

**ACTRA and The National Film Board
MEMORANDUM OF SETTLEMENT**

PAY INCREASES

Date of Ratification – April 30, 2008	3% increase in all rates and fees 1% increase in NFB contribution to Insurance, per Article A3801 1% increase in NFB equalization payments, per Article A3805
May 1, 2008 – April 30, 2009	3% increase in all rates and fees
May 1, 2009 – April 30, 2010	3% increase in all rates and fees
May 1, 2010 – April 30, 2011	3% increase in all rates and fees

TERM OF AGREEMENT

This Agreement will become effective upon ratification and remain in effect until April 30, 2011.

All articles not mentioned in this document are considered to be renewed automatically in the new Agreement upon ratification.

Article A2 – Exclusions

- A202** (e) Persons appearing as themselves, including ACTRA members, except when they are performing a Role.
- A203** (a) **Tribute Documentaries:** A Performer is entitled to waive any applicable interview fee required under the agreement at his or her discretion. A copy of the waiver is to be provided to ACTRA.

Article A4 – Definition of Terms

- A410** **Compact Device** means the distribution of a Production by manufacturing and selling or renting copies of a Production on tape, disc, cassette, laser disc, CD-ROM, DVD or any other similar format intended primarily for private, in-home exhibition.
- A422** **New Media** means all media currently known in the marketplace, other than those media listed in B301.

Article A5 – Obligations of NFB

- A502** **Policy of Equal Opportunities**
- (a) The NFB will not discriminate against any Performer because of age, race, sex, creed, colour, sexual orientation, disability or national origin. In accordance with this policy the NFB will make every effort to cast Performers belonging to all groups in all types of roles, so that the composition of Canadian society may be portrayed realistically. The Performer agrees that s/he will not discriminate against any NFB representative or fellow Performer or refuse to work for any NFB representative or with any Performer because of age, race, sex, creed, colour, sexual orientation, disability or national origin. In light of the foregoing, the NFB is committed to inclusive casting policies that are based on ability and the requirements of a particular Role.

- (d) **Affirmative Action for Performers with Disabilities:** In respect of any available Role that requires a Performer to portray a person with a disability, the NFB will liaise with ACTRA prior to casting these Roles with a Performer who does not have a disability. The NFB will take appropriate steps to ensure that Performers with disabilities have a reasonable opportunity to audition for such Roles. The NFB will provide ACTRA with the information set out in clause A506.16.
- (i) Casting of production facilities which are barrier-free for Performers with disabilities shall be used when such facilities exist and are available.
- (ii) In respect of any Role that requires a Performer to portray a character with disability, the Producer agrees to include these facts in the casting breakdown, if known, so as to enhance the opportunity for Performers with similar disabilities to audition for the Role.

A503 Personal Harassment Policy

- (e) When an aggrieved Performer ("Complainant") believes that this Article has been breached in any way, the Complainant shall inform the NFB or its representative and may at his or her discretion immediately make his or her disapproval known to the individual whose conduct is in question ("Respondent"), but in any case shall also report the incident to a representative of ACTRA. The ACTRA representative shall make the complaint known to a representative of the NFB, who shall meet with the Respondent and ask for an explanation.
- (i) ACTRA and the NFB agree to work cooperatively with each other so that the principles of this section are honoured.

A506 Production Information

16. Any Roles which require Performers to portray characters with disabilities, the name of each Performer cast for such Role, and whether the Performer has a disability.

Article A6 – Obligations of ACTRA and Performers

A602 Failure to Fulfil Engagement When a Performer does not fulfill a contracted engagement, which causes a cancellation, postponement, or delay of production, subject to the Grievance procedure the Performer may be required to forfeit the Performer's fee, except where the Performer's failure to fulfill such an engagement is caused by illness (subject to Article A1909) or other reason beyond the control of the Performer. Valid and verifiable certification of illness must be supplied if requested by the Producer. The Producer shall not withhold any of the Performer's fee pursuant to this Article, but may pay the disputed amount to ACTRA in trust, pending determination by an arbitrator of whether there has been a breach of contract by the Performer.

A606 A Performer shall identify to the ACTRA Steward any perceived breach of this Agreement in order that the ACTRA Steward may give the NFB the opportunity to remedy such perceived breach at the earliest opportunity in the spirit of this Agreement. There shall be no retaliation by the NFB or its representatives against any Performer for exercising their rights under the Agreement or for identifying to the ACTRA steward any perceived breach of the Agreement.

Article A7 – Qualification of Performers

- A701 Preferential Engagement of ACTRA Members** In accordance with A501, preference of engagement shall be given to ACTRA members. However, after making reasonable efforts to comply and having established that a person who is not a member of ACTRA is required in a Production, an application shall be made for a work permit at the Local ACTRA Office at least forty-eight (48) hours prior to the commencement of work, and the following procedure will apply for the issuance of work permits:
- a. Principal Performers who are Canadian citizens or landed immigrants shall pay \$130.00 for the first week of production on any Program for which the Performer is engaged. For the second and each subsequent week for which Performer is engaged, a work permit fee of \$65.00 shall be paid by the Performer. During the life of this Agreement ACTRA may amend the work permit fee with ninety (90) days notification.
 - b. Other Performers (except Performers in Background Performer categories) who are Canadian citizens or landed immigrants shall pay \$105.00 for the first week of Production on any Program for which the Performer is engaged. For the second and each subsequent week, a work permit fee of \$45.00 shall be paid by the Performer. During the life of this Agreement ACTRA may amend the work permit fee with ninety (90) days notification.

Article A17 – Travel and Expenses

- A1704** When travel time and expenses are payable, the NFB shall pay for:
- (i) Actual transportation expenses which a Performer is required by the NFB to incur on scheduled carriers covering economy air, first class rail fare or such other transportation as bus, taxi or limousine and, with prior approval from the NFB, the actual costs of reasonable and appropriate accommodation;
 - (ii) A kilometrage allowance equal to the kilometric travel policy allowance in force at the NFB, when the Performer is required by the NFB to use his/her own automobile;
 - (iii) All rental or leasing costs where the Performer is required by the NFB to lease or rent a vehicle;
 - (iv) All costs for taxi, limousine or other transportation which the Performer is required by the NFB to use in order to get to and from the destination required by the engagement and for which the Performer submits proper receipts ;
 - (v) A per diem allowance of \$65.00 in the case of a Nearby Location or Distant Location to cover all personal expenses. However, if meals are provided at the expense of the NFB, the per diem allowance may be reduced in the following manner:

Breakfast	<u>\$15.00</u>
Lunch	<u>\$20.00</u>
Dinner	<u>\$30.00</u>

Article A20 – Working Environment

- A2005** If known at the time of contracting, the Performer is to be informed if there are to be airborne special effects such as fog or smoke, cigarette smoking, or animals on set.

A2006 If known at the time of the audition, the Performer is to be informed when smoking is a requirement of the engagement.

Article A26 – Stunt Performance and Coordination

A2605 **Stunt Doubling for Females, Visible Minorities and Performers with Disabilities**

Where a Stunt Performer doubles for a role which is identifiable as female or a visible minority, and/or a person with a disability, and the race and/or sex of the double is/are also identifiable, every effort shall be made to cast qualified persons of the same sex and/or race involved. Where the Stunt Performer is not so identifiable, the Producer shall use best efforts to increase the employment of women and visible minorities and/or Performers with disabilities with due regard for safety for such Stunts.

A2608 **Safety and Protection of Performers**

9. No Stunt Performer shall be rigged with an explosive device of any kind without the presence of a qualified special effects person qualified in the film and television industry and a member of the police Emergency Task Force squad or equivalent (e.g. a member of the Sûreté du Québec) on the set. All performers rigged with an explosive device (e.g. squibs) shall be considered to be undertaking a Risk Performance.

A2609 **Safety Guidelines** The Producer shall obtain and adhere to all applicable safety guidelines issued by the Federal Government. The NFB further agrees to cooperate in disseminating such guidelines and adhering to future addenda and/or changes. When weapons are to be fired, the NFB, through the Stunt Coordinator, shall use best practices to ensure that all Performers directly involved, including those Performers at whom the weapon is aimed or fired, are properly trained.

Article A27 – Minors

A2705 **Work Day and Rest Periods**

6. The work day for Minors aged 16 to 18 shall not exceed twelve (12) consecutive hours per day, excluding meal periods but including tutoring time. Rest periods shall be twelve (12) hours between the end of one day and the beginning of the next work day.

A2710 **Tutoring**

5. During the course of a Minor's workday, the Minor is entitled to tutoring (i.e. educational instruction from a Tutor), a minimum of two (2) hours per Production workday, in blocks of no less than thirty (30) minute tutoring sessions at a time, commencing when instruction in the classroom actually begins, provided that the maximum amount of instructional time per day is five (5) hours per day.
6. Production timesheets indicating each Minor's attendance in the classroom shall be forwarded to the ACTRA steward on a weekly basis.

Article A28 – Talent Auditions, Interviews and Individual Tests

A2807 The NFB shall make character breakdowns, sides and/or scripts available to Performers no less than twenty-four (24) hours prior to an audition except for revisions.

Article A33 – Excerpts

- A3301** d) Excerpts of not more than four (4) minutes may be used, including on Internet, in the following circumstances without additional compensation to the Performer(s) appearing in such excerpts:
- i. for the purpose of advertising or promoting a Production or Series from which the excerpt is taken;
 - ii. in any awards Production; or
 - iii. in news, news magazine or lifestyle productions for the promotion of the Performer(s) and/or Production or Series, or because of the newsworthy nature of the performance or Performer(s) and/or the original Production.
 - iv. In a Documentary Production, for the purpose of supporting an interview or comment about a Production, a filmmaker, a performer.
- f) For excerpts used in Documentary Productions, the Performer shall be paid a fee of not less than \$100 per excerpt of 30 seconds or less up to the highest originally contracted daily fee or the current daily fee, whichever is greater.

Article A38 – Insurance and Retirement Plan, and Performer Deductions

- A3801 Insurance** The NFB shall contribute, for insurance benefits of each Performer who is a member of ACTRA, an amount equal to six percent (6%) of the Gross Fees (inclusive of Use fees) paid to such Performer.
- A3804 Deductions from Performer's Fees - ACTRA Dues** The NFB shall deduct dues at rate determined by ACTRA from the Gross Fees (inclusive of Use Fees) paid each Performer who is a ACTRA member and remit such amount to ACTRA. During the life of this Agreement, ACTRA may amend the percentage of this deduction with thirty (30) days notice to the NFB.
- A3805 Non-members – Equalization Payments and Deductions**
- a) In order to equalize the payments and deductions in respect of ACTRA Members and Non-Members, the NFB shall:
 - (i) contribute an amount equal to twelve percent (12%) of the Gross Fees paid to each Performer who is not a member of ACTRA, including those designated as Apprentice or Temporary Members, and Work Permittees, (a Non-Member). Where Performers who are not Canadian citizens or landed immigrants and who are not members of ACTRA are contracted, the deductions made and NFB contributions and payments required under this Article shall be limited to the minimum fees in this Agreement.
 - (ii) deduct from the remuneration payable to each Non-Member and Apprentice Member an amount equal to 3% of the Performer's Gross Fees (inclusive of Use Fees).
 - b) The Equalization Payments and deductions pursuant to this Article may be used and applied by ACTRA and ~~ACTRA Fraternal Benefit Society~~ for disposition in such manner and for such purposes as may be determined in its absolute and unfettered discretion.
 - [c] - deleted]

A3807 Payment Procedure All contributions and deductions made pursuant to this Article shall be payable by cheque to:

- (i) the Union of British Columbia Performers in respect to productions in the Province of British Columbia; and
- (ii) ~~the ACTRA Fraternal Benefit Society~~, in the case of all other productions. All cheques shall be mailed to the local ACTRA office in the location where the Production is being produced and/or administered. All deductions shall be indicated on the "Performer National Film Board Remittance Statement" and shall be payable at the same time as, and for the same period covered by, the Production payroll.

A3809 ACTRA'S Insurance and Retirement service provider of record is ACTRA Fraternal Benefits Society.

Article B4 – Use Rights for Documentary and Animation Programs

B403 Limitation of Selection of 25% Advance

- a) The only circumstances which will allow a Producer to select option # 4, and therefore make a twenty-five percent (25%) Advance payment under para. B402 b., is if there is are only one exclusively Canadian pre-sale(s) in one media, as of the first day of principal photography of the Production, and which pre-sale(s) must include one of the Declared Uses, as defined in para. B301. Unless the Production pre-sale(s) fulfils these conditions the Producer shall not be entitled to exercise option # 4. In the event that prior to the completion of principal photography of a Production or a Series there is a non-Canadian sale, the Producer shall immediately and retroactively increase the Advance payment to at least fifty percent (50%).

Article B5 – Use Rights for all Programs (Except Documentary and Animation Programs)

B502 Limitation of Selection of 25% Advance

- a) The only circumstances which will allow a Producer to select option # 4, and therefore make a twenty-five percent (25%) Advance payment under para. B402 b., is if there is are only one exclusively Canadian pre-sale(s) in one media, as of the first day of principal photography of the Production, and which pre-sale(s) must include one of the Declared Uses, as defined in para. B301. Unless the Production pre-sale(s) fulfils these conditions the Producer shall not be entitled to exercise option # 4. In the event that prior to the completion of principal photography of a Production or a Series there is a non-Canadian sale, the Producer shall immediately and retroactively increase the Advance payment to at least fifty percent (50%).

Appendix Declaration Respecting Option for 25% Advance

Prior to electing the 25% Advance Option, the CoProducer shall execute a Declaration in the form as provided below, and deliver same to ACTRA and ACTRA Performers Rights Society.

DECLARATION

I, _____, ("the Producer") in respect of the coproduction
of _____ ("the Production").
solemnly declare to:

- (a) Notify ACTRA and ACTRA PRS of all Canadian presales prior to the first day of principal photography of the Production;
- (b) Notify ACTRA and ACTRA PRS of all non-Canadian sales prior to the completion of principal photography of a Production, Series or the commencement of principal photography of the next cycle of the Series;
- (c) Full copies of licence and distribution agreements will be provided, if should such disclosure is be ordered by an arbitrator upon such terms as the arbitrator deems appropriate in his/her full discretion. Rulings for disclosure may be obtained on an expedited basis by telephone conference call.

I understand that ACTRA and ACTRA PRS are relying on this Declaration in order to permit the selection of Article B502(a).

CoProducer

Per _____
(signature)

(print name and title)

ACTRA Branch

ACTRA Performers' Rights Society

Per _____
(print name and title)

Per _____
(print name and title)

Date _____
(month/day/year)

(New) Article B7 – Use Rights for New Media

B701 For Use on non-revenue-generating New Media controlled by the NFB, the Producer shall pay to the Performer the following percentages of the Performer's Net Fees as a residual payment for such Use:

i. 10% for five (5) years Use as of the first day it is made available online
or,

ii. 15% for seven (7) years Use as of the first day it is made available online.

The NFB may secure additional blocks of five (5) or seven (7) years Use, provided that payments for such extended Use are made to the Performer prior to the expiry date of the initial five (5) or seven (7) years Use period.

B702 For Use on revenue generating New Media, the NFB shall pay to the Performer ten (10 %) percent of the Performer's Net Fees. In addition to this amount, the NFB shall pay Use fees in the amount of five (5%) percent of the NFB's Gross Revenue arising from the New Media exploitation of the Production, earned from first dollar of such New Media Use.

For clarity, should the NFB choose to distribute a Production for both revenue generating and non-revenue generating Use, the NFB shall pay the Use fees stated in B701 and B702 above.

- B703** Residual fees under articles B701 and B702 shall be paid within thirty (30) days of such Use.
- B704** Payment of Use fees as a percentage (%) of NFB's Gross Revenues (GR) shall be reported and paid to ACTRA PRS as per article B4.
- B705** For the purposes of B701 and B702, Net Fees earned by the Performer at the time of production shall be adjusted to reflect current base fees with respect to Productions produced under ACTRA jurisdiction prior to the coming into force of the present Agreement. The Current Base Fee is calculated by taking the Performer's Net Fee per Production (Gross Fee exclusive of Prepayment and expenses, but including above minimum payments and overtime/penalties), dividing it by the Daily Fee at the time of production, and multiplying the result by the current Daily Fee for the appropriate category.
- B706** Subject to the Performer's consent, articles B701 and B702 may also apply to Productions produced under ACTRA's jurisdiction prior to the coming into force of the present Agreement where New Media rights (or Internet or Digital Distribution rights in previous agreements) have not been acquired, as well as new Productions produced under this Agreement. Any renewal of New Media rights for Productions under ACTRA's jurisdiction for which New Media rights were acquired prior to the coming into force of the present Agreement shall be undertaken in accordance with the terms of this Agreement.
- B707** The provisions of Article B7 shall not apply to Productions used on non-revenue-generating New Media controlled by the NFB funded by the Canadian Heritage Ministry Memory Fund Program which Productions shall continue to be governed by the terms and conditions of the Letter of Agreement Relating to Content made Available on NFB Controlled Websites – Non-Revenue Generating dated December 6, 2006 (the "Letter of Agreement") for as long as the Memory Fund Program is granted to the NFB.
In the event that the Memory Fund Program is no longer available to the NFB, Productions requiring renewal of New Media rights acquired under the Letter of Agreement shall be undertaken in accordance with this Agreement.
- B708** For the purpose of this Agreement, New Media Use is understood to be included as a media granted under Non-theatrical Use as per A430, and therefore the NFB shall be entitled to world-wide Non-Theatrical Use in New Media in perpetuity without further payment in accordance with B401.
However, it is understood that any NFB direct sales in New Media made to consumers by the NFB through its controlled website, using streaming or downloading techniques or any similar techniques allowing a reproduction of a Production on New Media, shall be subject to payment of the Use fees set out in B702.
- B709** **Production "Made for" New Media** Upon payment of Minimum Fees to the Performer per Sections B or D of the Agreement for a performance in a Production "Made for New Media" only, the NFB shall be entitled to One (1) year Use in New Media.
Prior to the expiry of the one (1) year Use period, should the NFB wish to continue distribution of such Production in New Media, the NFB shall pay to the Performer Use fees in the amount of five (5%) percent of the NFB's Gross Revenue derived from the New Media exploitation of the Production.