

## Memorandum of Settlement

Between the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA) and the Association of Canadian Advertisers (ACA) and the Institute of Communication Agencies (ICA) (known collectively as "the Parties") with respect to the 2008-2011 National Commercial Agreement (NCA)

### 1. Term and Rates

Three year agreement commencing upon ratification and expiring on June 30, 2011.

Effective date of ratification – 2.5 % general increase

July 1, 2009 – 2.5% general increase

July 1, 2010 – 2.5% general increase

### 2. Revisions to Section 1 – Application and Recognition

**103 Parties to the Agreement** The Parties to this Agreement are ACTRA, the Institute of Communications Agencies (ICA), and the Association of Canadian Advertisers (ACA).

**104 Recognition** The ICA and ACA recognize that ACTRA is a trade union, as has been determined by the Ontario Labour Relations Board, and that it is duly authorized to represent each and all Performers working under this Agreement

The Engagers also recognize ACTRA as a trade union representing Performers with respect to all minimum rates and working conditions provided for in this agreement.

ACTRA recognizes the ICA/ACA as the sole and exclusive bargaining agent for each and all Engagers who sign an Authorization for the ICA to negotiate this national Agreement on their behalf.

New Article 105 (previous Article 105 to be re-numbered, Article 106)

The Parties acknowledge that in Quebec, ACTRA is recognized under the *Act respecting the professional status and conditions of engagement of performing, recording and film artists (R.S.Q., c. S-32.1)* and is thus empowered to conclude group agreements with producers and associations of producers for all Performers in the recording of commercial advertisements. If any divergence exists between this Agreement and the Act, the Act will prevail.

**3. Article 203 Principal Performer (PP)** "Principal Performer" (PP) includes an actor, announcer, Solo Singer (note Articles 205 and 208) or Solo Dancer (note Article 209) whose face (excluding a Demonstrator as defined in Article 206) appears on camera and who at the same time provides any **signing** or voicing including dialogue, thought process or singing, that is related to his or her on-camera role. A person who mimes a pantomime performance (e.g., **Adrian Pecknold**) or anyone performing in a specialty act shall be classified as a Principal Performer.

**4. Article 204 Silent-On-Camera (SOC)** means a Performer not otherwise classified as a Principal Performer (PP), whose face is clearly recognizable on camera, when

screened as the viewer would see it, for sixteen (16) or more frames of 16 mm film footage, or for two-thirds (2/3) of a second on any other means of recording.

In addition, one of the following criteria must be met:

- a) the Performer materially illustrates or reacts to the off-camera narration or the commercial message
- or
- b) the Performer is directly associated with the demonstration of or identified with the product or service (excluding a Demonstrator as defined in Article 206.)

5. **Article 207 Background Performer (BP)** means a Performer

- (i) not otherwise classified as a **Silent on Camera (SOC)** performer whose face may be recognizable and who appears solely as atmosphere, and whose performance is not directly associated with the demonstration of or identified with the product or service and whose performance does not materially illustrate or react to the off-camera narration or to the commercial message being given; or
- (ii) deleted
- (iii) to (vii) stet

6. **Article 401 Engager** "Engager" refers to any person, advertising agency, corporation or otherwise (other than a client or advertiser that engages an advertising agency) that contracts or pays, or both contracts and pays, Performers with respect to their engagement in a television or radio commercial **created by the Engager.**

7. **Article 503 Better Rates and Conditions** Nothing in this Agreement, however, shall be deemed to prevent a Performer from obtaining better rates or terms or Conditions than the minimum rates or terms or conditions provided for herein. **Written notices advising that the Engager is offering minimum fees only may not be issued. A copy of the casting breakdown will be forwarded to the local ACTRA office.**

8. **Article 506 Equal Opportunity Policy**

- (a) In connection with the engagement and treatment of Performers in all work categories in commercials, **Engagers shall not discriminate against any Performer** on the basis of age, sex, race, creed, colour, national origin or disability.
- (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. ACTRA shall make every effort to facilitate engagements in accordance with this policy, in all types of roles and work categories, so that the composition of Canadian society may be portrayed realistically.
- (c) stet
- (d) **Performers with Disabilities** – In respect of any available Roles that require a Performer to portray a person with a disability, the Engager or his or her representative will liaise with ACTRA prior to casting these Roles. The Engager will take appropriate steps to ensure Performers with disabilities have a reasonable opportunity to audition for such Roles.

- (i) Casting or 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 a disability, the Engager 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.
- (iii) For any role in which a deaf Performer is sought, the Engager shall provide a qualified sign language interpreter during the audition. For any role in which a deaf Performer is cast, the Engager shall provide a qualified sign language interpreter throughout the engagement.

Original (d) becomes (e) – stet

- (f) The Committee shall be empowered to receive and compile statistical information respecting engagements in accordance with this policy in all work categories in commercials; to prepare and present periodic reports to the parties to this Agreement on the progress being made in implementing this policy; to make recommendations respecting the conduct of an educational program among advertisers and advertising agencies to encourage equal and non-stereotyped engagement of Performers in commercials; as far as is practicable, to promote the engagement of Performers in accordance with this policy in all work categories in commercials; and to obtain other relevant information about this subject.

9. **Article 507 Political Advertising**

Television and radio commercials produced on behalf of candidates for public office and or political parties in order to promote that candidate for office or political party shall be subject to the terms and conditions of this Agreement in all respects, except that a candidate for or holder of public office, his/her spouse, their children and persons endorsing the candidate or being interviewed shall be excluded from the terms of this Agreement. These exclusions shall also apply to ACTRA members.

10. **Article 509 Conflict of Interest** The Engager shall, as a condition precedent to hiring a Casting Director or other person responsible for hiring Performers, ensure that the said Casting Director or person has executed a statutory declaration in the form attached as Appendix J, and that an executed copy of the said declaration has been delivered to the local ACTRA branch office.

(Conforming changes to Appendix J.)

11. (New) **Article 603 Credits**

Should any party involved in the production of a commercial receive credit, the Engager shall make best efforts to ensure that Performers in residual categories are also credited, for example, in award nominations or any public listing of production credits.

12. **Article 901 Preference in Auditions** In order to comply with the requirements of Article 702, the Engager agrees that preference will be given to ACTRA Members in the auditioning of Performers for television and radio commercials. It is preferable that Auditions for all roles shall be conducted in the location where the commercial is to be produced, i.e. the production centre serviced by the nearest appropriate branch.

13. **Article 910 Special Wardrobe** A Performer who is required to provide special wardrobe, as defined in Article 1402, at an audition shall be paid a fee of \$64.50/ \$66.00/ \$67.50. **The special wardrobe fee shall be indicated on the audition Sign-in Time Sheets.**

14. **Article 1001 Intent to Produce**

(a) Prior to production, the Engager shall advise the nearest local office of ACTRA of the Engager's intention to produce the television or radio commercial(s), the location of the production, the names and ages of any Minors engaged for the production, **the number of Group Background Performers engaged for the production**, the date(s) of production (see Appendix C), **and intended cycle dates, where available.** Such information may be verbal rather than written.

15.a **Article 1201 Work Session**

A basic work session shall not consist of more than eight (8) consecutive hours in any day, excluding one (1) meal period of at least one (1) hour in length. There shall not be a work session of longer than six (6) consecutive hours without the provision of a meal period for Performers (see Article 1214).

Adult Performers (over the age of 16)

Notwithstanding the number of commercials being produced on any day, Performers must be paid the appropriate additional work time rate for the ninth and tenth (9<sup>th</sup> and 10<sup>th</sup>) hour of work and the appropriate overtime rate for the eleventh (11<sup>th</sup>) hour and on.

**NOTE: CONFORMING LANGUAGE THROUGHOUT AGREEMENT TO BE COMPLETED IN EDITING BY ACA/ICA AND ACTRA.**

15. **15. (New) Article 1220** Where the provision of Workers' Compensation for Performers is not mandated by law, the Engager will contribute 1% of performers' gross session fees toward ACTRA's accident on set insurance program. ACTRA will ensure that payroll services will not apply any administration charges to that contribution.

16. **(New) Article 1221 Injury Reports** The Performer must advise the Engager at the earliest opportunity of any injury and or any inability to fulfill contracted obligations. The Engager shall notify ACTRA as soon as possible of any accident, incident or injury to a Performer in the workplace and shall send to ACTRA within one (1) business day, a report setting forth the circumstances of the nature of the injury. A copy of the accident report from the applicable workers' compensation insurance body or equivalent and the daily call sheet shall also be sent to ACTRA.

17. **Article 1401 Regular Wardrobe** Any apparel that is included in the personal wardrobe of a Performer, but not more than **two (2) changes** of apparel in any single commercial, shall be considered as regular wardrobe. The Engager may not specify wardrobe requirements as a condition of engagement. **If, at the request of the Engager, a Performer is required to bring to set more than two (2) changes of apparel in any single commercial, he/she shall be compensated as an expense claim, the amount of \$15.00 per additional change of apparel beyond two.**

18. **(New) Article 1407 Conditions for Makeup, Hairdressing and Wardrobe**

All makeup and hairdressing devices (e.g. sponges, brushes) shall be provided and shall not be used on more than one individual unless properly sanitized between uses. All wardrobe shall be appropriately cleaned between wearings.

**19. Article 1601 Special Consideration Required**

(a) The Parties to this Agreement hereby acknowledge and agree that it is necessary to specify rules so that Minors may be protected from abuse and improper working conditions. Furthermore, the Parties agree that they shall be guided in all respects by what is in the best interests of the Minor, which shall always prevail in the interpretation, application, and administration of the terms of this Agreement. The following provisions apply to Minors under 18 years of age. The term "Parent" shall mean either the Parent or Guardian of the Minor.

**20. Section 18 – Compensation for Use and Reuse**

ACTRA and ACA/ICA commit to continuing to work on new models for compensating performers for the Use of commercials over the term of the new NCA with the objective of agreeing on a new model (consistent with the negotiating Parties' evaluation principles) for implementation with commencement of the next collective bargaining agreement.

**20a. Article 1811 Other Languages**

The Parties agree that they will jointly seek solutions to the issue of Performers and compensation with respect to productions and use of multi-lingual commercials; the Parties will endeavour to agree upon such solutions by December 31, 2008; and that once such solutions are agreed by the Parties, such provisions may be implemented within the term of the current Agreement.

**21. Article 1820 New Media Commercials**

This section applies to all commercials made for or designed for exhibition on New Media, defined as digital, electronic, or any other type of delivery platform including, but not limited to, commercials delivered via internet podcasts, mobile phones, and other digital electronic media. The term New Media is intended to be all inclusive of digital, electronic or any other type of delivery platform, whether now known or unknown.

**1820 (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), in which pilot project rates paid for commercials made for new media will be:

**Video (Unlimited Websites)**

	Session Fee	1 day – 4 wks	5 – 8 wks	9 – 26 wks	27 wks – 1 yr
PP	\$320 (4 hrs)	35%	50%	75%	100%
SOC	\$320 (4 hrs)	35%	50%	75%	100%
VO/SS	\$235 (2 hrs)	35%	50%	75%	100%

Stunt Perf	\$320 (4 hrs)	35%	50%	75%	100%
Stunt Co-ord	\$430 (4 hrs)				
Demonstrator	\$320 (4 hrs)				
BP	\$200 (4 hrs)				
GBP	\$135 (4 hrs)				
GS	\$105 (.5 hrs)	35%	50%	75%	100%

**Audio (Unlimited Websites)**

SV/SS 1 or 2 cut	\$250 (1 hr)	35%	50%	75%	100%
MV/GS 1 or 2 cut	\$190 (1 hr)	35%	50%	75%	100%
SV/SS per cut	\$125 (1 hr)	35%	50%	75%	100%
MV/GS	\$95 (1 hr)	35%	50%	75%	100%

If a production goes over the included work time, session and use fees automatically double. Any HWT, AWT and/or OT is paid per the NCA; Sections 12 and 21. A grace period of 15 minutes will be allowed to complete a shot already in progress; this period shall not be used for a new scene or set-up.

For each subsequent use period, the Engager must

(ii) Re-contract the Performer(s) in residual categories; and

(iii) Make a payment to each Performer in residual categories, to not less than the Performer's contracted session fee.

If a commercial made for new media is moved over to broadcast television, radio, or other media per Article 1818(a), Performers must be re-contracted and paid no less than the applicable minimum session and residual fees for the category of performance in the appropriate medium.

Performers must be advised, prior to auditioning, of the proposed use of the commercial.

All rates proposed for the pilot project are exempt from any increases provided for in the overall agreement.

Furthermore, the Parties agree to establish a joint committee to monitor and research, as appropriate, developments in New Media as it pertains 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 the new Agreement. The pilot project may be extended on the mutual agreement of the Parties.

**Article 1820 (b) From Broadcast to New Media (Move-over)**

1. a) The advertiser involved in the production of a commercial produced for broadcast on television or radio may use that commercial on a single page of only one of the advertiser's websites that it controls at no additional cost, strictly for and identified as archival or reference purposes, to a maximum resolution and display of 320 by 240 pixels.

b) The advertiser involved in the production of a commercial produced for broadcast use may use that commercial on multiple websites that it owns or controls upon payment of one (1) session fee which shall entitle the advertiser (sponsor) to 365 days use (from the date that the commercial is made available on the Internet).

c) Engagers may use a commercial on the internet upon payment of not less than a minimum session fee per website for 365 days to a maximum payment equivalent to three (3) session fees for 365 days use on unlimited sites. A short life option for 31 days' use requires payment of one (1) session fee for use on unlimited websites.

**Note:** Conforming language per Article 1820 b) 1. b. and c., e.g. Performers must be advised, prior to auditioning, of the proposed use of the commercial; performers in residual categories shall be recontracted; Performers shall be deemed to have a product conflict for only as long as the commercial continues to be considered an 'active' commercial for television purposes.

Article 1820 (c) stet

22. **Article 1901 Alterations Create New Commercial** Except as provided for in this Section, any alterations made to a single commercial shall create a new commercial, requiring the payment of session and use fees. Where alterations are made in accordance with this Section, the Performer shall be paid the applicable use fees for as long as the commercial is used. Radio commercials altered in accordance with this Section may run in the same cycle as the original commercial without incurring additional use fees. Television commercials altered in accordance with this Section may run in the same cycle as the original commercial without incurring additional use fees, except as provided for in Article 1903

Before a new commercial may be made utilizing extant footage, the on-camera Performers (other than Background Performers) on the extant footage must first give their written permission for such use of their recorded performance. Such permission may not be withheld unreasonably. Where the Engager, when seeking consent under this provision, is unable after reasonable attempts to reach a Performer, the consent of the National Executive Director of ACTRA is to be sought. Such consent may not be unreasonably withheld.

23. **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 original commercial.

A soundtrack may be recorded to fit such a commercial for timing and synchronization purposes. A Performer required to record such additional soundtrack shall be paid an additional session fee.

Re-performance by a Principal Performer in order to create a new soundtrack, without requiring the re-performance of other on-camera Performers, may also be permitted upon payment of an additional session fee to that Principal Performer.

Three (3) versions of the same commercial made under this clause may be broadcast in the same cycle, upon payment of the appropriate cycle fees for one (1) commercial. If, however, all four (4) versions of the commercial are broadcast in the same cycle, Performers shall receive cycle payments for two (2) commercials.

24. **Article 1903 ~~Re-edited or Rearranged Versions~~** (original version withdrawn from air)  
a) **~~Off-Camera Changes~~** the off-camera message may be changed in any way, as long as the original commercial is withdrawn and the Performers recording the off-camera message are paid an amount not less than the applicable session fee.  
b) **~~On-Camera Changes~~** The on-camera portion of a commercial may be re-edited or rearranged, including use of new material shot at the original session, as long as the original version is withdrawn, but excluding engagement of any Performers or substantial changes in the nature or setting of the message.  
c) **Supers** A change in supers will not be considered new material.

25. **(New) Article 2806 ACTRA's Insurance and Retirement service providers of record are ACTRA Fraternal Benefit Society (AFBS) and in British Columbia, AFBS and The Member Benefits Trust.**

26. **SECTION 30— LETTER OF ADHERENCE**

- 3001 **Binding Obligation** Engagers who wish to engage ACTRA Performers in the production of their commercials for television or radio shall sign a Letter of Adherence on their own letterhead and forward the original signed copy to the National Executive Director of ACTRA. Such Letter of Adherence, once executed, shall constitute a binding obligation to the current National Commercial Agreement by the signatory of the Letter of Adherence in relation to the production of all commercials by the signatory or by any companies that it now or in the future controls or manages. Such Letter of Adherence shall be in the format provided in Article 3004.
- 3002 **Non-signatory** An Engager who clearly refuses to sign a Letter of Adherence, or who fails to respond to a request to sign a Letter of Adherence within a period of thirty (30) calendar days following the mailing of a registered letter requesting the Engager to do so, shall be considered a non-signatory.
- 3003 **Unfair Engager** Such failure or refusal by any Engager to sign a Letter of Adherence shall automatically cause the Engager to forfeit all rights under this Agreement. ACTRA may declare such Engager to be an "unfair Engager," and may instruct all Performers, without injury or damage to the Performers or to ACTRA, not to work for such unfair Engager.
- 3004 **Letter of Adherence** See format overleaf.
- 3005 **Relationship with Non-signatory** The Parties recognize the value of encouraging and facilitating foreign entities to produce commercials in Canada engaging members of ACTRA. Accordingly nothing in this Agreement shall be read as precluding foreign entities, whether agencies, production companies or advertisers, from utilizing a Canadian signatory to the Agreement to engage ACTRA members in Canada on their behalf.



LETTER OF ADHERENCE TO  
THE ACTRA—ICA/ACA NATIONAL COMMERCIAL AGREEMENT

Please sign a Letter of Adherence as follows on company letterhead and forward it to the National Executive Director of ACTRA, with a copy to the Branch Manager of the local ACTRA office. The executed Letter of Adherence shall constitute a binding and irrevocable obligation by the Engager to adhere to the terms of the current National Commercial Agreement for its full duration; that is, until such time as a new National Commercial Agreement is entered into by the ICA/ACA and ACTRA, or the terms and conditions of the current National Commercial Agreement come to an end by virtue of the right to strike or lockout having accrued in accordance with the Negotiation Protocol.

COMPANY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_

PROVINCE: \_\_\_\_\_

POSTAL CODE: \_\_\_\_\_

TEL NO: \_\_\_\_\_

FAX NO: \_\_\_\_\_

DATE: \_\_\_\_\_

EMAIL: \_\_\_\_\_

TO: ACTRA LOCAL UNION OFFICE

The Engager named below hereby acknowledges receipt of the national Agreement of rates and conditions for Performers in commercials dated \_\_\_\_\_ to \_\_\_\_\_ negotiated between ACTRA and the ICA/ACA. In the interests of promoting stability and national standards in the industry and effecting harmonious relations with ACTRA and Performers working under this Agreement, the Engager hereby becomes signatory to said Agreement and agrees to abide by and conform to all the terms and conditions contained therein. This Letter of Adherence, once executed, will constitute a binding obligation to the current Agreement by the signatory in relation to the production of all commercials by the signatory or by any companies that it now or in the future controls or manages.

SIGNATURE \_\_\_\_\_

PRINT OR TYPE NAME

TITLE

SIGNED ON BEHALF OF:

\_\_\_\_\_  
COMPANY NAME

THIS \_\_\_\_\_  
DAY/MONTH/YEAR

This Letter of Adherence is hereby countersigned by a duly authorized representative of ACTRA:

PER \_\_\_\_\_

DATE \_\_\_\_\_

## **27. Article 3400 – Grievance/Arbitration**

### **Grievances and Complaints**

#### **3401 Relationship to be Unaffected**

Engagers agree that Performers exercising their rights under the provisions of this Agreement do so without prejudice to their relationship with such Engagers and with the Sponsors who may be clients of such Engagers.

#### **3402 Time Period for Filing Grievances**

##### **First Stage:**

Performers and/or ACTRA shall make every effort to raise with the Engager, discuss and resolve any complaints or potential grievances connected to the production at the time of production, wherever possible. ACTRA shall have the right to screen a commercial or commercials connected to the production at a time mutually convenient to ACTRA and the Engager.

- a) In any event, the Performer must advise ACTRA within thirty (30) days of the date on which he/she becomes aware or ought to have become aware of the act or omission giving rise to any grievance. A party may initiate a grievance only within sixty (60) days of the date on which that party becomes aware or ought to have become aware of the act or omission giving rise to the grievance
- b) A grievance shall be considered initiated when the initiating grievor (ACTRA, the ICA/ACA or the Engager) sets forth in writing the facts giving rise to the dispute, the relevant sections of the Agreement or of the individual contract, and the remedy sought, and delivers the grievance to the other party to the grievance. The Association to which a respondent Engager belongs will be provided a copy.
- c) In all cases concerning one or more Performers, ACTRA, as the exclusive bargaining agent for Performers covered by this Agreement, has carriage of the grievance and is considered the grievor or the respondent, as the case may be. When the Engager is not a member of one of the Associations, ACTRA shall advise both the ICA and the ACA of the grievance.

##### **Second Stage:**

In the event of a failure to resolve the grievance at the first stage, ACTRA, the ICA/ACA or an Engager shall refer the grievance in writing to the Joint Standing Committee for mediation or to obtain guidance from the Committee.

#### **3404 Joint Standing Committee Composition**

The Joint Standing Committee will be composed of four (4) representatives of the ICA and ACA and four (4) representatives of ACTRA [six (6) of whom shall constitute a quorum]. Each Party shall have equal voting rights at any meeting of the Committee; for example, when only three (3) representatives of the ICA/ACA are present, then ACTRA shall be entitled to only three (3) representatives at that meeting.

Both the ICA/ACA and ACTRA shall advise the other Party in writing of its appointees to the Joint Standing Committee. Each of the Parties may appoint an alternative member in the absence of a member of the Committee.

##### **3404 (a)**

The Joint Standing Committee shall meet six (6) times per calendar year, on the second Tuesday of the months of January, March, May, July, September and November, at times and places to be determined by the Committee or its representatives. Meetings may be cancelled only in the event that there are no grievances to discuss. A meeting may be postponed because of extraordinary circumstances, but in no event for more than eleven (11) working days.

##### **3404 (b)**

The Joint Standing Committee shall hear the dispute and shall attempt to resolve the matter. **Parties submitting grievances who are not able to appear in person may submit a statement in writing or on videotape**

#### **3405 Rules and Procedures**

The Joint Standing Committee may make its own rules and procedures and shall rotate the position of chairperson.

Records and minutes must be kept. The Committee may appoint a non-member secretary to keep records and minutes.

#### **3406 Powers**

The Joint Standing Committee shall be empowered to mediate, and if such mediation is unsuccessful, to recommend resolutions on each matter submitted to it in accordance with the provisions of this Agreement. The Committee may make such recommendations, as it sees fit, including:

(a) giving its views on its interpretation of the Agreement where it is found by the Committee that a provision or provisions of the Agreement are ambiguous;

(b) recommending redress to the complaining party when it is found that the Agreement has been violated;

(c) recommending improvements to the administration of the Agreement to the Parties.

3407

The mediated resolution or, in the alternative, the recommendations of the Committee shall be reduced to writing and made available to all parties to the grievance.

3408

In the event that settlement is not reached through the first or second stages of the grievance procedure, or in the event the respondent party does not respond to the grievance, the complaint may be referred to arbitration by the grieving party in accordance with this provision:

3409

(a) Where a difference arises between the parties relating to the interpretation, application or administration of this Agreement, including any question as to whether a matter is arbitrable, or where an allegation is made that this Agreement has been violated, the grieving party, after complying with the stages set out above in this Article, shall, notify the other party in writing of its desire to submit the difference or allegation to a single arbitrator.

(b) The party invoking arbitration shall, in its notice of intent to proceed to arbitration, suggest a person or persons to serve as the sole arbitrator.

(c) The recipient of the notice shall respond within ten working days, either agreeing to a proposed arbitrator, or suggesting alternative arbitrators.

(d) If the parties cannot agree on an arbitrator within thirty days, either party may request the Minister of Labour for the province where the dispute is being heard to appoint an arbitrator.

(e) In Quebec, the arbitrator in such case may be appointed in accordance with the *Act respecting the professional status and conditions of engagement of performing, recording and film artists* (R.S.Q., c. S-32.1)

#### 3410 Timely and Complete Hearing

The Arbitrator shall hear the dispute in a timely fashion.

#### 3411 Powers of Arbitrator

The Arbitrator shall not alter, amend, add to or delete from the terms of this Agreement. The Arbitrator shall be accorded all of the powers of an Arbitrator under labour relations statutes applicable in the province in which the dispute is heard. In Quebec, the arbitrator shall be accorded the powers described in section 100.12 of the *Labour Code* (as amended).

#### 3412 Arbitrator's Decision

The Arbitrator shall be empowered to issue a final and binding decision and will enable the complaining party to exercise all rights and benefits provided by this Agreement. The Arbitrator

shall, in establishing entitlement to such rights and benefits, render a decision that he/she considers warranted under the circumstances, including redress in the form of damages.

#### **3413 Association Status**

In any grievance against an Engager, the ICA/ACA may request that the Arbitrator grant the ICA/ACA intervener status.

#### **3414 Unfair Engager**

In the event that the Engager fails or refuses to abide by this complaint procedure or to implement a decision by an Arbitrator, ACTRA shall have the right to declare such Engager "unfair." ACTRA may direct its members not to accept any engagements from such Engager, without injury or damages to the Performers or to ACTRA.

#### **3415 Time Periods May Be Changed**

Any time period provided for in this section may be changed by mutual written agreement between the representatives of ACTRA, the ICA/ACA or the Engager as the case may be.

28.

## **APPENDIX K NEGOTIATION PROTOCOL FOR THE NATIONAL COMMERCIAL AGREEMENT**

Whereas the Parties have always recognized the value and public interest in maintaining a legal and enforceable contractual framework for the negotiation of national standards of engagement for Performers in this industry;

And whereas the Parties to that end are desirous of continuing their practice of negotiating a National Commercial Agreement ("NCA") available to all Engagers, as defined in the NCA, wishing to engage Performers represented by ACTRA in their radio and television commercials.

And whereas ACTRA by letter to the ICA dated August 2, 2007, has put the ICA/ACA on notice that it will henceforth be refusing to authorize ACTRA performers to work on commercial productions other than for "true engagers" who choose to sign the National Commercial Agreement.

The parties now agree as follows:

1. The terms of this Negotiation Protocol shall govern the process of collective bargaining for the renewal of this National Commercial Agreement. It is the Parties' desire to resolve matters without resorting to strike or lockout. Therefore, prior to the declaration of a strike or lockout, the Parties mutually commit to using the Negotiation Protocol to govern their negotiations.
2. The Institute of Communications Agencies and the Association of Canadian Advertisers (ICA/ACA) recognize that ACTRA is a trade union, as has been determined by the Ontario Labour Relations Board, and that it is duly authorized to represent each and all Performers working under the NCA.
3. ACTRA recognizes the ICA/ACA as the sole and exclusive bargaining agent for Engagers who sign an Authorization for the ICA to negotiate this national Agreement on their behalf. Prior to each round of bargaining, the ICA shall take concrete steps to obtain from Engagers such Authorizations to bargain this Agreement on their behalf.
4. The Authorization that each Engager shall be asked to execute shall include:
  - i) a requirement that each Engager-member agree that the ICA shall be its exclusive bargaining agent, authorized to bargain on its behalf in respect of the renewal of the National Commercial Agreement, and
  - ii) a requirement that each such member shall be bound by the terms and conditions of the Agreement, which is the result of collective bargaining between the ICA/ACA on the one hand and ACTRA on the other hand, subject to ratification in accordance with the bylaws or practices of each Party.

The ICA will, at the commencement of each round of bargaining, provide to ACTRA a list of all of the Engagers who have executed such Authorization.

5. To the extent that any matters are the subject of negotiations between the ICA/ACA and ACTRA, the Engager, once such Authorization is given, shall be precluded from negotiating separately with ACTRA or from entering into any agreement with ACTRA different from the NCA. Similarly, ACTRA shall be precluded from negotiating separately with such Engager, or from entering into any agreement with the Engager different from the NCA, for so long as the terms and conditions of the NCA continue in effect.
6. The Parties agree to meet within forty-five (45) days of notice to bargain having been given, and to bargain in good faith and to make every reasonable effort to enter into a new Agreement.
7. While bargaining continues, and until the right to strike or lockout has accrued in accordance with this Protocol, the terms and conditions of the current NCA shall continue in full force and effect, and neither party shall alter, or threaten to alter any of the terms thereof, without the written consent of the other party. In particular, without limiting the generality of the foregoing, the Engagers shall not, without the written consent of ACTRA, alter any rates or any other term of the

current NCA or any right or privilege of the Performers in the bargaining unit or any right or privilege of ACTRA until the requirements of the Protocol have been met.

8. Where a Party to the NCA considers that Mediation/Conciliation would be helpful, the Party may request the assistance of a Mediator/Conciliator. Such a request shall be made by the Party giving written notice to the other Party of its desire to obtain the assistance of a Mediator/Conciliator. Such notice shall contain the names of three persons whom the Party giving notice is prepared to accept. The proposed persons shall be neutral persons who have no direct interest in the subject matter of the negotiations, and who have not acted as employee, agent or advisor for either of the Parties or for an interested Party in any previous proceedings between the Parties or their members.
9. The Party receiving such notice shall reply in writing within ten (10) days, accepting the appointment of one of the Mediators/Conciliators suggested by the other Party or indicating that none of the suggested persons is acceptable. In the latter event, the Party responding shall suggest alternative persons as part of its written response. The Parties shall then have a further 10 days in which to reach agreement upon a Mediator/Conciliator. Should the Parties be unable to do so, they shall forthwith submit a mutual request to the Ontario Minister of Labour to appoint the Mediator/Conciliator.
10. Where a Mediator/Conciliator has been agreed to by the Parties or otherwise appointed under paragraph 9, such person shall forthwith confer with the Parties and endeavour to assist them to reach a new Agreement.
11. The Parties agree that the fees and expenses of the Mediator/Conciliator ("the Officer"), if not paid by the Ministry of Labour, shall be paid fifty percent (50%) by ACTRA and fifty percent (50%) by the ICA/ACA.
12. After the Parties have met with the Officer and have made reasonable efforts to enter into a new Agreement without success, either Party shall have the right to request a Report from the Officer that the parties have reached an impasse in their bargaining.
13. The Parties agree that there shall be no strike or lockout declared until the expiry date of the Agreement and fifteen days have elapsed from the date that the Report of the Officer indicates it was issued.
14. ACTRA agrees that there shall be no strike against any Engager, on whose behalf the ICA/ACA has been authorized to negotiate, and the ICA and ACA agree that there shall be no lockout by any Engager on whose behalf the ICA/ACA has been authorized to negotiate, unless there is a strike against all Engagers, or a lockout by all Engagers, on whose behalf the ICA/ACA has been authorized to negotiate.
15. The Parties to this Negotiation Protocol agree that "strike" and "lockout" shall have the same meaning as those terms have under the Ontario Labour Relations Act.

16. The Parties and any Engagers signatory to this National Commercial Agreement expressly acknowledge that the National Commercial Agreement, negotiated in good faith between the Parties, is intended to be a binding and enforceable agreement. Accordingly, neither party nor any signatory Engager shall, during the life of this National Commercial Agreement, raise as an issue in any proceeding to enforce its terms:

a) whether ACTRA had or has status to represent performers covered by this Agreement,

or

b) whether the performers covered by this Agreement are "employees", "dependent" contractors, or "independent" contractors.

or

c) whether this is an enforceable agreement.

17. Subject to the provisions of the *Act respecting the professional status and conditions of engagement of performing, recording and film artists* (R.S.Q., c.S-32.1), which prevails, the Negotiation Protocol is applicable in Quebec.



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

Agreed this 6<sup>th</sup> day of October, 2008 in Toronto, Ontario.

Signatures

ACTRA

ACA

ACTRA

ICA

October 6, 2008

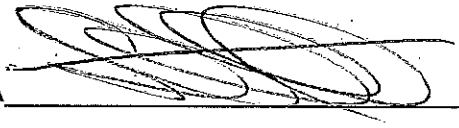
Statement of Intent

Re: Article 3005

Given that the issue of third-party relationships under Article 3005 has now been addressed on a go-forward basis in the new National Commercial Agreement, the ICA/ACA will work to facilitate a resolution of the grievance outstanding under the previous Article 3005 between Canadian Connections, a signatory to the National Commercial Agreement, and ACTRA.

Signatures

ACTRA \_\_\_\_\_ ACA 

ACTRA  ICA 