

Submission to the Labour Court

Irish Equity (SIPTU)

And

Screen Producers Ireland (SPI)

TV Drama Agreement

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Chairperson, members of the Court, the case before you today concerns the current dispute between Irish Equity/SIPTU (hereafter referred to as Irish Equity) and Screen Producers Ireland. The issue in dispute is the completion of an agreement to cover the terms of engagement for actors for the production of TV drama.

Background

The discussion on this particular agreement has been ongoing sporadically for almost 10 years without success. The central issue for the union is the absence of post-production payments such as royalties and usage fees. The current Irish contract is what is referred to as a full buyout contract. All rights of the performer are paid for in perpetuity at the point of production. Irish Equity have been disputing this part of the contract for years but have not, thus far been able to reach agreement with SPI on an alternative. There have been a number of engagements under the auspices of the Labour Relations Commission (LRC) over the years and most recently on March 12th 2014.

The union for its part have produced a draft document, which was revised for SPI on two occasions after conciliation conferences at the LRC and re-presented to SPI. For its part however, SPI have not provided the union with a response document, or indeed, any formal written response at all. During the discussions in 2013 the position of SPI was that they were agreeable to enter in to an agreement for TV drama that allowed for the backend type payments that the union had been seeking. Subsequently however SPI changed their position and said they would only enter in to this agreement if the union agreed to negotiate a film agreement that was a full buyout agreement. As the union would not consent to this the negotiations broke down and the matter was referred to the Court for a full hearing.

The Union Case

The vast majority of the TV drama production in the Republic of Ireland comes from the English speaking world. All of these same countries have contracts that allow for the payment of royalties and residuals. Ireland is unique among this group with the full buyout clause. The union position is that in order to ensure that the Irish Contract is at least the equivalent of the contracts in other English speaking countries then backend payments must be part of the contract.

Initially the producers had argued that this would add to the cost of the production but that is not the case. The actor's fees are scheduled as follows:

On engagement there is a basic minimum fee plus a number of additions. The basic fee normally covers one or two transmissions (as specified in the contract). Everything else has a value and this is

an identified percentage of the minimum fee, for example a repeat may be 50% of the fee, a repeat in another territory may be 45% and making available on line to view may be another percentage and DVD sales will be another percentage and so on. The production company decides what it will need from these lists of usages, the fee plus all the various percentages are calculated and added together to form the total engagement fee. This is normal in all contracts and a draft of the current proposals are contained in the appendix to demonstrate the structure described.

In other countries the norm is to have these purchases time limited, repeats perhaps purchased for 5 years, the various types of on line viewing may perhaps be on a 3 year licence etc but in the Irish contract these payments are considered to be forever, i.e. purchased in perpetuity. The important fact here is that all of these payments, once time expired, become linked to the income stream for the producer generated from the continued viewing of the production. So for example if the production is sold to a particular broadcaster for a repeat transmission, the producer gets this money and pays the actor the agreed percentage fee for the repeat from this money. Likewise if there is a 10% licence fee for download to rent for 3 years, after the 3 years expires the producer is free to negotiate another licence and the 10% is paid to the actor from the revenue generated by the production. This is how all other normal English speaking countries construct their contracts for actors and it is clear that as these additional backend payments come from additionally generated revenue post production, it does not add to the cost of production.

The producers have also argued that it is administrably very difficult to administer these types of backend payments. We do not accept this however as it has been done already in this country and SPI have already agreed that they are in a position to negotiate such an agreement, thus conceding an ability on the part of their members to administer it. It is not therefore that the producers cannot administer the payments, they just want to trade such payment against a buyout Film agreement.

Section 125 of the copyright legislation in Ireland provides that the Artist should have a right to "equitable remuneration" in respect of their work and that the amount payable is that which has been agreed by or on behalf of the person to whom it is payable. Section 125 (6) further states that an agreement is void in so far as it purports to exclude or restrict the right to equitable remuneration conferred by Section 125. While we are not here today under the Copy Right Act Irish Equity believe that the full buyout in perpetuity clause in the contracts does not meet the definition of "equitable remuneration" under the Act as it holds the actor to one initial payment without ongoing reward for the continued exploitation of their work and that this should be considered to be a restriction of their rights.

In reality, while very important to us, some of the above argument has become irrelevant in respect of the TV drama as SPI are agreeable to negotiate these matters, albeit in exchange for another agreement so the principle point is conceded.

The arguments are very relevant however to the reasons that the union are unable to make the exchange to trade one contract for the other. Given that the parties have been engaged on this matter for almost 10 years without agreement it is not credible that the parties could now re-engage and negotiate 2 agreements concurrently. Neither party has the capacity for that and in any event each agreement needs to be negotiated on its own merits.

The fact of the matter is that the majority of the document is uncontested on the terms and conditions laid out as it reflects the day to day working practices anyway.

Our request to the Court today is not to ask the Court to decide on the specifics of what the fee or percentages should be but rather to ask the Court to uphold the union position that the TV drama and Film agreements should be the subject of separate negotiations and that these negotiations should be time limited. To try to do otherwise, would, in our view only ensure that the discussions continue to be prolonged and agreement would be reached in on neither.

We thank the Court for their time and look forward to a favourable Recommendation.



TV Agreement

IRISH EQUITY and SCREEN PRODUCERS IRELAND

Complete draft 1.0 February 2014.

Contents	Clause	Page
DATE OF COMMENCEMENT, DURATION AND TERMINATION OF THE AGREEMENT	1	3
APPLICATION AND SCOPE OF THE AGREEMENT	2	3
EQUAL OPPORTUNITIES	3	4
UNDERTAKINGS OF SCREEN PRODUCERS IRELAND AND THE PRODUCERS	4	4
UNDERTAKINGS OF THE UNION AND THE ARTISTS	5	5
ENGAGEMENTS AND CASTING	6	5
EXTENSION OF FIRST CALL - Special Provision	7	7
SECOND CALL AND OTHER PAYMENTS	8	8
CANCELLATION OF WORKING DAY INCLUDING WEATHER COVER	9	9
DECLARED HOLIDAYS	10	10
WORKING TIME	11	10
OVERTIME PAYMENTS	12	13
HOLIDAY ENTITLEMENT	13	13
AUDIENCE CONTINUITY, RECAP SHOTS & FLASHBACKS/ FLASHFORWARDS	14	14

USE OF EXTRACTS	15	14
COMPILATION PRODUCTIONS	16	14
ASSIGNMENT	17	15
RIGHTS AND USAGES BEYOND THE AGREED LICENCING PERIOD	18	15

Contents	Clause	Page
ADDITIONAL RIGHTS OF USE	19	15
CLAIMS FROM COLLECTING SOCIETIES – QUIT CLAUSE	20	16
COPYRIGHT AND USES	21	16
PRE-PRODUCTION MEETINGS AND INFORMATION TO THE UNION	22	17
FACILITIES FOR TRADE UNION ACTIVITY	23	17
ILLNESS	24	17
DANGEROUS WORK	25	17
NUDITY AND SIMULATED SEX ACTS	26	18
COSTUME AND PERSONAL PROPERTY	27	19
DISPUTE PROCEDURE	28	20

INSURANCE	29	21
FORUM	30	21
DURATION OF THIS AGREEMENT	31	21

1. Date of Commencement, Duration and Termination of the Agreement

This Agreement between Screen Producers Ireland (SPI) and Irish Equity (the Union) shall commence on _____ and shall continue until such time as amended by agreement. The Agreement will be subject to ongoing periodical review to ensure it does not become outdated.

2. Application and Scope of the Agreement

This Agreement provides the minimum terms and conditions for all Artists (excluding instrumental musicians, crowd artistes and Walk-On/Background Artists performing only in those capacities) including dancers where the dance involved is specifically choreographed for the production and employed in productions produced primarily for exhibition on television and shall apply irrespective of the source of finance, means of production or of ultimate use. Documentaries (with the exception of dramatized documentaries) music videos (where they are not used as part of the television production) and advertising commercials are not subject to this agreement.

SPI and the Union agree that the spirit and intention of the Agreement is to create, maintain and further good relations between the Producers and Artists. The Union is recognised by Screen Producers Ireland and Screen Producers Ireland by the Union for the purpose of collective bargaining as the sole representative organisations of Artists and Producers within the application of this Agreement.

Irish Equity accepts that the recruitment of Artists is the sole prerogative of the Producers and the Union commits to allow all Artists recruited by the company to become Union members.

For its part SPI agrees to recognise Irish Equity as the sole negotiating body for all Artists covered by this agreement. It shall be a pre entry condition of employment for all Artists covered by this Agreement that they become and remain benefit members of Irish Equity.

Irish Equity acknowledges that the Producers will retain the right to engage non-Irish resident Artists as part of its obligations under co-production and financing arrangements, and that those Artists who are members of an Artists Union in their home country, will not be required to become members of Irish Equity.

Any dispute which may arise in relation to any aspect of this Clause will be processed by the Parties in accordance with the Disputes Procedure of this Agreement

Any rights of exhibition, transmission or other exploitation of the production that are not provided for in this agreement shall be subject to separate agreement between the Producers and the Union. Such agreement shall be deemed to be included in and part of the original contract between the Producer(s) and the Artist relation to the production.

3. Equal Opportunities

The parties to this Agreement are committed to the development of positive policies to promote Equal Opportunities and fair employment regardless of disability, marital status, race, religion, age, membership of the travelling community, nationality, gender or sexual orientation, family status as set out in the Equal Status Act 2000. The principle will apply in respect of all terms and conditions of engagement under this Agreement.

The casting of artists of specific gender and / or ethnic origin will be excepted from this policy.

The principal criteria for casting an artist for a particular role shall be the artist's ability and the requirements of the role. The parties agree to monitor the introduction of this clause and to review the operation of this clause from time to time.

In order to enable the casting of Artists with disabilities, whether or not the part specifically calls for an Artist with a disability, the Production Company will make every practical effort to ensure that :-

- I. Access to any area of audition, rehearsal or performance is available to an Artist with a disability.
- II. Where disabled access is outside the Production Company's control and is inadequate the production Company shall use every effort practical to effect improvements.

4. Undertakings of Screen Producers Ireland and The Producers

Screen Producers Ireland, their affiliated Production Companies and the Producers undertake that the engagement of all Artists as defined in Clause 2 above shall be subject to the provisions of this Agreement and shall be made upon the agreed Form of Engagement.

Screen Producers Ireland, their affiliated Production Companies and the Producers undertake that engagements will not be offered to any Artist for any television production to which this Agreement does not apply except upon terms and conditions agreed between the Production Company and the Union.

Screen Producers Ireland, their affiliated Production Companies and the Producers undertake and agree to abide by the terms of this Agreement and to have a copy of this Agreement made available to every member engaged on the production.

5. Undertakings of the Artists

The Union and the Artists undertake;

- I. To accept, comply with and observe the provisions of this Agreement.
- II. The Artists shall to the best of their abilities interpret their parts and render all services required under this Agreement, and under their respective engagement with the Production Company, in such manner as the Production Company may direct, and (subject to the relevant provisions of this Agreement) at such times and places as the Production Company may require.
- III. The Artists, when on first or second call, shall keep the Production Company informed of their current addresses and telephone numbers.

6. Engagements and Casting

- a) All individual Artists shall be engaged on the appropriate contract, i.e. the Form of Engagement, as agreed between Screen Producers Ireland and the Union, which are only available from the offices of Screen Producers Ireland and the Union. The Form of Engagement shall not contain any terms or provisions other than those included in the appropriate Form of Engagement, except to provide for any Special Stipulation(s) due to the exceptional requirements of a particular engagement. Such Special Stipulation(s) shall not contain any provision(s) less favourable to the Artist than those contained in this Agreement and in the appropriate Form of Engagement.
- b) The engagement fee(s) specified in the Artist's Form of Engagement shall not be less than the minimum agreed between Screen Producers Ireland and the Union. The Artist's Form of Engagement shall specify the payments on which additional uses shall be based and shall detail any rights pre-purchased. Additional uses shall be calculated on the Artist's aggregate earnings excluding payments made for rehearsal days, overtime and payments made under second call provisions, with the exception of still photographs for use in the production, pre-recorded sound and re-takes for the completion of the Artist's part.
- c) The Artist's Form of Engagement shall provide for the day(s)/week(s) on which the Artist shall be on first call to the Production Company (called "first call period(s) of engagement"). The period of first call shall be the day(s) and/or week(s) specified in the Artist's Form of Engagement for which the Artist shall attend to render services in the rehearsal, photographing or recording of the Artist's part.
- d) In the event that the Production Company does not call the Artist to render services on the day(s) and/or week(s) specified in the Artist's Form of Engagement the Artist shall have been deemed to have attended for the purposes of payment due to the Artist and such payment(s) shall be included in the Artist's aggregate earnings and the Artist shall receive all appropriate additional use payments in accordance with their Form of Engagement.
- e) The Production Company may not vary or add to the day(s) and/or week(s) specified in the Artist's Form of Engagement. Where the Production Company requires the services of the Artist outside the specified period(s) of engagement in the Artist's Form of Engagement or any extension thereof, this will be subject to the Artist's availability and a separate Form of Engagement shall be issued which may involve re-negotiation of the Artist's engagement fee. These payments shall be included in the Artist's aggregate earnings.
- f) The Production Company shall before the first day of the recording of the Artist's part issue to the Artist the Form of Engagement appropriately completed. The Form of Engagement shall contain the terms agreed between the parties and shall be signed by the Production Company or their authorised representative and the Artist or their authorised representative and returned to the Production Company before the first day of recording of the Artist's part or of recording in any form.

- g) The Artist or the Artist's Agent shall be notified in advance of either an audition or recall if videotaping is to be deployed and such recordings must be destroyed after the completion of casting for the production.
- h) The purpose of video recording an audition or recall should, unless otherwise agreed, only be to assess the Artist's suitability for the role not as an aid to the development and presentation of any production idea.
- i) The Production Company shall have the right to lengthen, shorten, rewrite or eliminate the Artist's part in the production and/or to substitute another Artist in the place of the Artist who was first engaged to appear subject to the provisions of the Agreement.
- j) The Artist's Form of Engagement shall state whether or not the Production Company has the right to dub the Artist's voice. If this right is not expressly reserved to the Production Company in the Artist's Form of Engagement, the Production Company shall have no right to dub the Artist's voice except for the purposes described in sub-clause m) below.
- k) Notwithstanding sub-clause j) above, in the absence of any special stipulation to the contrary, the Production Company shall in every case have the right to dub the Artist's voice for the purpose of foreign language versions, or for retakes, or added scenes required at a time when the Artist is not reasonably available.
- l) It shall be the policy of the Production Company in so far as it is reasonable and practicable to offer engagements subject to this Agreement to experienced professional performers. If the Production Company has engaged an Artist with no previous professional experience other than a registered graduate from an accredited dance or drama course, the Union will be notified as soon as possible.
- m) The Production Company shall have the right to use a double in the Artist's place:
 - 1. In scenes which in the opinion of the Production Company would impose an undesirable risk upon the Artist; and/or for retakes or added scenes required at a time when the Artist is not reasonably available.
 - 2. In scenes which do not involve the use of professional skill in dramatic interpretation and in which no feature identifiable as other than that of the Artist appears on the screen.
 - 3. In scenes involving nudity, semi-nudity or simulated sex acts in accordance with 26.
 - 4. In other circumstances by agreement with the Artist.

7. Extension of first Call - Special Provisions

The Production Company shall be entitled to extend first call by notice in writing to be given to the Artist not later than seven days before the end of the period of engagement. Such period of extension must immediately follow the Artist's original period of engagement.

If the Artist, in order to be free to accept a bona fide offer of a professional engagement, shall request in writing the release as from a given date from the obligation to accept the extension of the period of first call, the Production Company shall reply in writing to such request within 24 hours (or if such request is received by the Production Company on a Saturday or Sunday, the Production Company shall reply not later than the following Monday except where such a Monday is a Declared Holiday). Failing such reply, the Production Company shall be deemed to have consented to such release. If the Production Company refuses such request the Production Company shall be deemed to have extended the first call period up to and including such given date and such extension shall be deemed to be part of the original contract whereby the Artist's engagement fee shall not be subject to re-negotiation.

If the Production Company requires the Artist to be available outside the permitted period of extension this shall be subject to the Artist's availability and a separate Form of Engagement shall be issued which may involve re-negotiation of the Artist's engagement fee and payments made shall be included in the Artist's aggregate earnings.

Where the Artist's performance is declared by the Production Company to be essential for sale or distribution of the production, the Production Company may offer an engagement subject to a Special Stipulation by which the Artist will undertake not to accept, without the written permission of the Production Company (for which no charge may be made, and which shall not be unreasonably withheld), any engagement during the period of such extension. Such period of extension must immediately follow the Artist's original period of engagement and shall be subject to a maximum of 30 working days.

8. Second Call and other payments

The Artist's previous professional engagements shall have priority over calls to render services under this Clause. With the exception of calls for pre-recording sound, retakes, and stills photographs for use in the production, all other calls made to the Artist on second call as defined hereunder shall not attract additional use payments.

Between the date upon which the Artist signs their Form of Engagement and the beginning of the period of first call, the Artist shall be on second call for purposes other than rehearsal, added scenes, principal photography and main sound recording for the part.

After the expiry of the period of first call (including any extension thereof) the Artist shall be on second call until the completion of the Artist's part in the production and the Artist shall, if required, attend for the purpose of retakes, post synchronisation, stills photographs and the like.

Before the beginning of any period of first call the Artist shall attend at the request of the Production Company for photographic and sound tests, make-up tests, costume and wig fittings, publicity stills, story and other conferences, read-throughs. Payment for which shall be, half the Artist's negotiated daily rate, for sessions of not more than 5 hours. Such payment shall not attract use fees.

Subject to the Artist's availability the Artist shall attend for the purposes of re-takes and the Artist's engagement shall be treated as an extension to the existing Artist's Form of Engagement whereby the engagement fee payable shall not be subject to re-negotiation and all payments made shall be included in the Artist's aggregate earnings on which additional use payments shall be calculated.

If the Artist is required to attend for the purpose of pre-recording sound or stills photographs for inclusion in the production, the Artist shall receive half their negotiated daily rate. Such payment attracts use fees.

Where the Artist is required to attend for the purpose of added scenes this shall be subject to the provisions of first call and shall be subject to the Artist's availability and a

separate Form of Engagement shall be issued which may involve re-negotiation of the Artist's engagement fee and payments made shall be included in the Artist's aggregate earnings.

If the Artist's services are required, the Artist shall be notified not later than 20.00 hours on the day previous to the day on which their services are required, and, whilst they shall not be bound to accept a call when advised after 20.00 hours, they shall do so if prior to 20.00 they are advised that an emergency exists which prevents a contemplated call being made definite until a later hour that night.

Calls to the Artist made under these second call provisions may be cancelled without payment up to 48 hours before the date upon which the Artist's services are required. For any call given within 48 hours that is subsequently cancelled, payment becomes due in any event. Payments made for cancelled calls shall not count towards the Artist's aggregate earnings on which additional use payments are calculated.

9. Cancellation of the Working Day (Including Weather Cover)

For any day upon which the Artist is required to attend but is unable to work due to adverse weather or is not called to render their services as a result of any other circumstances outside the control of the Production Company, the Artist shall receive their guaranteed payment. Where an Artist is not

called to render their services as a result of circumstances outside the control of the Production Company, the Production Company shall notify the Artist of the cancellation of the call at the earliest opportunity giving the reason for the cancellation.

The Production Company can, subject to the Artist's availability, request the Artist to re-attend for the number of days so lost. For each day of such re-attendance due to adverse weather the Artist shall receive a production day payment. For each day of such re-attendance due to other circumstances the Artist shall receive their negotiated daily rate plus use fees. The artist agrees to make every effort to accommodate the Production Company in the event of such a disruption.

10. Declared Holidays

Declared Holidays are days declared as Public Holidays by the Government of the Republic of Ireland.

For any Declared Holiday upon which the Artist is called to render services, the Artist shall be paid at double time.

11. Working Time

a) Normal Day or Night

Except in circumstances where the working period is changed as below, a working period shall be ten hours, exclusive of an unpaid meal break of one hour.

b) Make-up, Hairdressing and Wardrobe

The Artist shall be available for Make-up, Hairdressing and Wardrobe, which time shall be counted as part of the working day or night.

c) Day Calls

The Working Day, including the Artist's preparation for their part, shall normally commence between 07.00 hours and midday and shall be deemed to begin at the time at which the Artist is called or attends to render services, which in any event shall not be later than midday. These terms can be varied in accordance with sub Clause d) e. below.

d) Continuous Working Day/Night

Provided that agreement has been reached at the pre-production or other comparable meeting (s) the continuous working period will consist of eight hours

without cessation of work for a meal. Such continuous periods will normally take place between 07.00 hours and 19.00 hours, or 20.00 hours and 08.00 hours.

- a. Overtime provisions will apply in the event that work continues beyond eight hours. Such overtime will not be scheduled and in the event that overtime is called, it shall not exceed two hours in any one continuous working period except in emergencies.
 - b. The Production Company will provide a running buffet at no cost to the Artist. Dependent on the time of day or night the appropriate meals will be available.
 - c. The Production Company will use their best endeavours to ensure that the Artist is able to take refreshments whilst not actually working. The timing and frequency of such opportunities will be dependent on operational requirements.
- e) Agreement to Vary Hours
Subject to agreement at the pre-production or other comparable meeting(s), alternative starting times may be arranged in respect of working periods falling under either sub-clauses' 11 a) or 11 c) above to meet the requirements of a production. The Production Company will however schedule to ensure that such variations are applied only when they are essential.
- f) Extended Days
Work which is restricted to night exteriors or which cannot be undertaken in daytime and which extends beyond 22.00 hours, but does not extend beyond midnight, shall not be regarded as night work. Such work shall be paid for as overtime to those Artists who are entitled to claim overtime.
- g) Dawn Calls
Work which cannot be undertaken during the normal working day owing to factors such as light (e.g. sunrise), or otherwise restricted access to thoroughfares or locations, may require a dawn call. A dawn call may commence either at 04.00 hours and continue until 09.00 hours, or at 05.00 hours and continue until 10.00 hours. Overtime provisions shall apply after 09.00 hours or 10.00 hours as if the normal day had been worked.
- h) Night Calls
Night work is specially called as such and scheduled to extend beyond midnight or to commence before 04.00 hours. Payment for Night Work shall attract an additional fee of 40% of the minimum daily rate for each night worked and this payment shall not be included in the Artist's aggregate earnings on which additional use payments shall be calculated.
- a. Night Work that is undertaken on the Seventh Day or on a Declared Holiday shall attract an additional fee of 60% of the minimum daily rate and this

payment shall not be included in the Artist's aggregate earnings on which additional use payments shall be calculated.

l) Meal Breaks

The Artist shall be given an unpaid meal break of one hour, to be taken at a time to be agreed, but in any event not later than five hours from the unit call, or completion of the last meal break, excluding make-up time, whichever is the later.

j) Deferment of Meal Breaks

When the Artist's meal break is deferred, though not cancelled or curtailed, and as a consequence does not take place within five hours from the time of unit call, the Artist shall be paid €7.50 for each half hour or part thereof subject to a maximum payment of one hour.

k) Curtailment of Meal Breaks

Although it is recommended that the Artist should get their appropriate meal breaks, it is sometimes essential that meal breaks have to be curtailed to meet operational requirements. For such meal break curtailment the Artist shall be paid one hour at €50.

l) Dawn Calls

If the Artist is engaged for such calls the Artist shall be provided with a hot drink upon their arrival and the Producer shall provide adequate light refreshments, which shall be consumed whilst work continues.

m) During Overtime

Where overtime continues for more than one hour, but less than one hour and a half, there shall be no meal or refreshment break. The Production Company will in those circumstances provide light refreshments, which shall be consumed while work continues;

n) Where work continues beyond one and a half hours of overtime the Production Company shall **either**:

a. give a break of one hour at the end of the normal day or night, during which a meal shall be paid for and provided by the Production Company;

or

b. give a break of 15 minutes not later than one and one half hours after the end of the working day or night during which light refreshments shall be provided by the Production Company. In these circumstances work shall terminate 45 minutes before the scheduled finishing time but the Artist will be paid as if the work had terminated at the scheduled hour.

o) Breaks Between Calls

The period of rest between periods of work on the same engagement shall normally be not less than twelve hours, and in general, such a period must be given. In special circumstances, however, this period may be reduced to eleven hours. Any reduction

below eleven hours may only be made in the case of an emergency that would prevent the job being completed. Any reduction below twelve hours shall be subject to the consent of the Artist which shall not be unreasonably withheld and the Production Company shall inform the Union of the occurrence as soon as possible.

- a. In the event that the eleven hour break between calls is infringed then the Artist shall receive a payment of 30% of the minimum daily rate for each hour or part thereof that the eleven hour break is curtailed. This payment shall not be included in the Artist's aggregate earnings on which additional use payments shall be calculated.

12. Overtime Payments

- a) Overtime payments shall not count towards the Artist's aggregate earnings on which additional use payments are calculated.
- b) Overtime payments shall apply to all hours worked in excess of ten hours as per clause 11 a) or 8 hours as per clause 11 d) as the case may be.
- c) Overtime when worked on a normal day shall be paid at the rate of time and a half for each 30 minutes or part thereof up to a maximum of two hours per day.
- d) Overtime, when worked on a Declared Holiday, Night Work and Seventh Day or beyond two hours on a normal day shall be paid at the rate of double time for each 30 minutes or part thereof.
- e) If the Artist's negotiated Performance Fee is in excess of 4 times the daily/weekly minimum rate the overtime rates may be varied by Special Stipulation in the Artist's Form of Engagement.
- f) Screen Producers Ireland and Irish Equity agree that it is not in the interest of either the Artist(s), or the production on which they are engaged for hours to be worked that are so onerous that the Artist(s) ability to do the work for which they are engaged is impaired, particularly to the extent of putting their own health and/or safety at risk. Production Companies are therefore expected to make sure that they have taken this consideration fully into account when scheduling work in advance or asking Artist(s) to work hours in addition to those already scheduled.

13. Holiday Entitlement

An Artist shall be entitled to holiday pay calculated at 8% of the Artist's negotiated daily/weekly rate.

The Production Company may nominate periods of holiday and will provide at least twice as much notice as the length of the nominated period e.g. at least two days notice for one day of holiday. In addition, subject to the agreement of the Production Company, holiday may be taken at times requested by the Artist. The Artist must give at least twice as much notice as

the length of the period requested. Days of holiday taken during the period of the engagement shall be paid at the same rate as if they were days of work.

14. Audience Continuity, Recap Shots & Flashback/Flashforwards

When an Artist has been engaged under the terms of this Agreement to work on a production, the Production Company shall also be entitled to incorporate any part of the Artist's performance(s) into more than one episode, segment or instalment for the purposes of Audience Continuity, Recap Shots and Flashbacks/Flashforwards. For this use the Artist shall receive an additional sum which shall not be less than €90 per episode, segment or instalment for a screen time of not more than two minutes within the same production. This sum shall not be included in the Artist's aggregate earnings.

15. Use of extracts

Upon payment to the Artist of €50 the Production Company shall be entitled to permit an extract from the recording of an Artist's performance not exceeding one minute or €75 for an extract exceeding one minute but not exceeding four minutes in length.

These extracts may be used in instructional, critical, magazine, educational and similar programmes (not including any programmes of an advertising nature) for one transmission by a UK or Irish terrestrial Broadcaster.

In the case of extracts which are to be incorporated into a drama or other type of production not provided for above, the consent of the Artist must first be obtained. The prior consent of the Artist will be required for any extract that criticises or ridicules the Artist's performance, or is of an explicitly sexual nature.

16. Compilation Productions

These are productions consisting predominantly of extracts from previously transmitted productions made under the terms of this Agreement and celebrating the work of one Artist or an established group of Artists or a known production series. The prior consent of each Artist shall be obtained and a negotiable payment made which shall not be less than €300 per compilation programme. This payment shall grant to the Production Company all exploitation rights, as per the use fees in this agreement.

The Nominated Additional Use payment shall not be compulsory and shall only become due when the first Nominated Additional Use takes place and any additional uses shall be acquired in accordance with the provisions of this agreement as per the attached schedule of payments.

17. Assignment

The Production Company may at any time assign to any person, firm or company the whole or any part of the benefit of the Artist's engagement provided that the assignee undertakes

the obligations of the Production Company under the Agreement and under the Artist's Form of Engagement. The Artist shall thereupon render services to the assignee and shall look primarily to the assignee for fulfillment of the Production Company's obligations, but as between the Artist and the Production Company the Production Company shall not be released from any of the obligations imposed on the Production Company under this Agreement or the Artist's Form of Engagement which shall remain in full force and effect insofar as the same shall not have been fulfilled by the assignee.

The Production Company agrees that, in the event of an assignment or partial assignment of the copyright in the programme to a third party assignee, the Production Company will also assign all rights and obligations under this Agreement to the assignee including the obligation to make all use fee payments in accordance with the Agreement. The Production Company will ensure that a further clause is included in the assignment to the third party assignee together with a clause requiring the third party to ensure that all rights and obligations under the Agreement shall be incorporated in all and any future and further assignments. In the absence of the incorporation of these clauses in such assignments the Production Company and/or the previous assignee shall remain liable to the Artist. This Agreement is to be governed by and construed in accordance with the laws of The Republic of Ireland and the parties hereto submit to the exclusive jurisdiction of the Irish Courts.

18. Rights and Uses beyond the agreed licensing period.

The Production Company shall be entitled to exploit or agree to the exploitation of the production after the agreed licensing period has expired subject to payment to the Artist of the appropriate use fees in accordance with this agreement.

19. Additional Rights of Use

Any rights of transmission, exhibition or other uses of the production that are not provided for in this Agreement shall be subject to agreement between the Production Company and the Union. Such subsequent agreement shall then be deemed to be included in and part of the Artist's original Form of Engagement between the Production Company and the Artist, and every consent necessary under the Copyright and Related Act 2000 (or as subsequently amended) and any other relevant legislation shall be deemed as having been granted in accordance with said agreement.

20. Claims from Collecting Societies – Quit Clause

- a) Where in respect of performances contracted in accordance with this Agreement the Artist is entitled by law to receive from domestic or foreign collecting society's equitable remuneration or other forms of income additional to that arising under this Agreement, nothing in this Agreement shall prevent the Artist from laying claim thereto. The Artist shall not be obliged to account to the Production Company for any such income to which the Artist is entitled in these circumstances.

- b) For the avoidance of doubt, other than that specified elsewhere in this Agreement, the Artist shall not be entitled to any equitable remuneration or other forms of income which the Production Company is entitled to receive whether as a producer and /or broadcaster or otherwise from domestic or foreign collecting societies, and the Production Company shall not be obliged to the Artist for any such income.
- c) Such income includes but is not limited to equitable remuneration in respect of the off air recording right, the cable retransmission right, blank tape levies or machine levies, the lending right and rental right and any other right from time to time provided for by the law of any jurisdiction, unless specified in this agreement.
- d) The Artist will make no claim against the Production Company that shall arise from any failure by the Artist or any organisation that may represent the Artist to enter into any agreements with collecting societies or any failure on the part of such a society to make any payment to the Artist.
- e) The Production Company is authorised to disclose all necessary information about the Artist to a relevant collecting society so as to assist such collecting society to identify those entitled to receive the money it collects.

21. Copyright and Uses

The Artist shall grant to the Production Company all consents required under the Copyright and Related Act 2000 or any modification or re-enactment thereof to enable the Producer to make the fullest use of the Artist's services and the products thereof. The Artist shall assign to the Production Company with full title guarantee free from all third party rights all present and future copyright and performer's property rights in and to the performances and services of the Artist and the products thereof throughout the world for the full period of copyright and thereafter insofar as it is covered by this agreement.

Uses of the production shall be paid for in accordance with the fee arrangements as set out in this agreement.

22. Preproduction Meetings and Information to the Union

Prior to the commencement of any production the Production Company and the Union shall convene a "Pre-Production Meeting" which shall take place not later than 4 weeks before the start of principal photography.

At the pre-production meeting the Production Company shall supply all necessary information including information concerning the schedule, hours of work, details of resident locations where applicable and such allowances as apply to Artists.

23. Facilities for Trade Union Activity

The Production Company shall offer all reasonable facilities for meetings of Artists in the Artists' own time and for a full time accredited official of the Union to visit the Artists at their designated place(s) of work

24. Illness

The Artist shall warrant in the Artist's respective Form of Engagement that to the best of the Artist's knowledge and belief the Artist is in such a state of health that the Production Company will be able to effect insurance under normal conditions without the premium being subject to either loadings or special exclusions and that the Artist shall be able to perform the services required by the engagement.

Prior to the start of the engagement the Production Company shall be entitled to require the Artist to undergo examination by the Production Company's doctor in the presence of the Artist's doctor if the Artist requests. If this examination reveals the Artist not to be in an insurable state of health, or if the Artist fails to undergo the examination, the Production Company may forthwith terminate the Artist's engagement. However if the Artist's doctor does not agree with the Production Company's doctor following an examination then any medical matter in dispute shall be decided by a third doctor who shall be selected by agreement of the first two doctors.

25. Dangerous Work

The Production Company shall not require the Artist to render services of a hazardous or dangerous nature nor to undertake work that involves an unreasonable degree of risk, unless the Artist with the consent of the Production Company is prepared to undertake such work.

An Artist required to render services that are predominantly of a hazardous or dangerous nature shall be engaged in accordance with the provisions for Stunt Performers.

In the event that an Artist is requested and consents to undertake work of a hazardous or dangerous nature which is incidental to the Artist's part, then the special circumstances of the work shall be stated in the Artist's Form of Engagement, and the Production Company shall affect additional insurance for the Artist.

26. Nudity and Simulated Sex Acts

- a) "Acts of a sexual nature" and "simulated sex acts" shall mean any act, which if performed in public would be regarded as "indecent".
- b) "Nudity", "semi-nudity" and "disrobe" shall mean to be in a state of undress, which if in public could be regarded as "indecent".
- c) The Artist shall be notified before any audition takes place that the actual engagement will involve nudity or simulated sex acts or both.

- d) Where nudity or semi-nudity is required, an observer acceptable to the Artist(s) may be present.

- e) At Auditions:
 - a. No artist shall be required to disrobe entirely or partly until after being interviewed for the part, whatever its nature.
 - b. No artist shall be required to perform any simulated sex acts.
 - c. All persons not necessary for nude or semi-nude auditions shall not be present at such auditions.
 - d. No audition that takes place under this Clause shall be filmed except by prior consultation with the Union and the prior consent of the Artist being obtained.

- f) Performances
 - a. Any Artist required to perform in a production in which there is a presentation of nudity or the performance of simulated sex acts as defined in sub clauses one to three above shall have included in the Form of Engagement the following special stipulation:
 - b. "The Artist hereby acknowledges that he/she has been informed that there will or may be included in the production nudity and/or simulated sex acts as defined in Clause 26 of the SPI/Irish Equity Television Drama Agreement".
 - c. Where nudity and/or acts of a simulated sexual nature are required of an Artist for the purpose of portraying the part in the production, the Artist must be so advised in writing in advance of entering into a contract. Such notice shall state the degree of nudity and/or the nature and extent of any simulated sex acts required. In addition the Artist shall receive the relevant part or parts of the script prior to the contract being concluded.
 - d. Where an Artist has received and accepted the script and is subsequently unwilling to perform in any or all of the scripted scenes, the subject of this Clause, the Production Company may employ body doubles and the Artist's Form of Engagement shall be amended in writing to reflect the Artist's consent.
 - e. In the event that an Artist is unable to perform, the engagement of body doubles shall be subject to discussion between the Production Company and the Artist and the Artist's Form of Engagement shall be amended in writing to reflect the Artist's consent.
 - f. Persons not necessary to scenes involving nudity or simulated sex acts shall not be admitted to the set while such nudity and simulated sex acts are being undertaken.

- g. In the case of an Artist being arrested or charged with any offence arising from the Artist's performance as directed, the Production Company will do all that is possible to assist the Artist but in the event that such assistance is held by the Artist to be inadequate in the light of circumstances, then the complaint shall be referred to the FIDT for decision.

g) Unused Recorded Material

- a. The Production Company shall ensure that the unused recorded material of those scenes involving nudity, semi-nudity and/or simulated sex acts not used in the finished product shall be destroyed.

27. Costume and Personal Property

The Artist shall take reasonable care of the costume the Artist wears, and should the Artist's own clothing being used for the purpose of the production be soiled or damaged during the actual rehearsal or recording of a scene the Producer shall pay for the cleaning of soiled clothing or compensate the Artist or make good damaged clothing.

The Production Company shall wherever possible supply reasonable facilities for the Artist to place the Artist's property under lock and key.

The Production Company shall be responsible for transporting the Artist's necessary clothing or costume to and from any resident location.

28. Dispute Procedure

- a) In the first instance, an endeavour shall be made by the production company and the local representative to settle the difficulty /dispute at the place where the matter has arisen and normal working will continue.
- b) The Union shall refer the matter to the Production Manager in writing, if necessary, and vice versa.
- c) A joint meeting consisting of the Production Management and the Union will be held within seventy-two hours of the written notice of dispute being given by either party.
- d) Either party may refer the issue to the Film Industry Disputes Tribunal (FIDT)
- e) The FIDT will be a committee comprising of an independent chairperson, who will agree to serve for the duration of the Agreement, and nominees of Screen Producers Ireland and the EIG all of whom must be appointed prior to the ratification of this agreement. In the event that a member of the FIDT is unable to serve for the duration of this agreement, that person will be replaced by a nominee of the party that nominated the retiring member and in the case of the chair, the replacement will be agreed by SPI and The Irish Equity Group jointly.

- f) The FIDT will meet those directly involved in the dispute within one week of being called upon, unless a longer period is mutually agreed.
- g) The FIDT will issue a recommendation within 3 working days thereafter. The decision of the FIDT, where unanimous, is binding.
- h) In the event that the issue at hand is not resolved, the matter will then be referred to the Labour Relations Commission and in the event of failure to agree, to the Labour Court.
- i) Throughout the entire course of these procedures, it is agreed and understood by all that normal work shall continue. No unofficial action may be undertaken by either party in accordance with the terms of this Agreement. In the event of a dispute arising, as to whether or not either party is acting in accordance with the terms of this Agreement, the matter shall be referred to the Dispute Procedures set out above.
- j) Disciplinary Procedures & Grievance Procedures
 - a. Disciplinary procedures will be agreed in keeping with the Code of Practice set out in this agreement.
 - b. Grievance procedures pursued in accordance with this agreement will be in keeping with Labour Relations Commission / Labour Court guidelines.

29. Insurance

- a) Employers and Public Liability and Third Party Insurance
The Production Company shall arrange the appropriate insurance provisions to meet their statutory obligations and any obligations arising from this agreement.
- b) Outside the Republic of Ireland
Where appropriate, relevant travel insurance for members who are required to travel outside the Republic of Ireland will be put in place.

30. Forum

Screen producers Ireland and Irish Equity agree to establish a Forum as soon after the signature of this Agreement as possible.

The terms of reference, membership and procedures of the Forum shall be agreed between the parties as soon after the signature of this Agreement as possible.

The purpose of the Forum shall be to act as a body for the discussion of issues of general concern to SPI and the Union and their members, including matters not covered by this Agreement. The aim of the Forum shall be to promote understanding of issues of joint concern and to facilitate the resolution of problems in the relationship between SPI and the Union. The Forum shall meet no less than twice a year.

31. Duration of this Agreement:

This Agreement will take effect from the date of signature and remain in force until otherwise agreed as per clause 1.

Broad Definitions to be agreed

- **Artist:** individual artists who are members of the union
- **Production Companies:** independent production companies who intend to engage the artist(s) for television production(s) covered by this agreement and referred to as “the Producers” in this agreement
- **SPI:** Screen Producers Ireland
- **The Union:** Irish Equity
- **Non-resident Locations:** locations within a 60 kilometre radius of the GPO Dublin and / or locations which travel and shoot can be accomplished within a 13 hour day
- **Artist Form of Engagement for Artists engaged on Television:** the agreed form of engagement for artist engagement on television productions to be signed by the Artist and the production company
- **Special Stipulations:** additional requirements and / or terms agreed between the Artist and the Producer other than but not less favourable than the terms contained in this agreement
- **Guaranteed Payment for Television:** -means the payment of the performance salary (as hereinafter defined) plus the payment of nominated pre-purchased Use Fees which must include at least one of the two television uses
- **Pre-purchase:** the advance purchase of a Use Free or Use Fees in line with the terms of this agreement
- **Performance Salary:** the Artists basic payment for the engagement (before Use Fees) in consideration of which the Artist attends to render services
- **Total Applicable Salary:** the aggregate of those payments to the Artist upon which Use Fee payment (hereinafter defined) shall be calculated
- **Use Fees:** those payments which are made in consideration of the production company being entitled to permit uses of a recording of the Artists performance
- **Non Theatric:** the exhibition to audiences who are not required to make specific payment for the viewing of the production
- **Pay Television:** those systems for which the subscriber pays directly for each programme of for a defined service including basic cable where this is used for relay purposes in free television
- **Simultaneous Analogue/Digital Transmission:** in the event that, in accordance with the use provisions of this agreement, an artist’s performance is included in a programme broadcast in an analogue format and a simultaneous transmission is made of that permitted broadcast which is identical in every way save that it is transmitted in a digital format on the same delivery platform, i.e. cable, satellite or terrestrial, then the simultaneous broadcasts shall be considered to be a single transmission for the purpose of this agreement.
- **Videogram:** any form of video-disc or video-cassette offered for sale or rental to the general public for viewing in the home
- **DVD:** any digitised format enabling a production to be stored on to a digital visual display device which can be played on an enabling device including but not limited to a personal

computer, television apparatus or device specifically designed or enabled to use the digitised format for the purpose for which it was intended.

- **FVOD:** (Free Video on Demand) – the making available of a programme to a consumer where the consumer may view (but not keep a copy of) the programme at a time of his or her choosing but the timing of which is either:
 - not related to the linear transmission of a programme or
 - occurs more than 30 days after the linear transmission of a programme

and is offered on a service where the consumer pays no charge or subscription for access to the programme itself (but may pay a periodic fee for receiving a service which offers access to the programme.

- **Catch up TV services:** i.e. where a consumer's access to a programme is linked to a TV broadcast without making any additional payment being made by the consumer for that access; generally involves access to the program by streaming or time limited download on a broadcaster's branded platform (examples are: BBC I-player)
- **AVOD:** (advertiser funded video on demand): where a consumer /user does not pay for access to a service or programme and instead the service is funded by adverts/sponsorship (e.g. YouTube); the producer generally receives a fee from the platform in respect of content supplied which may be on a per click/per view basis or can be according to the number of hours of content included on the service.
- **SVOD:** Subscription video on demand services: where a consumer/user pays for access to a non-linear service (rather than a programme), on which a variety of programmes are available often through a monthly subscription basis (e.g. Netflix)
- **EST:** Electronic Sell Through (includes DTO/DTR and transactional VOD services) where a consumer pays for access to a programme only and obtains a copy on a temporary or permanent basis (e.g. iTunes).
- **DTO:** a service or transaction whereby a consumer/user is able to download and retain a permanent copy of a programme usually on payment of a fee for the programme (this is also included within the scope of EST)
- **DTR:** a service or transaction whereby a consumer/user is able to download a temporary copy of a programme at a time of their choosing usually on payment of a fee for the programme (this is also included within the scope of EST). DTR should be distinguished from catch up TV rights which although similar in providing access to a copy of a programme on a temporary basis is not linked to the broadcast or transmission of the programme



Costings 1.0

To be read with TV Drama Agreement 1.0

[Pick the date]

Draft

**DAILY/WEEKLY FORM OF ENGAGEMENT FOR ARTISTS ON TELEVISION SERIES (subject
to agreement on definitions)**
(For Members of Irish Equity)

SECTION 1. DAILY/WEEKLY ENGAGEMENT

Issued on:

Contract No

Production Company:

Address:

Tel:

Email:

SECTION 2.

Artist:

Address:

Email:

Tel:

SECTION 3.

Agent:

Address:

Email:

Tel:

SECTION 4.

Part:

Production: "Production Name"

SECTION 5.

GUARANTEE PERIOD

Start Date On or About:

Period of First Call:

SECTION 6.

Rates

Artist Weekly Rate: (excluding use fees): €800

Artist Daily Rate: (excluding use fees): €200

The above rates shall not be less than those provided for the Equity/SPI Artists Agreement

SECTION 7.

Performance Payments

The Production Company undertakes to make the following performance salary and use fee payments.

Minimum payment includes **either** 1st UK Network TX only **or** 1st ROI TX only. Where the Production Company opts for 1st ROI TX, then 1st UK TX may only be pre-purchased at 100% of Artist's negotiated Performance Fee.

GUARANTEED PERFORMANCE SALARY PAYMENT

(excluding Use Fees) during period of First Call :

USE FEES: The Producer undertakes to pre-purchase where indicated the additional use shown below:

2nd. R.O.I. TX (50%)

3rd. R.O.I. TX (50%)

Thereafter per TX (75%)

Narrative Repeat within 7 days of first transmission 75% discount = 37.5% per TX

2nd UK Network TX (45%)

3rd UK Network TX (45%)

Thereafter per TX (50%)

Narrative Repeat within 7 days of first transmission 75% discount = 37.5% per TX

Any use of the Artists performance in any ROI or UK secondary television market shall be

subject to negotiations between Irish Equity and the Producers.

R of W rights (excluding ROI/UK/USA) (35%) (for a 3 years license period)

World Pay TV (20%) (for a 3 year license period)

World Video/DVD rights (14%) (for a 3 year license period)

Where "Video on Demand" rights are required, in whatever territory, the producer shall pay an additional 1% (for a 3 year license period)

Where "DTO/EST" rights are required, in whatever territory, the producer shall pay an additional 1.5% (for a 3 year license period)

Future Media Rights:-

Any uses or media in connection with this production title that are not contemplated in this agreement shall be subject to good faith negotiations between Irish Equity and the Producer.

Any subsequent agreement shall form part of the Artists contract.

Future Series of the named Production title:-

The minimum fees shall increase by at least 5% per each series.

Expiry of 3 year license period:-

The Producer agrees that any exploitation of the artist's performance shall be subject to

- A) The agreement in force at the time or,
- B) Subject to good faith negotiations.

SECTION 8. SPECIAL STIPULATIONS ATTACHED AND FORMING PART OF THIS AGREEMENT

- 1. Rehearsals fees Payable at 50% of the Artists negotiated daily rate less us

2. ADR Payable at 50% of the Artists negotiated daily rate less use fees
3. Accommodation To be negotiated locally
4. Travel Day Payable at 50% of the daily rate less use fees (non-work day). Travel on work days will have regard for the rest periods provided for under the Organisation of Working Time Act 1997.
5. Wardrobe €75.00

Any special stipulation agreed shall not be less than those provided for the Equity/SP Artists Agreement

Section 9

Theatric Rights ROI and UK Limited	14%
1st USA Network Prime Time TX	75%
2nd USA Network Prime Time TX	25%
Thereafter per TX	15%
First USA Network Non Prime Time TX	35%
Thereafter USA Network Non Prime Time TX	7.50%
USA PSB Network	15%
USA Syndication (Full)	25%
USA Basic Cable	10%
USA Major Pay	30%
USA Theatric (Limited)	14%
ROW Theatric (Exl ROI/UK/USA)	14%

Section 10.

SIGNATORIES:

All terms and conditions of your engagement shall be subject to the Special Stipulation attached

which shall form part of this Agreement.

Signed _____ & _____ Agreed _____ by
..... (The
Producer)

Signed _____ & _____ Agreed _____
by:.....
.....(The Artist)

Equity Membership No:..... PPS
Number:.....

