travel, etc., including applicable penalty payments (e.g., meal period infringement) as provided for in this Agreement, shall be made not later than ~~fifteen (15) working~~ **twenty-one (21) calendar** days after the work session.

- (b) Edited Commercials Payments to be made under Section 19, Editing of Commercials, if not covered elsewhere, shall be made not later than ~~fifteen (15) working~~ **twenty-one (21) calendar** days after the first air-date of the edited commercial.

- (c) Use or Residual Payments Whenever reference is made in this Agreement to "cycle," it shall be deemed to mean a period of thirteen (13) consecutive weeks. Use of all commercials must be declared in cycles.
 - (i) Wild Spot or Network Spot Cycle: Television Residual payments for wild spot or network spot usage shall be paid within ~~twenty (20) working~~ **twenty-eight (28) calendar** days of the first play or the beginning of the applicable cycle of each television commercial.

 - (ii) An Engager may change a commercial in spot usage to a higher classification during a cycle of use by either declaring a new cycle and making full payment under the new classification, or by paying the difference between the old classification and the new classification and continuing in the present cycle of use. However, such change as herein provided shall not extend the lifespan of the commercial beyond the provisions of Article 1814.

If, during any cycle of use, a commercial is used at a higher classification or in additional Television markets not originally declared, additional payments for the upgrade shall be made within ~~twenty (20) working~~ **twenty-eight (28) calendar** days of the date of first use in the higher classification or additional market(s).

 - (iii) Program Cycle: Television All residual payments for program cycles, including the first cycle and minimum guarantees, shall be paid within ~~twenty (20) working~~ **twenty-eight (28) calendar** days of the

beginning of the applicable cycle. Prepayments referred to in Article 1806(c) must be paid within fifteen ~~(15) working~~ **twenty-one (21) calendar** days of the beginning of the cycle. Additional use payments within any cycle shall be made within ~~twenty (20) working~~ **twenty-eight (28) calendar** days of the end of the applicable cycle.

- (iv) All Cycles: Radio Residual payments for use of radio commercials shall be paid within ~~twenty (20) working~~ **twenty-eight (28) calendar** days of the first play or the beginning of the applicable cycle.

However, since the first cycle of use of a radio commercial is covered by the session payment, it will still be necessary to report the cycle dates for applicable commercials within the time periods specified.

- (d) Failure to make payments within the periods specified in this Agreement shall result in the following penalty payments being payable to the Performer:
 - (i) A penalty payment of \$6.00 per Performer is due for each ~~working~~ **calendar** day, beginning with the day following the date of default, up to ~~thirty (30)~~ **forty-two (42) working calendar** days.
 - (ii) Thereafter the penalty shall cease unless ACTRA notifies the Engager that full payment has not been made. In the event that full payment, including accrued penalties, is not made within ~~twelve (12) working~~ **sixteen (16) calendar** days thereafter, the penalty payment shall be resumed, retroactive to the date of receipt of notice of non-payment. The amount shall then be \$10.00 per Performer per ~~working~~ **calendar** day, without limitation, until the full payment is made.

24. **(New) Appendix "R"**

LETTER OF UNDERSTANDING REGARDING WORKING CONDITIONS

The Parties to this Agreement agree to uphold the basic working conditions contained in this Agreement. As part of this objective, the Parties will specifically address the items contained below in this Letter of Understanding.

The following terms and conditions represent fundamental working conditions for Performers. These include but are not limited to:

- (a) The Casting Director shall remit Appendix J (Statutory Declaration) per Article 509 and forward a copy of the casting breakdown to the local ACTRA office, per Article 503.

- (b) Roles for Silent-On-Camera Performers shall be properly auditioned, per Article 902.
- (c) Audition sign-in sheets shall be forwarded to the local ACTRA office on a timely basis, per Article 907 (b).
- (d) Spokesperson or hero roles shall be auditioned singly, per Article 912.
- (e) Proper audition facilities shall be provided, per Article 914.
- (f) All contracts, before they are provided to the Performer, shall be signed by the Engager, per Article 1003.
- (g) Contracts shall be provided to performers before work commences, per Articles 1003 and 1004.
- (h) All Performers have access to the same and ample selection of food items from the craft service table for their substantial snack, per Article 1214.
- (i) Performers shall be provided with seating during rest and meal periods, per Article 1215.
- (j) A Performer's injury shall be reported to ACTRA at the earliest opportunity, per Article 1221.
- (k) Security for the safekeeping of Performers' personal wardrobe/effects shall be provided, per Article 1404.
- (l) Clean and accessible toilets and washrooms shall be provided, per Article 1406 (a)
- (m) Sufficient studio seats shall be available for Performers during rehearsals, per Article 1406 (b).
- (n) Privacy shall be provided when a complete change in wardrobe is required, per Article 1406 (c).
- (o) Access to a supply of potable drinking water shall be provided, per Article 1406 **(e)**.
- (p) When craft service or catering is supplied to Performers, every effort shall be made to provide a clean environment, per Article 1406 **(f)**.
- (q) Basic sanitary conditions — e.g., using same hair or makeup brush for multiple Performers without sanitizing these brushes between uses shall be adhered to, per Article 1407.
- (r) Every precaution shall be taken to provide performers with protection from adverse environmental conditions on set, per **Article 1508**.
- (s) Minors shall be provided with appropriate rest breaks, per Article 1603.
- (t) When the Engager is required to provide transportation, reasonable efforts shall be made to ensure that Minors leave the set within 30 minutes of the end of the working day, per Article 1606 (h).

Any breach of these provisions shall be addressed immediately between ACTRA and the Engager. The provisions of Section 34 – Grievance and Complaints shall apply in all respects, Furthermore, such breaches shall be discussed at quarterly meetings, but in no event shall such discussions undermine the grievance process.

25. Housekeeping language agreed by the Parties on July 21, 2011 shall also form part of this Memorandum of Settlement.

Letter of Understanding relative to the New Media Pilot Project

During the 2011 round of negotiations leading to conclusion of the 2011-2014 NCA, the Parties to the NCA agreed that the new media pilot project (Article 1820(a)) would expire on June 30, 2013; but may be extended by mutual agreement of the Parties. In the course of negotiations leading to this result, the Parties considered the process for evaluation of the success of the pilot project; agreed to compile and monitor data relative to the production and use of made-for-new media commercials; and to review the data during the regular quarterly interpretation meetings (NCA; Sideletter #2). In reaching this understanding, the Parties have also agreed that the fundamental objectives of the new media pilot project are:

- to “do no harm”;
- to increase the production of made-for-new media commercials engaging professional performers; and,
- to encourage agencies to become NCA-signatory in the production of made-for-new media commercials.

As part of the evaluation process, the Parties have agreed to jointly compile and share data, such as but not limited to:

- total number of new media productions;
- total number of Performers in new media productions;
- total number of commercials produced @ the full rate (e.g. over 4 hours) versus the 4 hour rate;
- total ad spend for video-on-line versus total television ad spend;
- productions budgets of TV in comparison with on-line video.

The Parties have further agreed to monitor and share data relative to the production of commercials made for new media engaging members of the public/ real people on waivers, such data to include, but not be limited to:

- total number of commercials with members of the public/ real people on waivers;
- total number of members of the public/ real people on waivers;
- total number of Performers engaged in commercials with members of the public/real people on waivers.

A New Media commercial in which a waiver permit for members of the public (Article 1820(a)) has been obtained, cannot be used on conventional television unless all people in the commercial are permitted and paid as per the terms and conditions of the National Commercial Agreement.

The Engager agrees that when producing a commercial with members of the public, the following will be provided to the local ACTRA branch:

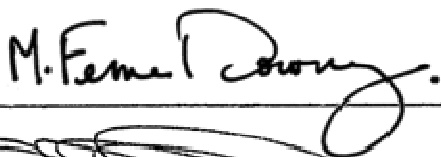
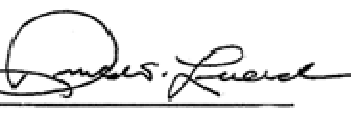
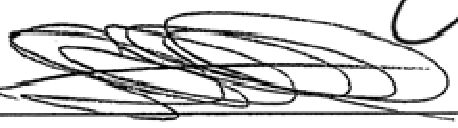
- a) Prior to production - Production report (see attached)
- b) Following production – A copy of the final edit of the commercial will be forwarded to the nearest ACTRA office.

If the Parties cannot agree that the pilot project should be extended beyond June 30, 2013, then the Parties will refer the issue to an Arbitrator (per Section 34).

The Parties will recommend approval of this Memorandum of Settlement to their respective boards/councils. In the case of ACTRA, this Memorandum of Settlement will be submitted to eligible members for approval via referendum vote.

Agreed this 23rd day of September, 2011, in Toronto, Ontario.

Signatures

ACTRA		ACA	
ACTRA		ICA	