

**CANADIAN PRODUCTION FINANCE**

**A PRODUCER'S HANDBOOK**

**BY KATHY AVRICH JOHNSON**

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**and**

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## **DISCLAIMER**

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## **About the Author KATHY AVRICH JOHNSON, BA, LLB**

Kathy has been involved in numerous aspects of the film and television business since 1983, shortly after her call to the bar in Ontario and the establishment of an independent commercial law practice. In 1984, Kathy became the founding executive director of the Association of Canadian Film and Television Producers (now merged to become the CFTPA), representing the interests of and speaking for entrepreneurial entertainment production companies in Canada. After 6 years of building an entertainment practice and 5 years as executive director, Kathy joined a television production and distribution company establishing the business affairs department. In 1991 Kathy joined Norstar Entertainment where she served for 7 years as Vice President of Production Finance and Business Affairs, shepherding 16 features and 2 MOWs from development or acquisition through production and distribution.

From August 1997 until March 2000, Kathy was a Senior Manager and the Director of Skills Development and Marketing Initiatives, a new department of the Ontario Film Development Corporation (now the Ontario Media Development Corporation). As Director of SDMI, Kathy was responsible for initiating and developing innovative and practical professional development, business and marketing opportunities for emerging or smaller production companies, in addition to serving as part of senior management of the organization.

She is an executive producer of the Genie and BAFTA best picture nominee “Regeneration”, a UK-Canada co-production starring Jonathan Pryce, based on Pat Barker’s novel. Kathy is also the executive producer of “desire” a Canada-German co-production, written and directed by Colleen Murphy which debuted at the Toronto International Film Festival in September 2000 and opened the Mannheim Film Festival in November 2000.

She served on the board of Women in Film and Television - Toronto, as chair of fundraising, professional development and acting president. In 1998, Kathy authored the first edition of “Canadian Production Finance: a producers handbook” commissioned by the OFDC and Telefilm Canada.

Kathy Avrich Johnson consults to independent producers and government agencies, while developing independent productions. She is the Senior Vice-President of Humewood Communications Corporation – [www.humewood.ca](http://www.humewood.ca).

## **What this handbook does and does not do**

Canadian Production Finance – a Producer’s Handbook was prepared initially for the Ontario Film Development Corporation (now the Ontario Media Development Corporation) and Telefilm Canada (Toronto) following a canvass I undertook on behalf of those agencies, of small production companies and their challenges in accessing agency administered funding. A basic chorus that emerged from my discussion with both producers and agency staff, was the difficulty smaller or newer producers had in dealing with the tremendous paperwork requirements related to production finance. Producers wanted some practical guidance and examples of what was required. Agency staff indicated the topics or areas that they found to be the most problematic for producers.

Producing covers many talents from creative to business to management. One aspect of business, albeit a substantial one, is production finance. This handbook relates to that last aspect of producing and seeks to address the type of components that an investor or financier in Canada will need or request when considering an application for their involvement. I have sought to provide annotated examples or discussion points that will allow a producer to understand many of the basics of what is required for any given document and why. However, there are as many variations and alternative routes as there are productions. Most subject headings here could easily have resulted in an entire tome on the subject. This is not an everything-you-wanted-to-know about production finance guide. The words here are not the gospel - there may be new or better ways than proposed to accomplish what you wish to do. This handbook will not allow you to dispense with professional assistance in terms of business affairs, entertainment or corporate lawyers and accountants but hopefully it will de-mystify much of the documentation and allow you to manage your paperwork with greater confidence and efficiency. If this book allows you to ask better-informed questions or give greater focus to your discussions with professionals and mentors, it will have served its purpose.

This handbook is being updated to incorporate changes that have occurred since it was first written in 1998 and to make it more accessible by putting it online. That being said, the one constant in this business is change, and policy shifts and developments in technology are constantly taking place that affect how business is done.

The best piece of advice I can provide to any producer is get good help. You cannot operate effectively without the advice and wisdom of those that have gone before or who spend their professional life puzzling through these kinds of problems. Whatever the artistic and cultural ramifications of production, television and film production necessarily involves large sums of other people’s money. With that money comes competing interests and responsibilities. You cannot hope to stay current and know how everything is done yourself. Find mentors and advisers you can trust and turn to when you need to bounce ideas off of

someone or understand how things work or how to go about doing something. Understand your strengths and weaknesses and compensate for the latter by building relationships with people whose strengths complement yours. Notwithstanding you do not have to follow a specific educational or training path to hang out a shingle as a producer, producing calls on a tremendously complex and wide-ranging set of skills and there is always more to learn.

My hope is that this handbook responds at least in part to the requests of those producers who are struggling with the load of what has to be done but don't yet have the staff to delegate the assignment to. I thank those folks who sent kind words since the first edition of this handbook came out and I would welcome comments and suggestions on how the handbook could be improved. You can send them to the writer by email at [kathy.avrich-johnson@humewood.ca](mailto:kathy.avrich-johnson@humewood.ca).

Kathy Avrigh Johnson  
Summer, 2001

## TABLE OF CONTENTS

I	RIGHTS AGREEMENTS _____	1
	<i>Sample Option/Purchase Agreement</i>	5
	<i>Alternative Grant of Rights Provision</i>	25
	<i>Sample Writing Agreement</i>	27
II	ORGANIZATION _____	31
III	CO-PRODUCTIONS _____	33
	<i>Sample Co-Production Agreement</i>	35
IV	BUDGET _____	53
	<i>Sample Budget - Telefilm Form</i>	57
V	FINANCING _____	66
	<i>Sample Financing Telefilm Preferred Layout</i>	71
	<i>Sample Production Cash Flow (sheet 2)</i>	72
	<i>Sample Summary Cash Inflow and Outflows (sheet 1)</i>	73
VI	COMPLETION GUARANTEES _____	74
	<i>Sample Escrow of Funds Agreement</i>	76
	<i>Sample Deferral Agreement</i>	80
VII	DISTRIBUTION AGREEMENTS _____	81
	<i>Sample Theatrical Distribution Agreement</i>	86
	<i>Sample Theatrical Delivery List</i>	114
	<i>Sample Television Distribution Agreement</i>	129
	<i>Sample Television Delivery List (1)</i>	142
	<i>Sample Television Delivery List (2)</i>	144
VIII	RECOUPMENT SCHEDULES _____	146
IX	TAX CREDITS _____	151
	<i>Estimate Calculation of OFTTC</i>	154
	<i>OFTTC Calculation of Eligible Labour Expenditures</i>	155
X	COST REPORTS _____	172
	<i>Sample Cost Report Excerpt</i>	173

# I RIGHTS AGREEMENTS

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Every television and film production is based on, or incorporates, other forms of expression whether it is a docudrama based on some aspect of someone's life story, a documentary with narration, a series developed from a play or an original feature film. The producer needs to acquire all the rights necessary to do what he/she wants to do with the property including exploiting the final production. A producer must be able to draw a connecting line from the creator of all the underlying or incorporated materials or works, to the production company. This connecting line is the chain of title. The chain is made up of rights agreements between the holders of the rights and the production company, and any other linking documents needed to complete the line such as assignments. The simplest example is an original dramatic production where the producer has a concept for a film, and then commissions the writer to write a script. Assuming the producer has already incorporated the production company, there would be a writing agreement between the production company and the writer. The agreement would set out that the production company engages the writer to write a script based on the producer's idea and all rights to produce and distribute the film based on that script are granted to the production company. That one agreement would be the chain of title.

If the project is a documentary series based on a book or magazine article, the producer would need: an agreement giving the producer the right to adapt the original work, an agreement with whoever creates the proposal or treatment for the series, and a writing agreement(s) for the writer of the narration or script(s), if any. If any of these agreements are not with the production company, they will need to be assigned to the production company to complete the chain of title. This can be done with a relatively short and simple assignment of rights agreement.

## **OPTION / PURCHASE AGREEMENT**

There are generally two forms of rights agreements – where you are acquiring the work “as is” and where you are commissioning the work to be done. The first is usually in the form of an Option/Purchase Agreement, the latter in the form of a Writing Agreement.

The Option/Purchase agreement can be two linked documents or one larger agreement. An option agreement sets out the terms of the option but is frequently attached to a longer purchase agreement. An option is an exclusive limited right to deal with a property for a specific period of time. The limited rights should include the right to develop a script and raise money. The purchase agreement lays out in detail the rights and terms governing acquisition once the option is exercised. There is no such thing as a valid option without provisions governing the exercise of the option i.e. how and when the rights are to be acquired and what rights are being acquired.

The key elements to be included in an option agreement are as follows:

- Description of the property or material being optioned/acquired
- The period of the option, and whether or not it is renewable
- Price for the option and for any renewal
- What portion of the option price, if any, is deductible against the purchase price (Writers Guild of Canada (“WGC”) – Independent Production Agreement (“IPA”) allows 18 months of the option price to be deducted and requires that 10% of the exercise or purchase price be paid for each year of the option).
- What activities may be undertaken during the option with regard to the material optioned (i.e. seeking interest from potential partners or buyers, pre-production activities, etc.).
- How the option is exercised – written notice and payment of the purchase price less deductible amounts
- Purchase price – the range of price is unlimited and unless it is a WGC script, the price is totally negotiable. Additionally, owners of rights may look for some additional compensation such as profit participation or royalties for other works created, i.e. per episode royalty if the first production is a movie but spins off a series.
- The rights being acquired – you need all rights to make at least one audio-visual production (or a series, if it is a series), which may be exploited in all media throughout the world in perpetuity. You are well advised to get the broadest rights possible so as not to limit how you develop the property or how you exploit it. One of the enumerated rights should be the right to change the property or material and to have the author waive so-called “moral rights” which prohibit anyone other than the author from changing the original story. Frequently, unless the property is a well-known work, you can acquire the right to make unlimited number of audio-visual productions. If the underlying work is a play or book, the owner will usually reserve the rights in that media and possibly other media as well. You should consider sequel, spin-off, re-make, novelization, publication (you need at least the right to publish synopses and the like for advertising and promotion, usually limited to 7500 words), character and merchandising rights, internet rights, interactive rights and other forms of exploitation not yet in common use. The terms “allied, subsidiary or ancillary rights” generally relate to most of these kinds of rights. Each of these areas may be the subject of negotiation.
- Exclusivity – you want sole and exclusive rights granted so as not to find yourself developing and producing something to which someone else also has rights. Specifically when you are acquiring an existing literary property, you will want to see



the original publishing agreement to satisfy yourself that the writer (or the Vendor) has the rights you are acquiring.

- Representations and warranties – you need to know the source of the material, chain of title and ownership, that no one else has been granted rights (or if there has been a previous grant, specifics on what these were) and that the material does not infringe any third party's rights
- Assignment – the producer will need the right to assign the rights to its successors, licensees or assigns
- Credit – whether the original author or owner is entitled to a credit in the production
- Reversion of rights – unless and until you exercise the option, you cannot exploit anything you have that is based on or adapted from that property. Sometimes a rights owner will seek to negotiate a reversion of rights which generally provides that even if you do exercise the option but you do not produce a production within a given period of time, the rights revert to the original owner. You should seek to avoid a provision of this kind given the time it may take to mount a production and especially since any material you may have developed, such as a screenplay, that is based on material to which you no longer hold the rights is unexploitable.

## WRITING CONTRACT

When you are hiring a writer to work from an idea or existing material (including earlier drafts of a script), you enter into a writing agreement. If your writer (or any of the script writers you use) is a member of the WGC, the terms of the agreement are largely determined by the IPA between the WGC and the Canadian Film and Television Production Association (“CFTPA”) and L'Association des Producteurs de Film et Television du Quebec (“APFTQ”). Animation writers, previously an exception, are now included under the IPA . Key elements to consider in negotiating a writing agreement include:

- Exactly what work is to be undertaken by the writer – an outline, a treatment, a draft, a full script, or a rewrite, and whether a polish is included. It is recommended you contract for a stage at a time if you are dependent on third party development funding (which requires lengthy delays between stages).

Whether you can terminate the writer at the end of any stage and hire another writer – this is possible even under the IPA if the work is contracted in stages. The rights granted in the material (see above under Option/Purchase Agreement) - Note that the IPA does not cover certain allied or ancillary rights and although these can be included in the same agreement, they should be referenced separately with separate consideration even if it is nominal. Note that the IPA does not allow an assignment of copyright in the material and that the grant of rights provided in the IPA for payment of

the Production Fee is very limited so if you use the form of contract in the IPA, those are the only rights you will get. You can obtain a license of virtually all rights under copyright. Animation writing is an exception to the prohibition on assignment of copyright.

- Time periods for writing and for producer to turn around notes and comments – the latter is covered by the IPA and is generally too short for producer's purposes. Although the parties can agree to change the time periods, it is important to set out each party's initial expectations.
- Credit – again, this is dictated by the IPA. You should be careful not to grant credits unconditionally since you may later change the writer.
- Warranties and representations – see above under Option/Purchase Agreement. The writer's warranties, representations and indemnity are set out in the IPA but you may still want to include them.
- Reversion or turnaround – if the work is original, the writer may want to negotiate the reversion of rights. See above under Option/Purchase Agreement. Note that the IPA has an automatic reversion clause in the event of bankruptcy of the producer prior to the start of principal photography. Additionally, it provides for reversion if principal photography has not commenced within 7 years of signing the contract unless otherwise provided in the contract. Again, considering how long it takes to get some shows off the ground, this is not very long. You might consider a provision allowing the writer to buy-back the rights to the script after a period of time.
- Payment – if payment is not subject to the IPA, this is entirely negotiable however, unless the writer is a neophyte, the aggregate amounts will likely track the IPA rates. If the agreement is not covered by the IPA, the payment schedule and turnaround for notes should be entirely negotiable.
- Although the IPA provides for two drafts and a polish, in feature film development this is very unlikely to get you where you need to be with the script . Generally you will require many drafts and revisions. You should discuss this with your writer and plan accordingly.

**SAMPLE OPTION/PURCHASE AGREEMENT**

**PRODUCTION COMPANY**

**AND**

**AUTHOR**

---

**OPTION / PURCHASE AGREEMENT**

**FOR**

**“TITLE”**

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**Production Company Address**

**OPTION AGREEMENT**

THIS OPTION AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

BETWEEN:

**PRODUCTION COMPANY**

a corporation incorporated under the laws of the  
Province of Ontario  
(hereinafter referred to as "Producer"),

- and -

**AUTHOR**

(hereinafter referred to as "Vendor")

**WHEREAS** Vendor is the sole owner throughout the world of all rights in and to the literary or dramatic work described as follows:

**Title:** " \_\_\_\_\_ " being an original short story;

***Amend for proper description of the work being optioned.***

**Written by:** \_\_\_\_\_ (which literary and dramatic work, and the plots, themes, titles, characters and copyright(s) thereof, along with any rewrites, additional drafts, revisions, polishes thereof, and any translations, dramatizations, sequels and other adaptations or versions thereof now or hereafter created, are herein together referred to as the "Property");

***The writer may not be the Vendor in which case you will want to have chain of title.***

**AND WHEREAS** Producer intends to produce a motion picture based upon the Property;

***Modify depending on what you are planning to develop.***

**AND WHEREAS** Producer, relying upon Vendor's warranties and representations, desires to acquire from Vendor and Vendor agrees to grant to

Producer the exclusive option to purchase certain rights in and to the Property upon the terms and conditions hereinafter set forth;

**NOW THEREFORE** in consideration of the mutual covenants, representations and warranties herein contained, the parties agree to and with each other as follows:

## 1.0 **GRANT OF OPTION**

1.1 Option: In consideration of the non-refundable payment by Producer to Vendor of the sum of XXX Dollars (\$XXX), hereby acknowledged as received, and other good and valuable consideration, Vendor agrees to and does hereby give and grant to Producer the exclusive and irrevocable option for a period commencing upon the execution hereof and extending for a period of twelve (12) months (hereinafter called the "Initial Term") to acquire from Vendor all rights in and to the Property on the terms and conditions set out in the Purchase Agreement annexed hereto as Schedule "A".

Vendor shall not, during the Initial Term or the Successive Term, if the option is so extended, grant, license, assign or in any way dispose of or permit the disposition of any rights in and to the Property which would be granted to the Producer pursuant to the Purchase Agreement if same becomes effective.

***The initial option term is a matter of negotiation and should be long enough (realistically) to allow you to accomplish necessary preliminary work - at least enough time to ascertain whether there is some interest in this project. If it is some form other than a screenplay, you will need enough time to get a few drafts done and to raise development monies. No matter what you do, a reasonable rule of thumb would be to figure out how much time you need and then double it. The price of the option if the work is not covered by the WGC agreement (i.e. a screenplay or draft written by a WGC member) is completely negotiable and depends on such things as the popularity of the work, how well known the writer is, how strongly the writer or his/her agent believes in you as the producer and your vision for the project, how much money they think you have, whether the writer is your cousin and other difficult to quantify factors. You can always take a flyer and use that as a starting point.***

1.2 Successive Term: Producer may extend the option for the Property for an additional period of twelve (12) months from the expiry of the Initial Period ("Successive Term") by notice in writing given to the Vendor accompanied by payment of the sum of XXX Dollars (\$XXX) on or before the expiry of the Initial Term.

**Note that if you are applying to the Canadian Film Development Corporation ("Telefilm") for funding, they require the producer to have an option of at least two years. You can do this with a successive term or renewal so the author/agent can see you are still doing something with their project.**

1.3 Deductibility: The payment for the Initial Term shall be deducted from the Purchase Price payable pursuant to the Purchase Agreement, but payments for the Successive Term shall not be deductible from the Purchase Price.

**As mentioned in the notes, you can have the first 18 months deductible under the WGC. It's obviously preferable to have the maximum amount deductible.**

1.4 Exercise/First Day: The option may be exercised by Producer by written notice to Vendor accompanied by payment of the Purchase Price at any time during the Initial Term or the Successive Term (the "Option Term") provided that it shall be exercised no later than the first day of principal photography of a motion picture based on the Property.

1.5 Pre-Production Authorized: Vendor acknowledges that Producer may, during the Initial Term or the Successive Term, undertake pre-production and production activities in connection with any of the rights to be acquired under the Purchase Agreement including, without limiting the generality of the foregoing, changes to the Property as contemplated in the paragraph "Rights to Make Changes" in the attached Purchase Agreement and the provisions under the titles "Effective Termination or Expiration" and "General" in the said Schedule "A" apply as though fully set out herein.

**It is important to be able to undertake activities with respect to the property even before the rights are acquired i.e. the option is exercised.**

1.6 No exercise: In the event the Option is not exercised, no rights shall pass hereunder.

## 2.0 EFFECTIVENESS OF EXHIBITS

If Producer shall exercise said option, the Vendor and Producer shall enter into an agreement in the form of Schedule "A" which is undated and it is agreed that if Producer shall exercise this option (but not otherwise) then the signatures of Vendor to the Purchase Agreement and Assignment shall be deemed to be effective and said Schedule shall constitute a valid and binding agreement and assignment effective as of the date of exercise of said option and Producer is hereby authorized and empowered to date such instruments accordingly. If Producer shall fail to exercise said option, then the signature of Vendor to the Purchase Agreement and Assignment shall

be void and of no further force or effect whatsoever and Producer shall not be deemed to have acquired any rights in or to the Property except pursuant to this Option Agreement. If Producer exercises the said option, Producer shall execute and deliver to Vendor a copy of the Purchase Agreement and Assignment dated as of the date of the exercise of said option, and Vendor will, if requested by Producer, execute and deliver to Producer any additional documents required to give effect to the Purchase Agreement. It is agreed that upon the exercise of said option by Producer, all rights in and to the Property agreed to be transferred to Producer pursuant to the provisions of the Purchase Agreement shall be deemed to be vested in Producer, effective as of the date of the exercise of the said option, which rights shall be irrevocable under any and all circumstances except as specifically provided herein.

***This says that when you exercise the option, ie. give notice and pay the purchase price, the Purchase Agreement automatically comes into full force and effect. The Purchase Agreement should be signed at the same time as the Option Agreement but left undated until the time of exercise.***

### 3.0 INCORPORATION OF PURCHASE AGREEMENT / EXCLUSIVE OPTION

3.1 All of the representations and warranties contained in the Purchase Agreement shall be deemed to be incorporated herein by reference with the same force and effect as though set out here in full and shall be applicable throughout the option period(s). Without limiting any other rights Producer may have in these premises, the Vendor hereby agrees that if there is any claim and/or litigation involving any material breach of any of such provisions of the Purchase Agreement, the option period granted hereunder shall automatically be extended until no claim and/or litigation involving any such breach of the aforementioned provisions is outstanding, such period not to exceed six months following resolution at which time Producer must waive the breach or terminate the agreement. At any time after the occurrence of such a claim and/or litigation until the expiration of the option period, as extended, the Producer may, in addition to any rights and remedies the Producer may have on the premises, rescind this agreement and in such event, notwithstanding anything else to the contrary contained in this agreement, the Vendor hereby agrees to repay the Producer any money paid by the Producer to the Vendor hereunder.

***You need all the representations and warranties during development as well as production. This provides that the lengthy warranties and representations in the Purchase Agreement are also to be applicable here.***

3.2 Without limiting the generality of the foregoing Vendor agrees that he will not, at any time during the Initial Term (or Successive Terms, if applicable), exercise or authorize or permit the exercise by others of any of the rights covered by this option.

#### 4.0 **ADDITIONAL DOCUMENTS**

The Vendor agrees to execute or cause to be executed all further instruments which the Producer may reasonably require to fully effectuate and carry out the intent and purpose of this agreement and to convey to the Producer the good and marketable title in and to the Property in the event said option is exercised by the Producer. Without limiting the generality of the foregoing, Vendor agrees to execute and deliver to Producer's request a short form option agreement or other evidence of the grant of the written option in a form satisfactory to Producer which instrument shall become effective immediately and may be recorded by Producer with the United States Copyright Office as evidence of the option herein granted to producer.

***You can register with the Canadian copyright office very simply online. In terms of international sales however, you may want to register with the US copyright office since this registration may be a delivery requirement to a US buyer.***

#### 5.0 **FAILURE TO EXECUTE DOCUMENTS**

If the Vendor shall fail to execute any agreements, assignments, or other instruments to be executed by Vendor hereunder, the Producer is hereby appointed Vendor's attorney-in-fact with full right, power, and authority to execute the same in the name of or on behalf of the Vendor and Vendor acknowledges that the authority and agency given Producer is a power coupled with an interest and irrevocable.

#### 6.0 **RIGHT OF ASSIGNMENT**

The assignment and lending provisions in section 8 of the Purchase Agreement shall apply equally to this agreement as if set out in full herein.

***Since the company that first acquires an option may not produce the film or you decide to join forces with someone else, you require the right to assign your rights.***

#### 7.0 **SECTION HEADINGS**

The headings of paragraphs, sections and other subdivisions of this agreement are for convenient reference only. They shall not be used in any way to govern, limit, modify, construe this agreement or any part or provision hereof or otherwise be given any legal effect.

#### 8.0 **ENTIRE AGREEMENT**



This agreement, including and incorporating the Purchase Agreement attached hereto, contains the full and complete understanding and agreement between the parties hereto with respect to the within subject matters and supersedes all other agreements between the parties hereto, whether written or oral, relating hereto, and may not be modified or amended except by written instrument executed by both parties hereto.

**IN WITNESS WHEREOF** the parties hereto have executed this agreement as of the day and year first above written.

\_\_\_\_\_  
**PRODUCTION COMPANY**

\_\_\_\_\_  
**AUTHOR**



## 1.0 GRANT OF RIGHTS

1.1 Rights: The Vendor hereby exclusively and irrevocably licenses to the Producer under copyright for the full term of copyright in the Property and throughout the universe all of the film, television, allied, subsidiary and ancillary rights to the Property including but not limited to the following rights:

***Notwithstanding this is a non-union agreement, the language is cast as a license under copyright which aligns with the WGC requirements. You could acquire the rights absolutely in perpetuity.***

***The following is a fairly elaborate listing of rights included in the grant. There is another example after this agreement of a different, more condensed, but still fairly broad grant of rights. Even if the project you are making is television only, you will want to have motion picture rights. There may be additional payments due if some additional production based on the material is made but this is negotiable (unless it's WGC). There may be reservations of certain rights i.e. if the property contains a well-known character and the grant of rights are non-exclusive regarding that character.***

(a) Motion Picture: All motion picture rights including, but not limited to, the rights to produce, project, exhibit, broadcast and transmit an unlimited number of motion pictures including remake and sequel motion pictures, as said terms are commonly understood in the motion picture industry, theatrically, non-theatrically, on television, video on demand, by means of discs, cassettes and cartridges, and in all other media, now or hereafter known, and in all gauges and sizes. The term "motion picture" or words of similar import as used in this agreement, shall be deemed to mean and include any present or future kind of motion picture in any gauges, without or with sound recorded synchronously therewith whether the same is produced on film or magnetic or videotape or wire or any other substance or by any other method or means now or hereafter used for the production, exhibition or transmission of any kind of motion picture, and whether the same is produced initially for theatrical, non-theatrical or television exhibition or transmission or otherwise.

(b) Television: All television rights including, but not limited to, the rights to produce, project, exhibit, and transmit an unlimited number of television productions (including without limitation "series" and "specials", as such terms are commonly understood in the television industry), on television and in all other media now or hereafter known and in all gauges. The term "television production" or words of similar import, as used in this agreement, shall be deemed to mean and include any present or future kind of television production, live or recorded, interactive or not, with or without sound recorded synchronously therewith, whether the same is produced on film or magnetic or videotape or wire or any other substance or by any other method or means

now or hereafter used for the protection, exhibition or transmission of any kind of television production, in the making of motion pictures and television productions and/or as a part of or in conjunction with any such motion picture and television production;

(c) (i) Change Property: so that the Producer shall be able to exploit fully the motion picture and television rights described in subparagraphs (a) and (b) above, the Writer agrees that such rights shall include, without limitation, the rights to use, adapt, translate, subtract from, add to and change the Property and the title thereof, or any other title by which it (or any part thereof) has been or may at any time be known, in the making of motion pictures and television productions and/or as a part of or in conjunction with any such motion picture and television production;

(ii) Combine: combine the Property in any manner with any other work or works in the making of motion pictures and television productions;

(iii) Character and Titles: use the Property and any part thereof, including without limitation the characters contained therein, and said titles and any similar titles, in conjunction with motion pictures and television productions based upon all or any part or parts of the Property and/or other literary, dramatic and/or dramatic-musical works, and/or in conjunction with musical compositions used for or in connection with such motion pictures and television productions, whether or not written for, or used in, or in connection with, or in any manner whatsoever apart from, any such motion pictures and television productions;

(iv) Used in Media: project, transmit, exhibit, broadcast, sell, rent or lend and otherwise reproduce the Property and any part or parts thereof pictorially and audibly by the art of cinematography or any process analogous thereto in any manner, including the right to project, transmit, reproduce and exhibit motion pictures and television productions and any part of parts thereof (including without limitation, by so-called "pay", "free", "free home", "closed circuit", "theatre", "toll", "cable TV" or "subscription television", pay per view, video on demand or near video on demand) and by the use of cartridges, cassettes, discs or digital storage media of all kinds or other devices similar or dissimilar, and by any other process of transmission now known or hereafter to be devised for public or non-public reproduction purposes;

(v) Publication and novelization: publish, use, copyright and license others to publish, use, copyright and license, a book of the film based on the Property or describing the making of the film, and excerpts, synopses, scenarios and other versions of the Property, the latter excerpts, etc. to be limited to 7500 words for publicity and promotion of the productions based on the Property;

***Obviously, if the material is based on an existing published work, this will likely be limited. 7500 words is fairly standard for excerpts. If the Property is an original***

***script and you have the right to novelize, a limitation on the excerpts would be unnecessary.***

(vi) Make, Add or Sell Music: copyright, use, sell or otherwise exploit in any manner or means (including mechanical and electrical means and any other means now known or hereafter developed), whether extracted from or based upon the Property or otherwise, and to interpolate other spoken words, dialogue, music and songs, record, reproduce and transmit sound, including spoken words, dialogue, music and songs, in or in connection with or as part of the production, reproduction, transmission, exhibition, performance or presentation of such motion pictures and television production; including the right to use the title of the Property and any similar titles in connection therewith;

(vii) Merchandising: arrange for any and all merchandising and commercial tie-ups of any sort and nature arising out of or connected with the Property and/or the title thereof and/or the characters contained therein and/or said motion pictures and television productions;

***Merchandising is not covered by the WGC agreement and is supposed to be negotiated separately. Sometimes merchandising may be treated as a separate revenue stream. For certain projects, this can be a lucrative source of revenue down the road so it is a good idea to have the possibility of merchandising.***

(viii) Remake and Reissue: and generally produce, reproduce, remake, reissue, transmit, exhibit and perform motion pictures and television productions of any and all kinds;

(ix) Electronic Publishing: license, reproduce, use, adapt, distribute, display, perform or create derivative works based on the Picture or any portion thereof in photographic, audio, video, optical, digital or interactive form or in any other form or method of copying, recording, manipulation, transmission or use, whether now known or hereafter devised (the "Work"), the purpose of which is to allow the user to selectively display, manipulate or perform the Work, derivative material based on the Work or portions thereof, alone or in conjunction with other audio, video, photographic, digital, computer software, firmware, hardware or any other systems now known or hereafter devised including, but not limited to any interactive form and hiring or renting of such products to members of the public on platforms including CD-I, CD-ROM, Apple MacIntosh, Sony Playstation, Sega Saturn, Nintendo, Snes and 64X, the internet and all future computer generated platforms such as virtual reality, game-on demand and on-line;

***This relates to uses other than linear presentation on DVD as it relates to interactive rights including gaming.***

(x) **Rental and Lending Rights** Writer acknowledges that the compensation payable pursuant to this agreement includes adequate and equitable compensation for a full and complete buy out in perpetuity of so-called rental and lending Rights as understood by European Community directives. Writer hereby assigns the Rental and Lending Rights to Produce and hereby irrevocably and absolutely grants to Producer the sole and exclusive right to collect and retain for Producer's own account all amounts payable to Writer in respect of rental and lending Rights and hereby irrevocably directs any collecting societies or other persons or entities receiving such amounts to pay them to Producer.

**"Rental and Lending Rights"** means all rights of Writer to authorize, prohibit, control or receive money (except as provided in this agreement) from the rental, lending, fixation, reproduction or other exploitation of the materials, results and proceeds of Writer's services, or any motion picture, program or other production based thereon, by any media or means now known or hereafter devised as may be conferred upon Writer under applicable laws, regulations or directives, in any jurisdiction throughout the world, including any so-called rental and lending rights pursuant to the European Community directives or enabling or implementing legislation, laws or regulations enacted by member nations of the European Community.

***As you can see by their terms, the clauses regarding rental and lending rights are particular to the European Community. If you are acquiring a property from a Writer or Author that is a European Community member citizen or co-producing with a European Community member producer, this may be useful for chain of title.***

(d) Radio and Television: The right to purchase and transmit the Property and any excerpts therefrom or the productions based thereon or adapted therefrom for the purposes of advertising, publicising and promoting such productions, each such broadcast not to exceed 5 [five] minutes in duration;

***This is for advertising and promotion. You may want a longer time allowance, particularly for internet advertising.***

e) Name Likeness and Biography: Solely for the purposes of advertising and exploiting the rights granted to the Producer hereunder, the right to use and to license, cause or permit others to use, the Vendor's name, portrait, picture or likeness, and biographical data.

f) Right to proceed with another writer: Producer shall have the right to engage another writer to continue with the material delivered by Vendor or any part of it.

***Although this may not be relevant for many option/purchases, if the writer has aspirations for the business or if you are optioning his/her screenplay or teleplay, this is likely to be a major discussion point. No matter how terrifically you get along with the writer now, you should reserve the right to move ahead with the material should each of your point of view take different directions.***

1.2 Reserved rights: All rights which are not specifically granted to Producer herein, including without limitation, radio rights, except as set out above, and stage rights are reserved for the Vendor provided that the exercise by the Vendor of any such rights shall not infringe upon or overlap the rights granted to Producer hereunder and with regard to any such rights that Vendor is considering exercising, Producer shall have first right of refusal to acquire any rights upon terms negotiated in good faith.

***This is where all rights not being granted to producer should be listed. If it is a published work, it would likely exclude publishing rights except perhaps for a “making of” work.***

## **2.0 VENDORS REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGEMENTS**

2.1 (a) Sole Author/No Breach of Third Party Rights: Vendor is the sole author of all material delivered by him hereunder and of all the material contained therein; all of such material will be wholly original with him and not copied in whole or in part from any work other than the Property and such material will not violate, conflict with or infringe upon, and the use thereof as herein contemplated will not violate, conflict or infringe upon, any rights whatsoever (including, without limitation, any copyright, literary, dramatic, photoplay or common law rights, rights of privacy or rights against libel or slander) of any person, firm or corporation.

***If Vendor is not the author, this clause should be amended but you will want all the absolute warranties and representations about originality and not violating third party rights, etc. since the writer is the best person to know this. You do not want a qualified warranty such as “to the best of my knowledge”. Although it is a qualified warranty, you will probably not be entitled to make such a qualified representation to buyers of the film. WGC warranty and indemnity is so qualified.***

(b) Right to Enter Agreement: Vendor has the right to enter into this agreement to perform the services contemplated hereby and to grant all rights herein granted and no provision for Vendor's employment or services hereunder or for the use of Vendor's name, likeness or biography as herein contemplated does or will hereinafter violate, conflict with or infringe upon any rights whatsoever of any person, firm or corporation and Vendor has not made nor will hereafter make any commitment or agreement which will interfere with the full and complete rendition of their services hereunder.

(c) No Disability: Vendor is not subject to any obligations or disability which will or might prevent or interfere with Vendor fully keeping and performing all of the agreements, covenants and conditions to be kept or performed hereunder, and Vendor has not made and will not make any agreement, commitment, grant or assignment and will not do, nor omit to do, any act or thing which could or might interfere or impair the complete enjoyment of the rights granted and the service to be rendered to the Producer.

2.2 Warranties Do Not Apply to Producer's Changes: Vendor's representations and warranties herein contained as to material submitted to Producer by Vendor shall apply only to such of the material as Vendor shall have contributed to the screenplay or the Film, and shall not apply to any extraneous matter inserted in the material delivered or the Film by Producer, its associates, successors, designees, licensees, assigns or others.

2.3 Producer's Right to Defend: Vendor hereby grants to Producer the free and unrestricted right, but at Producer's own cost and expense (subject to any rights of Producer to recover from Vendor for any breach by Vendor of any term, condition or warranty herein set forth), to institute in the name and on behalf of Vendor or Vendor and Producer jointly, any and all suits and proceedings in law or in equity, to enjoin and restrain any infringements of the rights herein granted, and hereby assigns and sets over the Producer any and all causes of action arising or resulting by reason of or based upon any such infringement, and hereby assigns and sets over to Producer any and all recoveries obtained in any such action. Vendor will not compromise, settle or in any manner interfere with such litigation if brought. Vendor will and do hereby appoint Producer his irrevocable attorney-in-fact to establish and protect the validity of all rights herein granted if they are attacked or appropriated by others, and Producer may also sue or defend in the name of Vendor, Producer or any combination thereof.

### **3.0 INDEMNITY**

3.1 Vendor Indemnity of Producer: Vendor will indemnify and hold harmless the Producer, its associates (including but not limited to any distributors of the Film), successors, licensees, and assigns from any and all claims, demands, suits, losses, costs, expenses (including reasonable counsel fees), damages or recoveries (including any amount paid in settlement) which may be obtained against, imposed upon or suffered by Producer, its associates and other parties referred to above, by reason of the breach by Vendor of any of the representations, warranties or covenants herein contained. Producer agrees to notify the Vendor of any situation in which Producer's rights under this Paragraph may apply, and Vendor shall have the right to participate in such litigation.



3.2 Producer Indemnity of Vendor: The Producer agrees to indemnify and hold harmless the Vendor his successors and assigns, from any and all claims, demands, suits, losses, costs, expenses (including reasonable counsel fees), damages or recoveries (including any amounts paid in settlement) which may be obtained against, imposed upon or suffered by Vendor, his successors and assigns arising out of any extraneous matter inserted in the Property or the Film by Producer, its associates, successors, designees, licensees, assigns or others other than the Vendor, or the manner in which the Film is shot or produced.

***You do not want the liability of the Vendor or writer to be limited to what you have paid to them since as soon as the project gets incorporated into a film or television program, the legal fees to defend such a claim would probably be enormous and will exceed that amount very quickly. The amount you pay to the Vendor or writer has no relationship to the amount of damages or claims that could arise for infringement or libel, etc. Most often the big problem is not fighting out the claim (very few of which actually get to final litigation), it is the legal cost of defending the action.***

#### **4.0 RIGHTS TO MAKE CHANGES**

4.1 Vendor agrees that Producer shall have the unlimited right to vary, change, alter, modify, add to and/or delete from the Property, and to rearrange and/or transpose the Property and change the sequence thereof and the characters and descriptions of the characters contained in the Property, and to use a portion or portions of the Property or the characters, plots or theme thereof in conjunction with any others literary, dramatic or other material of any kind. Vendor hereby waives the benefit of any provision of law known as "droit moral" or any similar law in any country of the world and agrees not to institute, support, maintain or permit any action or lawsuit on the grounds that any motion picture or television production or other version of the Property produced or exhibited by Producer, its assignees or licensees, in any way constitutes an infringement of any of the author's droit moral or is in any way a defamation or mutilation of the Property or any part thereof or contains unauthorized variations, alterations, modifications, changes or translations.

***A waiver of "moral rights" from the author is important to have when incorporating the author's material with other work or into another form so that you do not face a claim of having interfered with the "integrity of the author's work".***

#### **5.0 CONSIDERATION**

5.1 Consideration is all inclusive: The Producer and Vendor agree that it is their intention that the consideration set out herein shall be all inclusive for the rights granted.

5.2 As full consideration for the rights herein sold, transferred and assigned by the Vendor to the Producer and for all of the covenants, representations and warranties of the Vendor herein, the Parties agree that the Vendor will receive and accept the following:

- (a) XXX Dollars (\$XXX), hereinafter referred to as the Purchase Price, less amounts deductible pursuant to paragraph 1.3 of the annexed option agreement ("Option Agreement"), upon the exercise of the option in accordance with paragraph 1.1 of the Option Agreement provided same is not later than the first day of principal photography; and

***This would be a straight flat fee one-time purchase price. It is possible to have innumerable variations, including something like the following or a profit participation or additional payments for additional works.***

- (b) An additional sum of XXX Dollars (\$XXX), in the event the budget of the Picture is in excess of US\$5,000,000 payable at the same time as the payment in (a) except that should the option be exercised prior to production of a picture, the payment shall be made no later than first day of principal photography. Producer will provide Vendor with a certified copy of the budget top sheet on or before first day of principal photography); and

***Usually the budget of the project has no relation to the value of the underlying work unless the work or the author is very well known or you have convinced the vendor that you have to pay less because it is a real low budget production in which case if your budget increases, the payment would as well.***

- (c) If and when Producer has received Gross Revenues from exploitation of the Picture in all media equal to 150% of the audited production costs, the sum of Twenty-Five Thousand Dollars (\$25,000), which sum shall be an advance of the share of net profits referred to below.

***This is an example of a kind of bonus that is payable when you are assured you can pay it.***

- (d) A share of five (5%) percent of the net profits of the Picture. For the purposes of this calculation, net profits shall mean gross revenues from exploitation of the Picture in all media less distribution fees and expenses and less recoupment of the audited production costs. For the purposes

of this provision, gross revenues shall mean all revenues received by the Producer from all distributors of the Picture as well as the proceeds received by Producer from the exploitation or transfer or sale of ancillary or subsidiary rights. The terms "ancillary and subsidiary rights for this purpose shall mean all rights referred to in 1.1 above excluding rights otherwise compensated in (e) below, music publishing and sound recordings.

***Considering how many parties are likely to be sharing in the profits a rate of 5% is reasonably generous. Frequently no profit participation is payable for underlying works. Everyone knows profits are largely illusory and such a provision requires the producer to continue accounting to people for an indefinite period into the future.***

- (e) In addition to the amounts payable pursuant to 5.2 (a) - (d) above, if Producer produces additional productions based on the Property, Vendor agrees to accept:
  - (i) For sequels, prequels, remakes or mini-series, one half the full purchase price described in paragraphs 5.2(a) payable upon commencement of principal photography of each such sequel or remake;
  - (ii) For a television series, the sum of US\$1,500.00 for each new episode produced of thirty (30) minutes or less; the sum of US\$3,000.00 for each new episode produced longer than thirty (30) minutes but not longer than sixty (60) minutes.

***This work is obviously not originally contemplated as a series. For series or spin-offs where the writer is a WGC member, there are various provisions governing creative royalties for the original creator.***

## **6.0 NO OBLIGATION TO PRODUCE**

6.1 Nothing herein or elsewhere contained shall obligate the Producer to produce motion picture or television production based upon the Property.

## **7.0 ASSIGNMENT AND LENDING**

7.1 Producer may transfer or assign this agreement or all or any part of Producer's rights hereunder to any person, firm or corporation, and this agreement shall enure to Producer's benefit and to the benefit of Producer's successors and assigns. No such assignment shall relieve Producer of liability hereunder unless Vendor shall consent thereto. In such event Producer shall be relieved of liability hereunder. Vendor shall not

assign, encumber or otherwise transfer this agreement or any rights hereunder, nor shall they delegate any duties hereunder. Any such purported or attempted assignment, hypothecation, transfer or delegation shall be absolutely null and void and of no force or effect whatsoever.

## **8.0 CREDIT**

8.1 Vendor shall be entitled to a "Based on a short story by" credit. Such credit shall appear in the main titles on screen and in all paid ads, subject to the usual exclusions wherever the credit block appears.

***WGC has specific credit provisions for all screenwriters. This would not be within the purview of the WGC.***

8.2 Inadvertent Breach: No casual or inadvertent failure to comply with the provisions of this paragraph nor any failure of any other person, firm or corporation to comply with its agreements with Producer relating to such credits, shall constitute a breach by Producer of its obligations under this paragraph and the provisions of the paragraph entitled "General" respecting injunctive relief shall apply.

## **9.0 EFFECTIVE TERMINATION OR EXPIRATION/DAMAGES**

9.1 Neither the expiration, rescission nor any other termination of this agreement shall affect the ownership by Producer of the material written by Vendor hereunder and all other results and proceeds of the services rendered by Vendor according to the terms and provisions of this agreement or any warranty or undertaking on the part of Vendor in connection therewith, or otherwise alter or adversely affect any of the rights or privileges of Producer hereunder. No expiration, rescission or other termination of this agreement shall entitle Vendor to enjoin, rescind or revoke all or any of the rights herein granted or the exercise of those rights by Producer or Producer's licensees, successors or assigns, and in the event of any default by Producer of the terms of this agreement, Vendor's sole remedy shall be an action at law for damages.

## **10.0 OTHER TERMS**

***There are unlimited kinds of additional terms that might be agreed on including turnaround and other writing obligations. This is just one particular example.***

10.1 Sequel: If Producer is considering producing a sequel to the first Picture based on the Property, Producer shall notify Vendor who shall have 21 days in which to submit a sequel concept. If Producer is interested in the concept, the parties will negotiate in good faith for either the commissioning of a script to be written by Vendor or the acquisition of the concept. If the parties are unable to come to an agreement within

30 days of commencement, Producer shall be free to pursue other avenues and Vendor retains all rights to his sequel concept.

## **11.0 GENERAL**

11.1 Ontario Law Applies: This agreement shall be construed, interpreted and enforced in accordance with, and governed by, the laws of the Province of Ontario applicable to agreements executed and to be wholly performed within said province.

11.2 Entire Agreement: This instrument constitutes the entire agreement between the parties and cannot be modified except by a written instrument signed by Vendor and an authorized officer of Producer. No officer, employee or representative of Producer has any authority to make any representation or promise in connection with this agreement or the subject matter hereof which is not contained herein, and Vendor agrees that he has not executed this agreement in reliance upon any such representation or promise.

11.3 Headings: The headings of the paragraphs hereof and any underlining are inserted only for the purpose of convenient reference; such headings shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning or intent of the provisions of this agreement or any part or portion thereof; nor shall they otherwise be given any legal effect.

11.4 Currency: Any references to payments herein shall be in Canadian currency unless otherwise specified.

11.5 Enurement: This agreement shall be binding on and enure to the benefit of the parties, their respective successors, heirs and permitted assigns.

11.6 No Injunction: The rights and remedies of Vendor in the event of any breach of this agreement shall be limited to their rights, if any, to recover money damages in an action at law, and in no event shall they be entitled, by reason of any such breach to terminate this agreement, and they shall not be entitled, and both hereby waive the right in such event, to equitable or injunctive relief, or to enjoin, restrain or interfere with the distribution or exhibition of the Film.

***This is a very important provision. You cannot afford to have someone being able to stop production.***

11.7 Partial Invalidity: If any term or provision of this agreement or the application thereof to any person or circumstances shall, to any extent, be invalid and unenforceable, the remainder of this agreement or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this

agreement shall be valid and be enforceable to the fullest extent permitted by law. If any compensation shall be reduced while such limitation is in effect to the amount which is so permitted, then payment of such reduced compensation shall be deemed to constitute full performance by Producer of Producer's obligations hereunder with respect thereto.

**12.0 NOTICES**

12.1 All notices, accountings and payments ("notice") required or permitted hereunder shall be in writing and, if mailed by prepaid first class registered mail at any time other than during a discontinuance of postal services due to strike, lockout or otherwise, shall be deemed to have been given on the third business day after its posting and if delivered by courier or personally, on the day of such delivery.

Notices to the Producer shall be addressed to: \_\_\_\_\_

Notice to the Vendor shall be addressed to: \_\_\_\_\_

with a courtesy copy to: \_\_\_\_\_

All materials to be written or provided by Vendor hereunder shall be hand delivered. Any party hereto may change its address for the purposes of receiving any notice by giving written notice in the manner aforesaid to the other party or parties hereto. If the last date on which a notice required under this agreement shall fall on a Saturday, Sunday or a Statutory holiday, then (notwithstanding any other provision hereof), such last date shall be deemed postponed until the first day that shall not be a Saturday, Sunday or statutory holiday.

***You may not want to rely on the post office for notices. Depending on where the parties are located geographically, you may also want to include facsimile transmission.***

IN WITNESS WHEREOF the parties hereto have executed this agreement as of the day and year first above written.

**PRODUCTION COMPANY**

**By:**

\_\_\_\_\_

\_\_\_\_\_  
**AUTHOR**

## **Alternative grant of rights provisions:**

***The following provision is a slightly less detailed but still a reasonably comprehensive grant of rights.***

The rights to produce, project, exhibit, broadcast, transmit and distribute and subject to the provisions regarding payment herein, all motion picture rights including, but not limited to, an unlimited number of motion pictures including sequels, prequels, remakes and miniseries of the motion picture, as said terms are commonly understood in the motion picture industry, theatrically, non-theatrically or in any other medium or delivery system; all television rights, including, but not limited to all television motion picture, series, mini-series and serial rights whether for "free", "cable", "specialty", "pay", "Pay per view" or any other form of television, whether now known or hereafter devised; all audio visual device rights including but not limited to disc, cassette or other devised whether now known or hereafter devised; all "video on demand" or similar rights, all computer assisted media rights including but not limited to CD-ROM, CD-I, CI-I and/or similar or dissimilar systems in whatever form, whether now known or hereafter devised; all interactive media rights (in whatever form, whether now known or hereafter devised; all radio rights, and all other media, now or hereafter known, and in all gauges and sizes. The term "motion picture" or words of similar import as used in this agreement, shall be deemed to mean and include any present or future kind of motion picture in any gauges, without or with sound recorded synchronously therewith whether the same is produced on film or magnetic tape or videotape or wire or any other substance or by any other method or means now or hereafter used for the production, exhibition or transmission of any kind of motion picture, and whether the same is produced initially for theatrical, non-theatrical, home video, television exhibition or transmission or otherwise; the right to develop, produce or create other versions of the Property in any and all other media, whether now known or hereafter devised.

All allied, ancillary, subsidiary and incidental rights with respect to any and all of the foregoing, including but not limited to publishing the Property and "making of book publishing rights, music publishing rights, soundtrack record rights and all merchandising (including but not limited to video or computer game and other game or interactive or merchandising rights), licensing or commercial tie-up rights and promotional and advertising rights relating to the foregoing. Included in the grant of rights are the rights to exploit all productions and other products produced under this agreement by means of any and all devices or media, whether now known or hereafter devised, in any and all markets whatsoever, whether now known or hereafter developed.

Without limiting the Rights granted, the Rights shall also include the right: to use, and in so using, to adapt, translate, subtract from, add to and change, the title of

the Property or any title by which or any part thereof has been or may at any time be known; as vis-à-vis Vendor is concerned, the exclusive right to use the title of the Property; to make any and all changes in, deletions from and additions to the Property and combine the Property in any manner or use the Property in connection with any other work or works, including but not limited to, any ancillary or allied rights in a film or production based thereon or incorporating the Property, including but not limited to commercial tie-ups, merchandising, novelizations, interactive works and soundtrack albums.



## SAMPLE WRITING AGREEMENT

Rider to the WGC form of Writer's Agreement (Appendix B of the WGC Agreement)

***You can fill out the names of the parties, date, WGC number, etc. For all of the key terms such as 'description of material contracted' and 'delivery dates', write "(see attached rider)".***

Agreement between \_\_\_\_\_ ("Writer") and \_\_\_\_\_ ("Producer") made as of the \_\_\_ day of \_\_\_\_\_, 200\_, concerning the project tentatively entitled " \_\_\_\_\_ " .

***This is a specific provision where the producer has optioned the writer's first draft and is seeking third party interest in the project to proceed.***

Contemporaneously herewith, Producer has entered into an option/purchase agreement (the "Option/Purchase Agreement") with Writer to option Writer's first draft teleplay entitled " \_\_\_\_\_ " (the "Work"). A term of the option agreement is that Producer shall have the entitlement, subject to Writer's professional availability and willingness, to request Writer to write a second draft, plus such rewrites, revisions, and/or a polish of the teleplay upon the terms set out herein. If Producer wishes to proceed with a rewrite, revision and/or polish, Producer shall so notify Writer in writing, including the revisions Producer desires, and Writer shall respond within 15 days as to whether she is available and willing to undertake such work.

The terms which shall apply if Writer responds positively are as follows:

### 1.00 WRITER'S SERVICES

FILM – Defined The term "Film", as used herein, shall be deemed to mean the first feature length television motion picture production based on the Work.

***The applicable type of project should be outlined above.***

1.01 SECOND DRAFT TELEPLAY WRITING PERIOD If Producer requests Writer to write a second draft teleplay, commencing upon Writer receiving notes from Producer, Writer shall prepare a second draft of the Work, as discussed with Producer, and Writer agrees to deliver the second draft within three (3) months of receipt of Producer's notes. The draft shall be written in such manner and shall incorporate any changes in and revisions of, the Work requested by Producer or its designees, to the best of Writer's ability.

***The schedule for delivery of drafts should be discussed with the writer and be workable for both parties. This example is rather generous. You will also want to provide written notes on the draft to be as clear as possible about your intentions.***

1.02 REVISION OR REWRITE WRITING PERIOD If Producer has requested a rewrite, or a revision, commencing upon receipt of Writer's positive response referred to above, Writer shall prepare a rewrite of the Work, as discussed with Producer and Writer agrees to deliver the rewrite within 6 weeks after meeting with Producer and/or receiving Producer's notes thereon. The rewrite or revision, as the case may be, shall be written in such manner and shall incorporate any changes in and revisions of, the Work requested by Producer or its designees, to the best of Writer's ability.

***Rewrites and revisions (being something less than a rewrite and more than a polish) can be provided for in this agreement with the rates negotiated ahead of time.***

1.03 POLISH If Producer has requested a polish, commencing upon Producer's receipt of Writer's positive response referred to above, Writer shall prepare a polish of the Work, as discussed with Producer, and Writer agrees to deliver the polish within 2 weeks after meeting with Producer and/or receiving Producer's notes thereon. The polish shall be written in such manner and shall incorporate any changes in and revisions of, the Work requested by Producer or its designees, to the best of Writer's ability.

***A polish is generally included in a draft under WGC but you may want to have the polish done at a later time. The question of turnaround time for notes between drafts is not addressed here as each draft is subject to approval from the producer. This may be a problem in the cases where the producer has commissioned a full script rather than one draft or stage. The WGC agreement requires the producer to notify the writer within 21 days of receipt of an earlier stage (from treatment or outline to first draft, etc.) whether the producer wants the writer to proceed to the next stage. This provision gives no recognition to the notion of the producer seeking to obtain third party funding which frequently takes months. You might consider notifying the writer of your intention to proceed to the next stage but agreeing that commencement will be at some date in the future. Paying the 25/75 split of fees per instalment (rather than the full script payment under the IPA of 15/25/35/25) may also allow you to proceed with one stage at a time although the IPA now suggests single elements after treatment can be only a rewrite, polish or narration.***

1.03 PRODUCER'S REQUESTS Writer agrees to comply with all requirements,

directions and requests, and with all reasonable rules and regulations made by Producer in connection with the conduct of its business, to render services hereunder conscientiously and to the best of Writer's ability and as instructed by Producer in all matters, including those involving artistic taste and judgment.

***You may have a writer balk at the suggestion that he/she comply with the producer's directions and requests. Experience suggests that your best chance for a good working relationship with the writer is lots of communication and discussion and no amount of paper will create that.***

### 3.00 COMPENSATION

3.01 FEES AND STAGES Provided Writer faithfully and substantially performs her obligations hereunder, Producer shall pay Writer as full compensation for all of Writer's services to be rendered hereunder and for all rights granted or agreed to be granted to Producer, and for all warranties, representations and covenants herein made by Writer and Writer agrees to accept:

a) For the second draft teleplay, the sum of Seven Thousand Seven Hundred and Twenty-Two Dollars (\$7,722), payable One Thousand Nine-Hundred and Thirty Dollars (\$1,930) upon receipt of notice to commence and the balance upon delivery of the second draft;

***This rate is based on the first draft (which was optioned) representing 75% of WGC scale payment so that the second draft represents the remaining 25% of the full script fee.***

b) For a rewrite, WGC scale payable twenty-five (25%) percent within 3 days of receipt of positive response and the balance within 2 weeks of delivery of the rewrite;

c) For a revision, the sum of \$10,000 payable twenty-five (25%) percent within 3 days of receipt of a positive response and the balance within 2 weeks of delivery of the revision;

d) For an additional polish, WGC scale payable twenty-five (25%) percent within 3 days of receipt of positive response and the balance within 1 week of delivery of the polish.

***The 25/75 split on payment is the WGC requirement for individual stages contracted. There would be additional amounts payable including the production fee due on first day of principal photography and the Distribution Royalty (which in this case would have been spelled out in the option/purchase agreement executed contemporaneously with this writer agreement). You would likely also***

*want to allow for the possibility of additional productions such as those mentioned in the sample Option/Purchase Agreement. All of these payments including the production fee and distribution royalty should be qualified by wording such as “provided writer is a credited writer” or for the additional productions “provided the series or MOW... is substantially based on the material written by Writer hereunder”.*

3.02 CONSIDERATION IS ALL INCLUSIVE The Producer and Writer agree that it is their intention that the consideration set out herein shall be all inclusive for the rights granted hereunder.

4.00 GRANT OF RIGHTS

The rights granted shall be those as set out in the Option/Purchase Agreement.

***See notes on the Option/Purchase Agreement.***

5.00 WRITER'S REPRESENTATIONS AND WARRANTIES

The Writer's representations and warranties set out in the Option/Purchase Agreement shall be incorporated herein by reference.

The provisions numbered paragraph 2.00 to 4.00 and 7.00 to 12.00 of the Option Purchase Agreement shall be incorporated herein by reference.

**IN WITNESS THEREOF** the parties hereto have executed this agreement as of the day and year first above written.

**PRODUCER**

Per: \_\_\_\_\_

\_\_\_\_\_  
**WRITER**

## II ORGANIZATION

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To undertake production, a producer is advised to have a corporation set up, if for no other reason than to limit his/her liability. It is also a basic eligibility requirement for most of the tax credits available, certainly the federal and provincial tax credits. Incorporating does involve a whole other layer of paperwork and filing. Thankfully, you can now incorporate quickly and quite painlessly online federally. The incorporation cost is slightly higher than provincial incorporation. The province has not yet put documentation and registration on line. The corporation is a separate legal entity registered with the government, which, as long it conducts any activity, must be kept up to date.

You may set up a single purpose company for production. This means the only activity of this company is to produce this one project. Many producers establish a parent company which is the ongoing entity with the established “name”. Every time they move toward production of another project, they incorporate a single purpose production company that is a subsidiary of the parent company. Generally the sole or majority shareholder of the single purpose production company will be the parent company. Because the structure of each production is usually unique, with different partners and contributions, setting up a separate company keeps things tidier. You will keep separate books and records for each company. Those audit clauses in contracts that specify a financier can audit your books and records, will necessarily be limited to the books and records of that project. More importantly, if you are using tax credits as part of your financing, you will physically collect the credit because the production company will have no taxes payable, versus having the taxes that may be payable by the parent company reduced. There are specific provisions in the tax credit regulations allowing expenses paid by the parent company to be recognized as production costs by the subsidiary production company for the purpose of calculating tax credits.

Forming a corporation also requires you to address your relationship with other parties you work with, i.e. are they shareholders in the corporation with ownership of the production. You can have different shareholders of different production companies. You can also have only a contractual relationship with other parties in which they might be entitled to profit participation or bonuses or royalties without being owners of the copyright in the project. They may also be owners of a share of the copyright and still not be shareholders in your company. There are innumerable variations on the structure and it is useful to discuss the pros and cons of your particular situation with a commercial lawyer.

Co-productions are usually a type of joint venture or partnership. An organization in the form of a joint venture is more often used where two (or more) entities are coming together for a single project or group of related projects. Generally, each

party is contributing something to the venture such as the financing or the script or a combination of elements. The primary reason for co-producing at least interprovincially or internationally is to access any benefits or subsidies available to the parties in their territories. You may not want to have both entities as shareholders of a single production company to avoid making the company ineligible for various benefits in the other party's territory.

In any case, the terms and various responsibilities and the rights and obligations of the parties should be spelled out in as much detail as possible in an agreement. It is somewhat easier to negotiate a co-production or joint venture agreement for a specific project with some time frame rather than an ongoing arrangement where the exact activities or projects are unknown. A sample co-production agreement is set out in the Co-production section.

### III CO-PRODUCTIONS

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Whether interprovincial, international or both, co-productions are an increasing necessity to leverage multiple financing sources. The multiplication of producers does multiply the usual complications of production and production financing and adds some new complications. There are numerous informal types of co-productions (many broadcasters see themselves as co-producers where they have pre-bought a production) but generally there is one party responsible for producing and delivery of the project in those scenarios, notwithstanding one or more other parties may have lots of approvals or input.

In official co-productions, there is a joint responsibility for the project among two or more companies. This requires that everyone know who is handling what and what happens in case of a disagreement. As in any partnership, a great deal of trust and good will is required to make the partnership work. The additional challenges that cultural, language and geographical differences introduce to the mix cannot be overemphasized. Even if you speak a common language, the culture of business or production is frequently different from one place to another. You should out check your potential partner's reputation and be sure to discuss your expectations as fully and frankly as possible with them in advance.

Guidelines for interprovincial co-productions are not as extensive as those set out in the various international treaties. There are however certain requirements specified in tax credit regulations or by provincial agencies where agency equity is invested regarding ownership and minimum expenditures which must be met to qualify. Previously BC Film required that 75% of the expenditures be spent in BC but they have recently waived this requirement. The Ontario Film and Television Tax Credit ("OFTTC") requires that the Ontario producer qualify as an Ontario resident; and that no less than 20% of the cost of production is the Ontario portion; and not less than 75% of that Ontario portion is payable to Ontario based individuals or corporations for goods or services provided by Ontario-based individuals or corporations. Provincial agencies such as Manitoba Film and Sound or BC Film generally require that the provincial producer own 50% of the producer equity (or of the Canadian producer equity in case of an international co-production). Under Telefilm Canada's new Canada Feature Film Fund guidelines for performance based envelopes, the allocation of envelope amounts to companies is first based on ownership information. If you are the lead producer, you may want to consider providing in your interprovincial co-production agreement that any such allocation should be directed primarily to you, notwithstanding the ownership. It is best to do this up front.

When applying for tax credits for international co-productions, the rules are similar except there is no requirement for points since international co-productions are not

governed by a point system. The co-production division of Telefilm (in Montreal) provides a ruling on whether the production qualifies pursuant to the treaty, based on the balancing of elements from the co-production parties.

The minimum contribution and expenditure from any party in an international co-production is 20% of the budget (although with certain countries, the minimum may be 30%). In other words, no country's participation may represent less than 20% (the exception is China which allows a 15% minority participation). There may be a slight difference between the contribution to the financing and the expenditures on elements from that partner but neither may be less than 20%. Generally Telefilm will allow up to 10% discrepancy between contributions and expenditures so you might have one party contributing 35% of the production financing but the expenditure on that party's elements is only 28%. The treaties also require that there be meaningful creative contributions from the minority partner but the determination of much of this is flexible. Often you will require one or more performers from the minority partner as well as some keys and technical personnel. There is an allowance for some third country nationals to be involved but this often excludes the writer or the director. Certain European country treaties specify only that all participants must be nationals of member States of the European Union (eg. see the Canada-Italy treaty). In order to meet minimum expenditure requirements, you will usually have principal photography or some part of post-production in the minority country. Co-productions require a great deal of planning and some delicate balancing work.

Aside from the general production challenges of multiple producers and increased production costs, international co-productions are often more complicated from a financial perspective particularly accounting and banking. There are very few banks outside of Canada that understand and are prepared to bank Canadian tax credits. Conversely, Canadian banks, although often providing less expensive financing, may be unwilling to bank many foreign sources of financing, without difficult to obtain support such as letters of credit. The parties must account consistently and report to each other and follow through until final audits and the final approval of the production as a treaty co-production is done.

A sample co-production agreement with some annotations follows. Provided you take into account the specific requirements of any particular funding you are seeking to access, you could adapt this kind of agreement for an interprovincial co-production. You may, of course, have more than two partners in a co-production.



**SAMPLE CO-PRODUCTION AGREEMENT**

**CO-PRODUCTION AGREEMENT**

**FOR**

**“TITLE”**

\_\_\_\_\_

**THIS AGREEMENT** made as of the \_\_\_ day of \_\_\_\_\_, 200\_\_.

Between:

**CANADIAN PARENT COMPANY**, a corporation incorporated under the laws of the Province of Ontario having its head office at \_\_\_\_\_, Toronto, Ontario, Canada, represented by Big Honcho, duly authorized;

(hereinafter referred to as "Canco")

- AND -

**UK PARENT COMPANY**, a corporation incorporated under the laws of England, having its head office at \_\_\_\_\_, London, England, represented by The Boss, duly authorized;

(hereinafter referred to as "UKco")

- AND -

**CANADA PICTURES LIMITED**, a corporation incorporated under the laws of Ontario, having its head office at \_\_\_\_\_, Ontario, represented by Big Honcho, duly authorized;

(hereinafter referred to as "Canadaprod")

- AND -

**UK PICTURES LIMITED**, a corporation incorporated under the laws of England, having its head office at \_\_\_\_\_, England, represented by The Boss, duly authorized;

(hereinafter referred to as "UKprod")

***In this case, the parent companies and their respective production subsidiaries are parties to the agreement because the underlying rights to the project lay in one of the parents and the other parent is taking distribution rights. Both parent companies will also be parties to the bank loan agreements. Each scenario is different. Possibly your co-production partner may not be party to banking arrangements if they are cash flowing their end.***

**WHEREAS** Canco and UKco intend to co-produce within the framework of the co-production agreement which exists between the Government of Canada and the Government of the United Kingdom (hereinafter referred to as the "Treaty") a film project provisionally entitled " \_\_\_\_\_ " (hereinafter referred to as the "Co-production");

**AND WHEREAS** the parties have each caused to be incorporated a single purpose company called Ukprod and Canadaprod in their respective territories (hereinafter sometimes collectively referred to as the "Production Company") to produce and exploit the Co-Production, the articles of incorporation of which are attached hereto as Schedule "D";

**NOW THEREFORE WITNESSETH** that for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree each with the other as follows:

## **ARTICLE 1 GENERAL**

**1.1 Object** - The parties agree that the objects of this Agreement shall be to:

- (a) co-produce, on the terms of this Agreement and within the framework of the Treaty, the Co-production from a script written by \_\_\_\_\_ (the "Script") adapted from the novel by \_\_\_\_\_ (the "Underlying Rights") to be directed by \_\_\_\_\_;
- (b) exploit and distribute the Co-production worldwide, in its original version or any and all other versions, dubbed or sub-titled, in all known or yet to be known formats; and
- (c) outline the parties responsibilities and contributions for the Co-Production and outline how all revenues to be gained from said exploitation and distribution shall be allocated.

**1.2 Relationship** - Nothing herein shall be construed as creating an association or relationship between the parties hereto other than for the purpose of this Co-production.

**1.3 Schedules** - The following schedules are appended to this Agreement and are incorporated by reference and deemed to be part hereof:

Schedule "A"	Rights Agreement for Script
Schedule "B"	Option Purchase Agreement for Underlying Rights
Schedule "C"	Co-Production Budget top sheet
Schedule "D"	Articles of Incorporation of the Production Company
Schedule "E"	Cash Flow

***These schedules are useful but there are no mandatory schedules to include or attach. The basic elements of agreement are helpful and the above list, particularly C and E are critical to establish as early as possible.***

## ARTICLE 2 COPYRIGHT AND OWNERSHIP

### 2.1 Acquisition of Rights -

- (a) UKco represents that it has acquired all rights required for the production, exploitation and distribution of the Co-production, including, copyright to the screenplay of the Co-production, as well as a valid option to the Underlying Rights, as stated in the rights agreements attached hereto as Schedules "A" and "B" respectively (hereinafter collectively referred to as the "Rights Agreements");
- (b) UKco represents that all amounts due to date under the Rights Agreements have been duly paid and the Rights Agreements are valid and in good standing; and
- (c) UKco hereby transfers all of its right, title and interest as purchaser in and to the Rights Agreements to the Production Company to be held as joint tenants in accordance with the percentages set out in 2.4 below.
- (d) The parties agree that any agreements entered into by Canadaprod or Ukprod shall be for the benefit of the Co-production and shall constitute a joint obligation of and confer a joint benefit on both companies.

***The transfer of rights here and the recitation of rights all go to form the chain of title. The parties can each bind the other. Alternatively, you may want to set out a list of agreements or arrangements that require mutual approval. In this case, the financing and banking arrangements are already known but often you will not have everything in place prior to the execution of the co-production agreement. In that event you would want to approve any financing agreements either party is entering into or at least provide that approval is required if they impact on the parameters you have provided. Additionally, you will want to approve key creative and production personnel, production schedules, milestone events and key suppliers, etc.***

**2.2 Transfer of Rights** - Except as set out herein, neither party may, without the written consent of the other, transfer, cede or sell, in whole or in part, its rights in and to the property to a third party.

**2.3 Creditors** - In the event that a creditor of one of the parties undertake legal proceedings to take possession of the property and or revenues from the exploitation and distribution, then such party must undertake immediately, at its own expense, proceedings to negate said possession by the creditor or to limit the possession to the portion of the property and revenues belonging or due to the party responsible for the legal proceedings contemplated in this Section.

**2.4 Ownership of Copyright** - UKco or Ukprod shall own 80% of the copyright in the Co-production and Canco or Canadaprod shall own 20% of the copyright in the Co-production.

***The ownership usually approximates the expenditures of the respective parties. The financing structure - particularly the financing allocated to each party - may be more malleable than the expenditures. You may have other parties taking copyright ownership shares, but this will have to follow and flow from the original ownership split, e.g., if Telefilm is an investor, it will take a share of the Canadian ownership.***

**2.5 Ownership of Remake and Ancillary Rights** - UKco or Ukprod shall own 80% of the Remake Rights (as defined in the Rights Agreements) and all ancillary rights thereto and Canco or Canadaprod shall own 20% of the Remake Rights (as defined in the Rights Agreements) and all ancillary rights thereto.

***In this case, the ownership of other rights is the same as for the principal property but it could conceivably be different particularly where there is real potential for sequels or series.***

### ARTICLE 3

## ACCOUNTING

- 3.1 Accounting** - Each of the parties shall maintain specific books of accounts to record and register all their respective expenses incurred during the pre-production, production and post-production of the Co-production.
- 3.2 Access to Books** - Each party shall be granted access to the books of accounts of the other party with respect to the Co-Production during reasonable business hours, upon providing the other party with at least twenty-four (24) hours prior notice. Any such access shall be carried out without unnecessary interference with or disruption of the normal conduct of business of the other party.
- 3.3 Final Accounting** - Each of the parties hereto shall, within 120 days after the acceptance of the answer print, provide to the other party a financial report giving the final and definitive cost of the portion of the Co-production for which it is responsible to account hereunder. This report shall be in a form similar to the budget for the Co-production which has been accepted and agreed upon by the parties hereto.

***Responsibility for the books and accounting should be clear. It is obviously difficult to have two sets of books for one production. This needs to be coordinated and the production accountants need to establish a relationship and protocol for cost reports, etc. Having control of accounting, particularly in post-production is extremely important as you require audits of all the production costs to finalize your production and get a final co-production approval (as well as final draw downs from government investors).***

## ARTICLE 4 BANK ACCOUNTS

- 4.1 Canadian Account** - A special bank account will be opened at the \_\_\_\_\_ Bank, \_\_\_\_\_ address \_\_\_\_\_, Canada, Account #: \_\_\_\_\_, Sorting Code: \_\_\_\_\_ from which payments are to be made of all Canadian expenses of the Co-production.
- 4.2 UK Account** - A special bank account will be opened in the United Kingdom at the \_\_\_\_\_ Bank, \_\_\_\_\_ address \_\_\_\_\_, England, Account #: \_\_\_\_\_ Sorting Code: \_\_\_\_\_, from which payments are to be made of all UK expenses of the Co-production. The parties may also operate a cashing facility in or near the production location in Scotland.

***Since production is taking place in two countries, there will necessarily be more***

**than one bank account. This also identifies there may be a location account. Cash flow and accounting on a co-production are more complex as a result.**

## ARTICLE 5 BUDGET AND FINANCING

- 5.1 Budget** - The total budget of the Co-production, the top sheet of which is annexed hereto as Schedule "C", dated, \_\_\_\_\_, 200\_ is intended to be £XXX, which is equivalent to \$XXX in Canadian currency. The conversion rate used is one (1) Great British Pound is equal to two (2) Canadian dollars and forty (40) cents. The parties undertake that Canadian expenditures shall not be less than 20% of the final production costs of the Co-production. The parties have allowed an amount for fluctuation of exchange rates of XXX in the budget. In the event the exchange rate allowance is insufficient to cover fluctuations, the parties shall be responsible for the overruns in accordance with their respective ownership of the production.

***Telefilm Canada (both as the co-production authority and as an investor) requires that co-production budgets break out the Canadian and other country costs in separate columns and then provide the total. The parties being responsible for their respective shares of overruns due to exchange rate fluctuations is one option but is not particularly feasible for most producers. Ideally, you would flow Canadian funds to cover Canadian expenses and UK funds to cover UK expenses and therefore limit the exchange issues. However, since it is likely that a bank would be involved in cash flowing the co-production, this issue would have to be addressed as you may require advances in more than one currency and this must be part of the agreement with the bank. You could consider buying futures in the fluctuating currency to fix the exchange rate. This issue should be reviewed with the accountants and the bank.***

- 5.2 Financing** –The financing plan for the Co-Production is as follows:

Canadian Financing:

Canadaprod equity (including any Canadian tax credits)	,	
Canco distribution advance against Canada	,	
% of Canco distribution advance against world	,	
Total Canadian financing	,	(20%)

UK Financing

Sale leaseback proceeds	,	
English Production Fund equity	,	

UK Broadcaster equity	,	
UK Broadcaster license fee	,	
% of Canco distribution advance against world	,	
Total UK Financing	,	(80%)
Total combined financing	,	(100%)

**5.3 Equity Financing** - UKprod acknowledges that Canadaprod may seek equity investment from Telefilm Canada whereby Telefilm would step into Canadaprod's position with respect to recoupment and as a financier, but not as a producer to the extent of its contribution, which would not exceed half of Canadaprod's equity investment. Until such time as any such agreement is concluded, Canadaprod shall be responsible for the full amount of its contribution outlined above. Canadaprod's equity contribution includes any Canadian tax credits to which Canadaprod may be entitled. UKprod's equity contribution includes any proceeds of a sale leaseback or similar transaction.

*The above clauses lay out the financing scenario and allocate which of the amounts are being attributed to each party to arrive at the agreed split. With respect to distribution advances for territories other than that of one of the parties or pre-sales to countries other than those of the producers, amounts can be allocated between the nationals. This financing scenario does not necessarily allow for open territories or corridors of recoupment which may be required by the equity investors (certainly this would be the case for Telefilm). Telefilm has developed guidelines with respect to its requirements for sale leaseback transactions since these have become a standard element of Canada-UK co-productions.*

#### **5.4 Cash Flow, Underages and Overages -**

- (a) The parties hereby undertake to cause the Co-production to be funded. Pursuant to such commitment, the parties have agreed to the cash flow schedule attached hereto as Schedule "E".
- (b) The parties acknowledge they may borrow their joint contribution or part thereof from a financial institution and hereby agree to cooperate and do all things reasonably necessary to facilitate such an arrangement.
- (c) If the Co-production is over budget, then, subject to the provisions of the completion guarantee referred to in Article 6.1 hereof, the parties shall contribute in accordance with their respective share of ownership of the Co-production. Any such overage shall be applied first against producer's fees pro rata.

- (d) If the Co-Production is under budget, then 50% of any such underage shall be paid to the parties hereto divided according to their ownership of the Co-production and the remaining 50% shall be paid to the financiers, namely the UK Broadcaster, the English Production Fund, and the parties hereto, according to their respective equity contributions to the budget.

***Again, the structuring and responsibilities for cash flow and overages are essential in a co-production.***

#### **5.5 Pre-Production Advances -**

- (a) The parties hereby acknowledge that both UKco and Canco have advanced monies, prior to the execution of this Agreement towards pre-production costs and expenses and agrees that they shall be entitled to recoup such monies from production financing once the same has closed.
- (b) Each of the parties hereto hereby agrees to provide to the other with a full accounting for all monies spent to date.

***The accounting for all expenses to date could additionally be a schedule to the agreement to ensure it is all open and agreed.***

#### **5.6 Fees -** The parties shall be entitled to the following with respect to the Co-production:

- (a) \_\_\_\_\_ Writer \_\_\_\_\_ shall be entitled to £XXX for writing fees and an additional £XXX deferred, to be paid in accordance with Section 7.3(b) hereof;
- (b) UKco and Canco shall be entitled to the following producer fees, UKco £XXX and Canco £XXX;
- (c) Canco shall be entitled to distribution fees of 25% for the world excluding the U.K. and North America, 20% for the United States and 35% for Canada.

***This is only addressing related-party type fees. You can agree to a percentage split on producer fees rather than a fixed amount since it is usually a floating figure until all financing is settled.***

### **ARTICLE 6 COMPLETION GUARANTEE**



- 6.1 Guarantee** - The Co-Production undertakes to obtain a completion guarantee on the Co-production from The Film Bond Corporation. The terms of such guarantee shall be subject to the approval of UKco and Canco.

***If there are particular suppliers you can agree on that relate to some of the essential parts of the production, it is useful to set them out. Other financiers may also require approval of the bond company.***

## ARTICLE 7 TERRITORIES AND REVENUES

- 7.1 Territory** - Canco will have exclusive worldwide distribution rights, save and except those rights in the United Kingdom. The rights shall be divided into three distinct territories: (a) Canada, (b) the United States, and (c) world excluding Canada and the United States. The revenues and expenses for each territory shall be crossed among all media and markets in that territory but not between that territory and another territory.

- 7.2** Broadcaster has pre-licensed all television rights in the United Kingdom and will be appointed sales agent to sell theatrical and video rights in the United Kingdom for a fee of 15%. The terms of any agreement made by the Broadcaster shall be subject to the approval of the parties hereto.

- 7.3 Recoupment** - All revenues payable to the Co-production pursuant to the Canco Distribution Agreement (defined below) and all revenues from the United Kingdom shall be allocated as set out in detail in the Collection Agreement among the financiers of the Co-Production and such terms are briefly as follows:

- (a) First, to the equity investors in respect of their equity investments namely Canprod, UKprod, English Production Fund, and the Broadcaster;
- (b) Second, to all third party participants entitled to a fixed participation from first dollar after recoupment ("Deferment"). To date the Deferments are as follows:
  - (i) £XXX to     A. Actor    ;
  - (ii) £XXX to     B. Actor    ;
  - (iii) £XXX to     C. Actor    ; and
  - (iv) £XXX to     writer     for his deferred writing fee referenced in Section 5.6(a) of this Agreement.
- (c) Thereafter to net profit participants in accordance with their respective

entitlements. In this regard, the parties have allocated 10% of net profits to the Director, 1% to Author, 2% to A. Actor and 2% to B. Actor. The balance of the net profits shall be payable to the equity investors in accordance with the provisions of the Collection Agreement.

- 7.4 Financial Assistance** - All benefits or financial assistance available to each of the parties in each of their respective countries will be retained by the party in receipt of such benefit or assistance, as the case may be.

*In this sample agreement most of the deal terms are already finalised, particularly the financial elements. You will likely have numerous draft agreements during the course of determining or negotiating these details. The Collection Agreement is an agreement between all investors, the distributor and the bank regarding allocation of revenues.*

## ARTICLE 8 DISTRIBUTION AND EXPLOITATION

- 8.1 Distribution Agreements** - The terms of Canco's distribution rights are set out in a separate agreement between Canco and the Production Company (the "Canco Distribution Agreement"), which agreement shall be subject to the approval of the other parties hereto.
- 8.2 Revenue Accounting** - Canco shall maintain separate, full and proper books of accounts to record all revenues received. Canco shall provide to UKco, as often as required by an agreement with a third party but no less than semi-annually, within sixty (60) days of the end of June and December, an up-to-date financial report of all revenues and expenses. Such reports shall be accompanied with the payments of any and all monies due to UKco.

## ARTICLE 9 INSURANCE

- 9.1 Insurance** - Canco shall obtain in a timely manner and maintain in good standing at all material times after the commencement of principal photography for the benefit of Canco, UKco and any other necessary parties, including the Production Company, policies of insurance for the Co-production in accordance with the standards of the film industry, from a firm specializing in entertainment insurance. Such policies shall insure against the following, among other risks:
- (a) death or other incapacity of the director and principal performers;

- (b) loss or destruction of the original negative or master copy of the Co-production and of the sets, props or equipment used on the Co-production;
- (c) liability for death, personal injury or damage to property; and
- (d) liability for errors and omissions in chain of title to the Co-production, infringement of copyright for defamation or invasion of privacy.

**9.2 Coverage** - Such policies shall provide that, in the event any of the perils insured against materialize, the insurance proceeds will be sufficient to permit full recovery of the loss, including any required re-shooting for the completion of the Co-production.

**9.3 Delay** - In the event of a delay in the production, any monies paid by the insurer must be deposited in the Co-production bank account as set out in Article 4 hereof.

**9.4 Payment of Proceeds** - In the event it is impossible to resume the production of the Co-production for what ever reason, the policies of insurance must provide that the insurance proceeds will be paid to Canco and UKco and/or any other additional insureds on a pro rata basis based on their respective financial participation in the Co-production.

## ARTICLE 10 PRODUCTION

### 10.1 Date and Place of Shooting -

- (a) Pre-production shall commence the \_\_ day of \_\_\_\_\_, 200\_\_ and principal photography shall commence on or about the \_\_ day of \_\_\_\_\_, 200\_\_ for a period of X (x) weeks.
- (b) The shooting shall be completed on or about the \_\_ day of \_\_\_\_\_, 200\_\_.
- (c) If either party requests a delay in the start of the shooting, thereby causing the other party to incur additional expenses pursuant to signed contracts, then the party requesting the delay shall indemnify the other party in respect of such additional expenses.

### 10.2 Director -

- (a) The director shall be \_\_\_\_\_ (the "Director") or any mutually

agreed substitute.

- (b) The parties shall procure the payment to the Director £XXX as a directing fee for the Co-production and both parties hereby acknowledge that Canco has already advanced £XXX to Director for his services in respect of consultation on the script.
- (c) Both parties agree that the Production Company shall enter into a long form directing agreement with Director which shall be subject to the written approval of both parties hereto.

**10.3 Cast** - The parties hereby approve the following key cast members: A. Actor as "\_\_\_\_\_" and B. Actor as "\_\_\_\_\_". All additional principal performers shall be subject to the parties mutual approval. At least two (2) performers and possibly more, shall be Canadian.

**10.4 Producers** – The Boss and Big Honcho shall be credited as the Producers of the Co-production. The executive in charge of production for UKco and Canco shall be \_\_\_\_\_, who shall be credited as an executive producer, and the local line producer shall be \_\_\_\_\_.

**10.5 Location for Shooting** - The parties hereby agree that the Co-production shall be shot on location in Scotland. The director of photography shall be \_\_\_\_\_.

**10.6 Post Production -**

- (a) The cutting, picture, sound and other post-production for the original version or any other versions of the Co-production will be done in Canada and is scheduled to be completed within X (X) weeks of the end of principal photography.
- (b) Director's edit of the Picture with the editor will take place in \_\_\_\_\_, England. The editor will be \_\_\_\_\_.
- (c) The answer print or master videotape of the Co-production is scheduled to be completed for delivery purposes (to Canco) no later than the \_\_ day of \_\_\_\_\_, 200\_\_ or as otherwise agreed.
- (d) The Production Company shall create two negatives of the Co-production or at least one negative and one duplicate negative. The Production Company shall provide or procure access to Canco and UKco for the purpose of taking a duplicate negative or prints in accordance with the Canco Distribution Agreement.

***This is generally a requirement of the co-production treaties. This would in part be dictated by the distribution arrangements, eg. you could be required to deliver an internegative to your distributor in which case you would need to ensure that the co-production parties have access to the negatives.***

**10.7 Responsibilities** - All decisions concerning the Co-production, including, without limitation, casting, key creative or crew or replacements for any persons set out in this Article, shall be subject to the mutual written approval of both parties hereto.

***You may want to identify certain areas as being within the bailiwick of one or the other of the parties for convenience sake. Having mutual approvals on everything is generally too cumbersome unless the parties work tremendously well together or if most of the essential pieces are in place.***

**10.8 Technical Standards** - The quality of the finished product must be of international standard and both parties hereto agree to use only material and equipment of the best quality and to hire only qualified and experienced production and technical personnel.

## **ARTICLE 11 MATERIAL**

**11.1 Materials** - The parties shall ensure the delivery materials are listed in Schedule "B" to the Canco Distribution Agreement are available to each of them for the completed original version and trailer, if any, of the Co-production.

## **ARTICLE 12 PUBLICITY**

**12.1 Access to Publicity** - Canco and UKco shall each have access to the others and third parties' publicity material(s) with respect to the Co-production.

**12.2 Responsibility** - During the production of the Co-production Canco shall be responsible for publicity for the Co-production.

***This is one of the areas that may get forgotten. You will likely want unit publicity done in both countries.***

**12.3 Credit** - All prints and all printed material used in the distribution and exploitation

of the Co-production shall include the following:

A UK - Canada Co-Production

Mention of the Co-production companies and their respective individual producers shall also be made.

***Most treaties in Canada require that Canada appear first and in the other country, the other country appear first on prints. You should seek to settle the corporate and individual credits up front in this agreement.***

**12.4 Sharing of Information** - Canco and UKco will inform each other of their respective publicity commitments and they both undertake to respect each others publicity commitments as well as to have their respective distributors respect those publicity commitments.

**ARTICLE 13  
ORIGINAL NEGATIVE**

**13.1 Original Negative** - The original negative shall be kept in a laboratory in Canada. In order to permit Canco and UKco to jointly exercise their rights and obligations, the original negative as well as all other material from the Co-production will be the joint property of Canco and UKco and will be kept in the laboratory under both names. The laboratory must have written authority from both Canco and UKco to dispose of any of the Co-production materials(s).

***This would alleviate the need to have two negatives made.***

**13.2 Laboratory Instructions** - Canco will inform its laboratory of the requirements set out above. Such laboratory shall then inform UKco that it is aware of and will respect those obligations. The laboratory shall enter into such security documentation as may be necessary to safeguard the interest of either Canco or UKco or the financiers of the Co-production.

**13.3 Laboratory Obligations** - The laboratory shall also undertake to provide material to each of Canco and UKco notwithstanding that legal proceedings have been undertaken by a creditor of the other party.

**ARTICLE 14  
DEFAULT AND TERMINATION**

**14.1 Events of Default** - The following shall be considered events of default under the provisions of this Agreement:

- (a) either party ceases to carry on business, makes an assignment for the benefit of its creditors, becomes insolvent or commits an act of bankruptcy;
- (b) any action is taken to have either party declared bankrupt, or wound up, or a receiver is appointed over any part of either party; or
- (c) any judgement or order is rendered against either party and is not discharged or stayed within thirty (30) days of the making of such judgement or order.

***You may want to have additional events of default such as failing to deliver a piece of financing or otherwise, or figure out how you plan to proceed if something that is essential does not occur.***

**14.2 Costs** - Any costs related to the undertaking of any proceedings shall remain the responsibility of the party which is in default.

**14.3 Effect of Default** - If, during the production of the Co-production and until delivery of an accepted answer print of the Co-production, either party does not remedy a default pursuant to this Agreement within ten (10) business days after being notified of such default by the other party by letter delivered by personal delivery, facsimile copy or registered mail, then the Canadian or foreign producer(s) not in default may, subject to the express written agreement from the competent Co-production treaty authorities of the parties' respective countries, substitute another producer.

## **ARTICLE 15 GENERAL**

**15.1 Assignment** - Neither party shall be entitled to replace itself with a third party, in whole or in part, whether that third party is of the same nationality or not, nor can it assign its obligations to a third party without obtaining the express written agreement from the other party and from the competent Co-production treaty authorities of the parties' respective countries. This Agreement shall be binding upon and enure to the benefit of the parties and their respective heirs, legal personal representatives, successors and permitted assigns.

**15.2 Further Assurances** - Either party hereto shall, at the request of the other,

execute any documents or perform any act which is reasonably necessary to carry out the provisions of this Agreement.

- 15.3 Waiver** - No waiver by either party any of their respective rights under the provisions of this Agreement or of the breach of this Agreement shall constitute a waiver of any other such right or of the Agreement as a whole.
- 15.4 Entire Agreement** - This Agreement, including the schedules attached hereto, constitutes the entire agreement between the parties. No amendment to the Agreement shall be valid unless in writing and signed by both parties.
- 15.5 Indemnification** - The parties hereby agree to indemnify and hold each other harmless from and against any costs, claims or damages, including reasonable legal fees, arising, directly or indirectly from the production of the Co-production, the distribution of the Co-production, or from a breach or alleged breach by either party of any provision of this Agreement.
- 15.6 Validity** -
- (a) This Agreement shall be executed subject to the competent co-production treaty authorities of Canada and the United Kingdom agreeing that the Co-production meets the requirements of the Treaty and that the parties are thereby eligible to all benefits set out therein.
  - (b) The parties undertake to submit this Agreement with all pertinent documentation to their respective national competent Co-production treaty authorities, without undue delay.
  - (c) This Agreement is subject to the respective regulations, if any, of each party's country.
- 15.7 Interpretation** - There will be no application of the rule interpreting an agreement against its drafter and the parties acknowledge and agree that each played a joint role in drafting the same.
- 15.8 Counterparts and Facsimile Execution** - This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, but this Agreement shall be constituted only by all such counterparts together. The parties hereto agree that the delivery of this Agreement executed by either party to the other party by means of facsimile or other similar electronic transmission and the communication by such means will be legal and binding on all parties.

## **ARTICLE 16**

### **ARBITRATION AND JUDICIAL PROCEEDINGS**



- 16.1 Arbitration** - In the event of any dispute, claim, question or difference arising out of or relating to this Agreement or breach thereof, the parties shall use their best endeavours to settle such disputes, claims, questions or differences. To this effect, they shall consult and negotiate with each other, in good faith and understanding of their mutual interests, to reach a just and equitable solution satisfactory to all parties promptly upon notice by any party specifying full particulars of the dispute and, if they do not reach such solution within thirty (30) days thereafter, then either party may deliver written notice to the other party requiring resolution, at the choice of the party bringing the complaint, either by independent arbitration or through the judicial process, and thereafter refer the dispute, claim, question or difference in issue to arbitration for final settlement binding on all parties in accordance with the provisions of the commercial arbitration legislation applicable in the venue in which the party instituting legal proceedings is resident.

## **ARTICLE 17 CENSORSHIP**

- 17.1 Censorship** - The approval of the Co-production by the competent Co-production treaty authorities of either country shall not be interpreted as binding such authorities to grant any license of whatever kind to exhibit the Co-production.

## **ARTICLE 18 PROCEDURE**

- 18.1 Procedure** - In the event that the Co-production is not accepted by the competent co-production treaty authorities of either country or that the exhibition of the Co-production is disallowed by the authorities of either country, then the parties shall be respectively responsible for any or all contracts or other commitments which it has undertaken or expenses which it has incurred.

***This is one of the requirements under the treaties but it is advisable to address this possibility in any event.***

## **ARTICLE 19 ACKNOWLEDGEMENT OF RECEIPT**

**19.1 Acknowledgement** - Each of the parties acknowledges receipt of a signed copy of this Agreement.

**IN WITNESS WHEREOF** this Agreement has been executed by the parties hereto on the date first above written.

**CANADIAN PARENT COMPANY**

Per: \_\_\_\_\_  
Title:

**UK PARENT COMPANY**

Per: \_\_\_\_\_  
Title:

**CANADA PICTURES LIMITED**

Per: \_\_\_\_\_  
Title:

**UK PICTURES LIMITED**

Per: \_\_\_\_\_  
Title:

## IV BUDGETS

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The Telefilm budget format is the most widely accepted format in Canada. It is available in a number of computer programs. The form referenced here is in the MS Excel format. Unfortunately, for a few types of production, this form of budget is not readily adaptable, particularly for animation. Telefilm is currently developing a standard form budget for animation which should be available by the fall of 2001, if not earlier. You need not follow the form slavishly but you should observe the differentiation of sections and as many categories as possible:

Section A - Above the line costs (development, writer, producer, director, stars)<sup>1</sup>

Sections B & C – Production and post-production costs

Section D – General expenses and indirect costs including corporate overhead, medicals, legals, insurance, financing

There are certain Telefilm guidelines or requirements for various budget items:

- Allowable producer fees and corporate overheads are both capped at 10% of B & C. Producer fees include fees for all producers including producers for hire. Telefilm will also review producer fees earned during development and calculate that into the cap.
- Closed captioned version and dubbed or subtitled in other official language version – Telefilm requires these be budgeted unless the broadcaster or distributor, as the case may be, has undertaken to pay the cost. The latter is also a requirement of some of the pay licensees or associated investment funds.
- Publicity – Telefilm requires there be a minimum allowance for promotion and publicity in the budget of a feature film which is 1.5% of B & C with a minimum of \$20,000 for feature films. There is no similar requirement for television.
- National Archive Materials – Telefilm requires an internegative, a release print and a broadcast quality video master be delivered to the National Archives under the Canada Feature Film Fund guidelines. These are very expensive but not negotiable
- ½ inch VHS and DVD if available – Telefilm will require 2 VHS video copies and a DVD if available.

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<sup>1</sup> In the US, frequently the full cast is put above the line

The following reviews items that tend to be missed or confused by producers in budgeting:

- Development costs – Costs incurred to date can be entered as development costs. Payments to writers due in pre-production or the “production fee” due on first day of principal photography should be reflected in the scenario or writer sections with appropriate fringes. Where there have been development loans, sufficient amounts must be budgeted to ensure these loans are repaid during production. Occasionally, the development costs and loans to be repaid are entered as separate items – the repayable amount is not in addition to development costs incurred. The costs are only incurred once.
- Fringes – It is important to delineate between individuals engaged through their loan out corporation and people engaged directly since the amount of government fringes differ. This also impacts on the calculation of tax credits (see Tax Credits section). Also all union and guild fringes, if applicable, should be reflected. If the production is non-union in some regard, this should also be noted.
- Buy-outs or prepaid residuals - The buy-out applicable to the director and the actors must be reflected. The actor buy-out percentage particularly may impact on the distributors’ rights and obligations and on the financiers. At the end of this section is a review of the buy-out formula under the IPA with ACTRA, the Performers Guild.
- Contingency – Generally financiers look to the completion bond to determine a contingency it is comfortable with. Most bonders would like it to be 10% of the budget or at least 10% of B & C plus director and stars (and are quite firm on this for feature films) but the contingency does vary depending on the track record of the producer for accurate budgeting and the complexity of the show. A contingency of 5% of B & C may be acceptable for a producer with a good track record for a television series.
- Completion bonds – Certain large well-financed production companies (almost exclusively television) are able to self-bond. Unfortunately, that is a luxury most of us can’t afford. Almost all financiers will require a completion bond to protect their interests. Feature films are almost always bonded by third parties and banks will generally require that a producer have sufficient unencumbered assets, apart from the risk on the production to allow self-bonding. For certain smaller productions, particularly smaller non-dramatic one-offs, Telefilm will allow a form of self-bonding by the producer where the producer either defers its fees or puts its fees in escrow (discussed later under the section, Completion Guarantees). Most productions will require a completion bond guaranteeing delivery of the production to the distributor or broadcasters.

Bond premiums have become more competitive in recent years. They are based on the guarantor's assessment of the risk it is undertaking and will range from about 2% of B & C plus director and stars for its best commercial clients, to about 3% to 5% of the full budget minus the bond and contingency amounts. The earlier practice was to charge a full 6% premium and if the producer came in on budget, the producer would get a refund of half the premium. Most guarantors charge the net or just slightly higher than the net amount and there is no or very little refund. There may however be an additional premium payable prior to the guarantor having to contribute towards increased costs. In the US, this is called a "back end call". In Canada, it is a "first call". In fact, the international standard for fees outside of Canada is based on calculating a percentage of the entire budget including financing costs because the guarantor must make the bank whole (i.e. put the bank in its original position prior to the transaction) if the picture is abandoned (which is extremely rare). If the bank you are using is outside of Canada or the picture is bonded outside of Canada, you should be aware of the more expensive fees.

- Deferrals – A true deferral is an amount payable from revenues sometime after production. If the amount is payable at a fixed time whether there are revenues or not, it is not a deferral, it is just a delayed payment. All these amounts should be reflected in the budget. The difference will be reflected in the financing plan and the recoupment schedule. Telefilm's CFFF guidelines provide that deferrals are not normally to exceed 10% of the budget.
- Delivery costs – You must include all delivery items in existing distribution and broadcast agreements. These items are frequently not carefully reviewed or budgeted. Before you settle the delivery schedule with a distributor you should have the list reviewed by experienced post production personnel to assist you in budgeting these items. This is discussed in more detail under Distribution Agreements. Telefilm specifies in the CFFF guidelines that the producer must now deliver an internegative, release print and broadcast quality video master to the National Archives. These items alone will likely cost in the neighbourhood of \$15,000.

## USE PAYMENT CALCULATIONS

Under the IPA for ACTRA performers, the amounts set out as minimum fees (or scale) for actors cover only the "performance fees" and other than the very limited "declared use" (see ACTRA IPA for definition of "declared use"), do not cover exploitation rights of the actor's performance on film or tape. In addition to performance fees then, a producer must make use fee payments. Distributors and financiers will want producers to pre-pay performers for as many uses and for as

long as possible. The producer wishes to pay as little as he/she can without making the program unattractive to distributors.

The current IPA for Performers allows two options: the first is to “buy out” all media for a period of 4 years. For feature films this amount is 130% of the Net Fees payable to performers; for television this amount is 105% of Net Fees. (Net Fees are defined in the ACTRA IPA). If you pay the television buy-out, you have no theatrical release rights without additional payment. After the 4 year period, the performers are entitled to receive 3.6% of the distributor’s gross revenue from exploitation earned after the 4 year term. This creates quite a problem for producers since producers do not receive distributor’s gross revenue which is determined prior to deduction of distributor’s fees, expenses or recoupment of distribution advances. So you have an amount payable when is it highly unlikely you will have any cash to cover it. ACTRA would like the distributor to assume this obligation but it is not difficult to see why a distributor would be resistant to this proposal. The positive aspect of this formula is that the vast majority of the income of most productions will be made during the first three or four years following delivery.

The second option is paying an “advance on use fees” against the performers’ participation in distributor’s gross revenues. The advance is a smaller percentage of Net Fees than the buy-out – 25%, 50%, 75% or 100% with a converse participation percentage – 6.6% down to 3.6%. A 25% advance is only available if there is only a pre-sale limited to one Canadian medium which pre-sale includes the declared use. The way to determine what kind of pre-payment will be necessary is to calculate the total Net Fees for your budget.

Assume the Net Fees on a picture are \$200,000. At a 50% advance, the additional payment would be \$100,000. You divide the advance amount by the percentage participation, which is 5.6%, to get the break point at which additional monies will be due the performers. In this case the break point would be \$1,785,714. Now you have to judge whether, including pre-sales, this figure is high enough that your distributor is not likely to reach this number. Basically, if the break point is high enough, you can sell it to your investors and distributor as not being detrimental to their interests. There are a number of rules that apply to the choices made, including a requirement that the same choice must apply to all the performers. If you opted for an advance of 50%, no performer’s advance can be greater than 50% of the gross fees payable to the performer. If you engage a star at a flat fee of \$450,000, only \$225,000 may be considered the advance portion. Additionally, no performer can be credited with an advance of more than 20 x the minimum daily fee x number of days of principal photography of the picture, e.g. if the shooting schedule is 22 days, the maximum advance is  $20 \times \$510 \times 22 = \$224,400$ .

Exec Prod:  
 Producer:  
 Director:  
 Production Supervisor:  
 Prod Manager:  
 Prod Acct:

Budget Date:

Length:  
 Ratio:  
 Format:  
 Number of Shooting Days:  
 Post Production Duration:  
 Unions:

<b>BUDGET SUMMARY</b>						
<b>ACCT NO.</b>	<b>DESCRIPTION</b>	<b>PAGE</b>				<b>TOTAL</b>
	<b>ABOVE THE LINE</b>					
01	STORY RIGHTS/ ACQUISITION					
02	SCENARIO					
03	DEVELOPMENT COSTS					
04	PRODUCER					
05	DIRECTOR					
06	STARS					
	<b>TOTAL ABOVE THE LINE</b>					
	<b>PRODUCTION</b>					
10	CAST					
11	EXTRAS					
12	PRODUCTION STAFF					
13	DESIGN LABOUR					
14	CONSTRUCTION LABOUR					
15	SET DRESSING LABOUR					
16	PROPERTY LABOUR					
17	SPECIAL EFFECTS LABOUR					
18	WRANGLING LABOUR					
19	WARDROBE LABOUR					
20	MAKE UP/ HAIR LABOUR					
21	VIDEO TECHNICAL CREW					
22	CAMERA LABOUR					
23	ELECTRICAL LABOUR					
24	GRIP LABOUR					
25	PRODUCTION SOUND LABOUR					
26	TRANSPORTATION LABOUR					
27	FRINGE BENEFITS / PERMITS					
28	PRODUCTION OFFICE EXPENSES					
29	STUDIO/ BACKLOT EXPENSES					
30	LOCATION OFFICE EXPENSES					
31	SITE EXPENSES					
32	UNIT EXPENSES					
33	TRAVEL & LIVING EXPENSES					
34	TRANSPORTATION					
35	CONSTRUCTION MATERIAL					
36	ART SUPPLIES					
37	SET DRESSING					
38	PROPS					
39	SPECIAL EFFECTS					
40	ANIMALS					
41	WARDROBE SUPPLIES					
42	MAKEUP/ HAIR SUPPLIES					
43	VIDEO STUDIO FACILITIES					
44	VIDEO REMOTE TECHNICAL FACILITIES					
45	CAMERA EQUIPMENT					
46	ELECTRICAL EQUIPMENT					
47	GRIP EQUIPMENT					
48	SOUND EQUIPMENT					
49	SECOND UNIT					
50	VIDEOTAPE STOCK					
51	PRODUCTION LABORATORY					
	<b>TOTAL PRODUCTION</b>					
	<b>POST PRODUCTION</b>					
60	EDITORIAL LABOUR					
61	EDITORIAL EQUIPMENT					
62	VIDEO POST PRODUCTION (PICTURE)					
63	VIDEO POST PRODUCTION (SOUND)					
64	POST PRODUCTION LABORATORY					
65	FILM POST PRODUCTION SOUND					
66	MUSIC					
67	TITLES/OPTICAL/STOCK FOOTAGE					
68	VERSIONING					
69	AMORITZATIONS (SERIES)					
	<b>TOTAL POST PRODUCTION</b>					

Exec Prod:  
 Producer:  
 Director:  
 Production Supervisor:  
 Prod Manager:  
 Prod Acct:

Length:  
 Ratio:  
 Format:  
 Number of Shooting Days:  
 Post Production Duration:  
 Unions:

Budget Date:

<b>BUDGET SUMMARY</b>						
<b>ACCT NO.</b>	<b>DESCRIPTION</b>	<b>PAGE</b>				<b>TOTAL</b>
	<b>OTHER</b>					
70	UNIT PUBLICITY					
71	GENERAL EXPENSES					
72	INDIRECT COSTS					
	<b>TOTAL OTHER</b>					
80	<b>CONTINGENCY</b>					
81	COMPLETION GUARANTEE					
82	COST OF ISSUE					
	<b>GRAND TOTAL</b>					



TELEFILM FORM OF BUDGET							
ACCT NO.	DESCRIPTION	AMOUNT	UNITS	X	RATE	SUBTOTAL	TOTAL
<b>01</b>	<b>STORY RIGHTS</b>						
0101	STORY RIGHTS / ACQUISITIONS						
0195	OTHER						
	<b>Total 01</b>						
<b>02</b>	<b>SCENARIO</b>						
0201	WRITER(s)						
0205	CONSULTANT(s)						
0215	STORYBOARD						
0220	SCRIPT EDITOR(s)						
0225	RESEARCH						
0227	CLEARANCES / SEARCHES						
0230	SECRETARY						
0235	SCRIPT REPRODUCTION						
0260	TRAVEL EXPENSES						
0265	LIVING EXPENSES						
0290	FRINGE BENEFITS						
0295	OTHER						
	<b>Total 02</b>						
<b>03</b>	<b>DEVELOPMENT COSTS</b>						
0301	PRE BREAKDOWN / BUDGET & DEV						
0305	CONSULTANT EXPENSES						
0325	OFFICE EXPENSES						
0350	SURVEY / SCOUTING						
0360	TRAVEL EXPENSES						
0365	LIVING EXPENSES						
0370	PROMOTION						
0395	OTHER						
	<b>Total 03</b>						
<b>04</b>	<b>PRODUCER</b>						
0401	EXECUTIVE PRODUCER						
0405	PRODUCER						
0410	CO-PRODUCER						
0415	ASSOCIATE PRODUCER						
0425	PRODUCER'S SECRETARY						
0460	TRAVEL EXPENSES						
0465	LIVING EXPENSES						
0470	PUBLIC RELATIONS						
0490	FRINGE BENEFITS						
0495	OTHER						
	<b>Total 04</b>						
<b>05</b>	<b>DIRECTOR</b>						
0501	DIRECTOR						
0505	2ND UNIT DIRECTOR						
0507	DIALOGUE DIRECTOR						
0530	DIRECTOR'S SECRETARY						
0560	TRAVEL EXPENSES						
0565	LIVING EXPENSES						
0590	FRINGE BENEFITS						
0592	PERMITS						
0595	OTHER						
	<b>Total 05</b>						
<b>06</b>	<b>STARS</b>						
0601	STARS						
0604	RIGHTS PAYMENT ( %)						
0640	POST PRODUCTION LOOPING						
0644	RIGHTS PAYMENT ( %)						
0660	TRAVEL EXPENSES						
0665	LIVING EXPENSES						
0670	INCIDENTAL EXPENSES						
0672	POST PRODUCTION EXPENSES						
0690	FRINGE BENEFITS						
0692	PERMITS						
0695	OTHER						
	<b>Total 06</b>						
<b>t1</b>	<b>TOTAL ABOVE THE LINE</b>						
<b>10</b>	<b>CAST</b>						
1001	PRINCIPALS						
1004	RIGHTS PAYMENTS						
1010	ACTORS						
1015	OTHER PERFORMERS						
1018	RIGHTS PAYMENTS						

<b>TELEFILM FORM OF BUDGET</b>							
<b>ACCT NO.</b>	<b>DESCRIPTION</b>	<b>AMOUNT</b>	<b>UNITS</b>	<b>X</b>	<b>RATE</b>	<b>SUBTOTAL</b>	<b>TOTAL</b>
1025	OFF CAMERA PERFORMANCES						
1028	RIGHTS PAYMENTS						
1030	WARMUP PERFORMERS						
1040	POST PRODUCTION LOOPING						
1043	RIGHTS PAYMENTS						
1050	STUNT CO-ORDINATOR						
1052	STUNTS / ADJUSTMENTS						
1055	RIGHTS PAYMENTS						
1060	CHOREOGRAPHER						
1065	UPGRADING						
1067	RIGHTS PAYMENTS						
1070	CASTING DIRECTOR						
1075	CASTING EXPENSES						
1076	REHEARSAL AREA						
1077	VIDEO EXPENSES (CASTING)						
1090	FRINGE BENEFITS						
1092	PERMITS						
1095	OTHER						
	<b>Total 10</b>						
<b>11</b>	<b>EXTRAS</b>						
1101	SPECIAL SKILL EXTRAS						
1110	GENERAL EXTRAS						
1120	STAND-INS / PHOTO DOUBLES						
1170	CASTING DIRECTOR						
1172	CASTING FEE						
1174	CASTING SECRETARY						
1175	CASTING EXPENSES						
1180	TUTOR(S)						
1181	CHILDREN'S CO-ORDINATOR						
1182	GUARDIAN(S)						
1185	COLLECTIVE BARGAINING FEE						
1190	FRINGE BENEFITS / PERMITS						
1195	OTHER						
	<b>Total 11</b>						
<b>12</b>	<b>PRODUCTION STAFF</b>						
1201	PRODUCTION SUPERVISOR						
1205	PRODUCTION MANAGER						
1208	ASSISTANT PRODUCTION MANAGER						
1210	UNIT MANAGER						
1215	LOCATION MANAGER						
1220	1ST ASSISTANT DIRECTOR						
1223	2ND ASSISTANT DIRECTOR						
1228	3RD ASSISTANT DIRECTOR						
1235	PRODUCTION ASSISTANT(S) / TRAINEE(S)						
1243	PRODUCTION CO-ORDINATOR						
1245	PRODUCTION SECRETARY						
1248	TYPIST SERVICES						
1250	PRODUCTION ACCOUNTANT						
1254	BOOKKEEPERS						
1260	LOCAL CONTACT PERSON(S)						
1262	TECHNICAL ADVISOR						
1264	INTERPRETER						
1270	CRAFT SERVICES						
1280	SCRIPT SUPERVISOR / CONTINUITY						
1295	OTHER						
	<b>Total 12</b>						
<b>13</b>	<b>DESIGN LABOUR</b>						
1301	PRODUCTION DESIGNER						
1310	ART DIRECTOR						
1312	1ST ASSISTANT ART DIRECTOR						
1314	2ND ASSISTANT ART DIRECTOR						
1320	PRODUCTION ASSISTANT/TRAINEE(S)						
1330	DRAFTING						
1335	GRAPHIC ARTIST(S)						
1395	OTHER						
	<b>Total 13</b>						
<b>14</b>	<b>CONSTRUCTION LABOUR</b>						
1401	CONSTRUCTION CO-ORDINATOR						
1420	HEAD CARPENTER						
1425	CARPENTER(S)						
1440	SCENIC PAINTER(S)						

<b>TELEFILM FORM OF BUDGET</b>							
<b>ACCT NO.</b>	<b>DESCRIPTION</b>	<b>AMOUNT</b>	<b>UNITS</b>	<b>X</b>	<b>RATE</b>	<b>SUBTOTAL</b>	<b>TOTAL</b>
1445	HEAD PAINTER						
1450	PAINTER(S)						
1460	STAND-BY CARPENTER						
1465	STAND-BY PAINTER						
1470	STRIKE CREW						
1475	LABOURER(S)						
1495	OTHER						
	<b>Total 14</b>						
<b>15</b>	<b>SET DRESSING LABOUR</b>						
1501	SET DECORATOR						
1510	ASSISTANT SET DRESSER(S)						
1520	SWING GANG						
1530	LABOURER(S)						
1595	OTHER						
	<b>Total 15</b>						
<b>16</b>	<b>PROPERTY LABOUR</b>						
1601	PROPERTY MASTER						
1610	ASSISTANT PROPERTY MASTER						
1616	PROPERTY BUYER(S)						
1630	OTHER						
	<b>Total 16</b>						
<b>17</b>	<b>SPECIAL EFFECTS LABOUR</b>						
1701	SPECIAL EFFECTS SUPERVISOR						
1710	SPECIAL EFFECTS ASSISTANTS						
1730	OTHER						
	<b>Total 17</b>						
<b>18</b>	<b>WRANGLING LABOUR</b>						
1801	HEAD WRANGLER						
1830	OTHER						
	<b>Total 18</b>						
<b>19</b>	<b>WARDROBE LABOUR</b>						
1901	COSTUME DESIGNER						
1903	ASSISTANT COSTUME DESIGNER						
1905	HEAD WARDROBE						
1910	ASSISTANT WARDROBE						
1920	SEAMSTRESS(ES) / TAILOR(S)						
1930	OTHER						
	<b>Total 19</b>						
<b>20</b>	<b>MAKEUP / HAIR LABOUR</b>						
2001	MAKEUP ARTIST						
2010	ASSISTANT MAKEUP ARTIST(S)						
2020	DAILIES						
2040	HAIRSTYLIST						
2050	HAIRDRESSER						
2060	ASSISTANT HAIRDRESSER(S)						
2065	DAILIES						
2070	SPECIAL EFFECTS MAKEUP / HAIR						
2075	WIGS / HAIRPIECES LABOUR						
2080	OTHER						
	<b>Total 20</b>						
<b>21</b>	<b>VIDEO TECHNICAL CREW</b>						
2101	TECHNICAL SUPERVISOR						
2103	TECHNICAL DIRECTOR						
2105	FLOOR MANAGER						
2108	LIGHTING CONSULTANT						
2110	LIGHTING DIRECTOR						
2112	BOARDMAN						
2115	ELECTRICIAN(S)						
2120	AUDIO						
2125	BOOM(S)						
2130	CAMERA PERSON(S)						
2135	TONGUE OPERATOR						
2140	DRIVER(S)						
2145	VIDEO OPERATOR(S)						
2150	VTR OPERATOR(S)						
2155	MAINTENANCE						
2160	GRIPS						
2165	STAGEHAND(S)						
2170	AUTOCLUE OPERATOR						
2175	UTILITY PERSON(S)						
2185	TELEVISION ASSISTANT(S)						

<b>TELEFILM FORM OF BUDGET</b>							
<b>ACCT NO.</b>	<b>DESCRIPTION</b>	<b>AMOUNT</b>	<b>UNITS</b>	<b>X</b>	<b>RATE</b>	<b>SUBTOTAL</b>	<b>TOTAL</b>
2195	OTHER						
	<b>Total 21</b>						
<b>22</b>	<b>CAMERA LABOUR</b>						
2201	DIRECTOR OF PHOTOGRAPHY						
2205	CAMERA OPERATOR						
2210	1ST ASSISTANT CAMERAPERSON						
2212	2ND ASSISTANT CAMERAPERSON						
2220	TRAINEE(S)						
2250	SPECIAL EQUIPMENT OPERATOR(S)						
2260	ADDITIONAL CAMERA OPERATOR(S)						
2263	ADDITIONAL CAMERA 1ST ASSISTANT(S)						
2266	ADDITIONAL CAMERA 2ND ASSISTANT(S)						
2270	STILL PHOTOGRAPHER						
2295	OTHER						
	<b>Total 22</b>						
<b>23</b>	<b>ELECTRICAL LABOUR</b>						
2301	GAFFER						
2310	BEST BOY						
2320	ELECTRICIAN(S)						
2330	DAILIES						
2340	RIGGING / STRIKING						
2350	GENERATOR OPERATOR						
2395	OTHER						
	<b>Total 23</b>						
<b>24</b>	<b>GRIP LABOUR</b>						
2401	KEY GRIP						
2410	SECOND GRIP						
2420	GRIP(S)						
2428	CRANE GRIP						
2430	DAILIES						
2440	RIGGING / STRIKING						
2450	LABOURER(S)						
2470	TELEPROMPTER OPERATOR						
2495	OTHER						
	<b>Total 24</b>						
<b>25</b>	<b>PRODUCTION SOUND LABOUR</b>						
2501	MIXER / SOUND RECORDIST						
2510	BOOM OPERATOR						
2515	CABLE PERSON						
2520	PLAYBACK OPERATOR						
2570	PUBLIC ADDRESS OPERATOR						
2595	OTHER						
	<b>Total 25</b>						
<b>26</b>	<b>TRANSPORTATION LABOUR</b>						
2601	CO-ORDINATOR						
2610	CAPTAIN						
2612	CO-CAPTAIN / HEAD DRIVER						
2620	DRIVERS						
2695	OTHER						
	<b>Total 26</b>						
<b>27</b>	<b>FRINGE BENEFITS</b>						
2701	GOVERNMENT BENEFITS						
2750	UNION / ASSOCIATION BENEFITS						
2795	OTHER						
	<b>Total 27</b>						
<b>28</b>	<b>PRODUCTION OFFICE EXPENSES</b>						
2801	OFFICE RENTALS						
2803	HEAT & LIGHT						
2805	OFFICE FURNITURE						
2807	OFFICE EQUIPMENT						
2810	PHOTOCOPY						
2815	STATIONERY / SUPPLIES						
2820	TELEPHONE / TELEX / POSTAGE						
2830	COURIER						
2835	COMPUTER SERVICES						
2840	OFFICE CRAFT SERVICE						
2845	CLEANING						
2850	SECURITY						
2895	OTHER						
	<b>Total 28</b>						
<b>29</b>	<b>STUDIO / BACKLOT EXPENSES</b>						
2901	STUDIO / BACKLOT RENTALS						

<b>TELEFILM FORM OF BUDGET</b>							
<b>ACCT NO.</b>	<b>DESCRIPTION</b>	<b>AMOUNT</b>	<b>UNITS</b>	<b>X</b>	<b>RATE</b>	<b>SUBTOTAL</b>	<b>TOTAL</b>
2905	POWER						
2910	CARPENTRY SHOP RENTALS						
2915	OFFICE RENTAL						
2916	TELEPHONE						
2917	DRESSING / HAIR / MAKEUP ROOMS						
2920	STUDIO SPECIAL EFFECTS EQUIPMENT						
2950	SECURITY						
2955	CLEANING						
2995	OTHER						
	<b>Total 29</b>						
<b>30</b>	<b>LOCATION OFFICE EXPENSES</b>						
3001	OFFICE RENTALS						
3005	OFFICE FURNITURE						
3007	OFFICE EQUIPMENT						
3010	PHOTOCOPY						
3020	TELEPHONE / TELEX / POSTAGE						
3030	COURIER						
3095	OTHER						
	<b>Total 30</b>						
<b>31</b>	<b>SITE EXPENSES</b>						
3101	SURVEYING / SCOUTING EXPENSES						
3105	SITE RENTALS						
3107	SITE POWER						
3110	SITE ACCESS						
3115	SITE SPECIAL INSURANCE						
3120	REPAIRS / RESTORATION						
3142	CLEANING						
3150	SECURITY						
3152	POLICE CONTROL						
3160	PUBLIC RELATIONS						
3195	OTHER						
	<b>Total 31</b>						
<b>32</b>	<b>UNIT EXPENSES</b>						
3201	MEAL PAYMENT						
3210	CATERING						
3215	CRAFT SERVICE						
3218	TABLES / CHAIRS/ HALLS						
3220	GREEN ROOM						
3225	FIRST AID						
3240	CREW OUTFITTING						
3245	MEDICAL / INSURANCE/ VISA EXPENSE						
3260	PUBLIC RELATIONS						
3295	OTHER						
	<b>Total 32</b>						
<b>33</b>	<b>TRAVEL &amp; LIVING EXPENSES</b>						
3301	FARES						
3310	HOTELS						
3320	PER DIEMS						
3330	TAXIS / LIMOUSINES						
3335	EXCESS BAGGAGE						
3340	SHIPPING						
3350	CUSTOMS / BROKERAGE						
3395	OTHER						
	<b>Total 33</b>						
<b>34</b>	<b>TRANSPORTATION</b>						
3401	PRODUCTION CARS						
3405	TRUCKS / VANS						
3410	BUSES						
3412	MOTORHOMES						
3415	TALENT CARS						
3420	SPECIAL SUPPORT VEHICLES						
3430	GAS						
3432	MAINTENANCE						
3435	REPAIRS						
3440	TAXIS						
3445	PARKING						
3447	MILEAGE						
3450	SPECIAL LICENSES / PERMITS						
3455	BROKERAGE DUTY						
3495	OTHER						
	<b>Total 34</b>						

<b>TELEFILM FORM OF BUDGET</b>							
<b>ACCT NO.</b>	<b>DESCRIPTION</b>	<b>AMOUNT</b>	<b>UNITS</b>	<b>X</b>	<b>RATE</b>	<b>SUBTOTAL</b>	<b>TOTAL</b>
<b>35</b>	<b>CONSTRUCTION MATERIALS</b>						
3510	CARPENTRY RENTALS						
3515	CARPENTRY PURCHASES						
3520	PAINTING RENTALS						
3525	PAINTING PURCHASES						
3545	BACKDROPS / MURALS						
3595	OTHER						
	<b>Total 35</b>						
<b>36</b>	<b>ART SUPPLIES</b>						
3610	DRAWING SUPPLIES						
3612	DRAWING EQUIPMENT						
3615	RESEARCH EXPENSE						
3620	STOCK PRINTS / PROCESSING						
3622	BLUEPRINTING						
3695	OTHER						
	<b>Total 36</b>						
<b>37</b>	<b>SET DRESSING</b>						
3710	RENTALS						
3730	PURCHASES						
3740	MANUFACTURING						
3748	REPAIRS / REPLACEMENTS						
3795	OTHER						
	<b>Total 37</b>						
<b>38</b>	<b>PROPS</b>						
3810	RENTALS						
3830	PURCHASES						
3845	GRAPHICS / SIGNS						
3848	REPAIRS / REPLACEMENTS						
3850	PICTURE VEHICLES RENTALS						
3855	PICTURE VEHICLE PURCHASES						
3857	PICTURE VEHICLE MODIFICATIONS						
3859	PICTURE VEHICLE INSURANCE						
3895	OTHER						
	<b>Total 38</b>						
<b>39</b>	<b>SPECIAL EFFECTS</b>						
3910	RENTALS						
3930	PURCHASES						
3940	STUNTS PURCHASES / RENTALS						
3945	ARMAMENTS / PERMIT FEES						
3995	OTHER						
	<b>Total 39</b>						
<b>40</b>	<b>ANIMALS</b>						
4010	RENTALS						
4030	PURCHASES						
4040	FEED / STABLING						
4045	TRANSPORT						
4047	VETERINARY FEES						
4055	CUSTOMS BROKERAGE						
4095	OTHER						
	<b>Total 40</b>						
<b>41</b>	<b>WARDROBE SUPPLIES</b>						
4110	RENTALS						
4130	PURCHASES						
4140	MANUFACTURING						
4143	SHIPPING / BROKERAGE						
4148	REPAIRS / CLEANING						
4195	OTHER						
	<b>Total 41</b>						
<b>42</b>	<b>MAKEUP / HAIR SUPPLIES</b>						
4210	MAKEUP RENTALS						
4212	MAKEUP PURCHASES						
4220	HAIR RENTALS						
4222	HAIR PURCHASES						
4226	WIGS PURCHASES						
4240	SPECIAL EFFECTS						
4243	SHIPPING / BROKERAGE						
4295	OTHER						
	<b>Total 42</b>						
<b>43</b>	<b>VIDEO STUDIO FACILITIES</b>						
4301	STUDIO						
4305	CONTROL ROOM						

<b>TELEFILM FORM OF BUDGET</b>							
<b>ACCT NO.</b>	<b>DESCRIPTION</b>	<b>AMOUNT</b>	<b>UNITS</b>	<b>X</b>	<b>RATE</b>	<b>SUBTOTAL</b>	<b>TOTAL</b>
4310	DIGITAL / OPTICAL EFFECTS MACHINE(S)						
4315	CAMERA(S)						
4320	VIDEOTAPE MACHINE(S)						
4325	AUDIO						
4330	ULTIMATTE / IMAGEMATTE						
4333	TELECINE						
4340	AUTOUCUE						
4342	INTERCOM						
4344	GRAPHICS GENERATOR						
4346	MONITORS						
4350	DRESSING / MAKEUP ROOM(S)						
4355	GREEN ROOM(S)						
4360	CARPENTRY SHOP						
4395	OTHER						
	<b>Total 43</b>						
<b>44</b>	<b>VIDEO REMOTE TECHICAL FACILITIES</b>						
4401	MOBILE(S)						
4405	DIGITAL / OPTICAL EFFECTS MACHINES						
4410	CAMERA(S)						
4415	AUDIO FACILITIES						
4420	VIDEO MACHINE(S)						
4425	SLOW MOTION MACHINE(S)						
4430	SPECIAL EQUIPMENT						
4435	GRAPHIC GENERATOR						
4495	OTHER						
	<b>Total 44</b>						
<b>45</b>	<b>CAMERA EQUIPMENT</b>						
4510	BASIC PACKAGE RENTALS						
4512	DAILY RENTALS						
4515	SPECIALITY RENTALS						
4525	VIDEO / TELEPROMPTER						
4530	PURCHASES						
4535	STEADICAM - PANAGLIDE						
4543	SHIPPING / BROKERAGE						
4595	OTHER						
	<b>Total 45</b>						
<b>46</b>	<b>ELECTRICAL EQUIPMENT</b>						
4610	BASIC PACKAGE RENTALS						
4612	DAILY RENTALS						
4615	SPECIALITY RENTALS						
4626	GENERATOR(S)						
4630	PURCHASES						
4695	OTHER						
	<b>Total 46</b>						
<b>47</b>	<b>GRIP EQUIPMENT</b>						
4710	BASIC PACKAGE RENTALS						
4712	DAILY RENTALS						
4715	SPECIALITY RENTALS						
4720	CRANE RENTALS						
4725	SCAFFOLDING						
4730	PURCHASES						
4795	OTHER						
	<b>Total 47</b>						
<b>48</b>	<b>SOUND EQUIPMENT</b>						
4810	BASIC PACKAGE RENTALS						
4812	DAILY RENTALS						
4816	WIRELESS MICROPHONES						
4828	WALKIE / TALKIES						
4830	PURCHASES						
4895	OTHER						
	<b>Total 48</b>						
<b>49</b>	<b>SECOND UNIT</b>						
4901	CREW						
4915	FRINGE BENEFITS						
4920	TRAVEL / LIVING						
4925	TRANSPORTATION						
4930	EQUIPMENT						
4940	STOCK						
4942	PROCESSING						
4944	PRINTING						
4995	OTHER						







<b>TELEFILM FORM OF BUDGET</b>							
<b>ACCT NO.</b>	<b>DESCRIPTION</b>	<b>AMOUNT</b>	<b>UNITS</b>	<b>X</b>	<b>RATE</b>	<b>SUBTOTAL</b>	<b>TOTAL</b>
6730	STOCK FOOTAGE						
6795	OTHER						
	<b>Total 67</b>						
<b>68</b>	<b>VERSIONING</b>						
6801	VERSIONING						
	<b>Total 68</b>						
<b>69</b>	<b>AMORTIZATIONS (SERIES)</b>						
6901	AMORTIZATIONS						
	<b>Total 69</b>						
<b>t1</b>	<b>TOTAL POST PRODUCTION</b>						
<b>t2</b>	<b>TOTAL PRODUCTION AND POST PRODUCTION</b>						
<b>70</b>	<b>UNIT PUBLICITY</b>						
7001	UNIT PUBLICIST						
7005	PUBLICITY/PRESS EXPENSES						
7020	PHOTO EQUIPMENT						
7025	STILLS/PRINTING/PROCESSING						
7040	PROMOTION						
7045	VIDEO CASSETTES						
7050	PUBLIC RELATIONS						
7095	OTHER						
	<b>Total 70</b>						
<b>71</b>	<b>GENERAL EXPENSES</b>						
7101	INSURANCE						
7105	MEDICAL FEES						
7110	LEGAL FEES						
7120	POST PRODUCTION ACCOUNTING						
7125	AUDIT FEE						
7130	BANK CHARGES						
7195	OTHER						
	<b>Total 71</b>						
<b>72</b>	<b>INDIRECT COSTS</b>						
7201	CORPORATE OVERHEAD						
7220	INTERIM FINANCING						
7230	OTHER FINANCING						
7295	OTHER						
	<b>Total 72</b>						
<b>t2</b>	<b>TOTAL OTHER</b>						
<b>t2</b>	<b>TOTAL ATL, BTL, POST PROD &amp; OTHER COSTS</b>						
<b>80</b>	<b>CONTINGENCY</b>						
8001	CONTINGENCY						
	<b>Total 80</b>						
<b>t2</b>	<b>SUB TOTAL</b>						
<b>81</b>	<b>COMPLETION GUARANTEE</b>						
8101	COMPLETION GUARANTEE						
	<b>Total 81</b>						
<b>82</b>	<b>COST OF ISSUE</b>						
8201	COST OF ISSUE						
	<b>Total 82</b>						
<b>t3</b>	<b>GRAND TOTAL</b>						
Budget Control Total							

## V FINANCING

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A financing plan or model is not necessarily a very complex document. A basic financing plan is a list of all your sources of funding, identifying the kind of funding each is and the amounts, (hopefully) adding up to the full budget. The more numerous the sources, the more complex the plan. The complexity comes from the various rules and requirements upon which the funding may be conditioned or calculated. For instance, equity or investments from parties other than the producer may reduce the amount of the tax credit and some kinds of equity will make the production ineligible for tax credits altogether. Ontario no longer reduces production costs by private fund investments and such a change is being contemplated for the federal tax credit as well. Even pre-sales or licenses carry certain kinds of demands, like “name” cast or involvement of the buyer’s executives by way of approvals. Every kind of money has a price, be it meeting a public policy agenda (Canadian content points or employment) or market demands. The producer’s job and challenge is meeting the various (sometimes competing) demands and making a production that bears some resemblance to the producer’s vision at the outset.

The following are some examples of preliminary financing plans. Please note that all numbers here are fictitious and should not be relied on as a guideline for amounts available.

A one-hour documentary production with a budget of \$450,000

Canadian broadcast license fee	67,500
CTF – License Fee Program (“LFP”) (15%)	67,500
Telefilm equity	150,000
Private broadcaster fund - equity	67,500
Foreign presale	48,500
OFTTC (Ontario tax credit)	26,000*
CFVTC (Federal tax credit)	<u>23,000**</u>
Total	450,000

Unfortunately the small size of the project does not make it easier to raise the financing. There are 7 sources of financing here, 4 of them being government-type subsidies (2 tax credits, Telefilm equity and CTF-LFP). There will have been lots of negotiations and work behind each of these numbers.

\* The OFTTC is calculated roughly as 10% of \$300,000 (\$450,000 less Telefilm \$150,000), rounded down slightly to compensate for not all costs being Ontario-based.

\*\* The Canadian Film or Video Tax Credit (“CFVTC”) is calculated at 12% of \$232,500 (the \$450,000 budget total less Telefilm and less private broadcaster fund equity and less the Ontario credit), rounded down slightly.

Another example for contrast, also using fictitious numbers, is a Canada-UK co-production of a feature film budgeted at \$3,500,000. The split is estimated as 70% Canadian, 30% British.

#### Canada 70%/UK 30% Treaty Co-Production

##### UK Financing

UK Sale Leaseback – 10% of budget	\$350,000
UK TV License (£300,000 @ 2.35)	<u>705,000</u>
Subtotal UK Financing 30.1% of budget	\$1,055,000

##### Canadian Financing

Canadian Distribution advance (including Cdn broadcast pre-sales for \$225,000)	300,000
Telefilm equity	1,000,000
Private fund equity	250,000
Foreign pre-sale (US\$300,000 @ 1.5)	450,000
Foreign Distribution Advance	180,000
Tax credit – Ontario	140,000
Tax credit – Federal	<u>125,000</u>
Subtotal Canadian financing 69.9% of budget	\$2,445,000

An example of Telefilm’s preferred layout or format for financing plans follows at the end of this section in Excel format.

This sort of financing plan is really just a summary of the pieces that have been put together. It does not take into account the cash value to you of the various payments. This is discussed below under financing.

A sample of a financing plan as prepared for a submission to the banker follows:

#### ABC PRODUCTIONS INC. - “TITLE”

Note: Assumes exchange rate of CDN\$1.50 = US\$1.00		
	Inflows / (Outflows)	Status
Canadian distribution	300,000	Executed long form attached
Germany / US\$600,000 less 10% w/h tax	810,000	Estimated
World ex. Pre-sales / US\$1.35M, no w/h tax	2,025,000	Draft long form attached
Telefilm / Non-recoupable contribution	663,247	Draft agreement attached
Tax Credits / Federal and Provincial / estimated	<u>691,753</u>	Calculation attached
<b>TOTAL</b>	<b><u>\$4,490,000</u></b>	

## **CASH FLOW**

Once you have the financing plan and a reasonably firm budget, you need a cash flow. A cash flow is exactly what its name implies – a schedule of the inflow and outflow of cash for the production. On a spread sheet, go through each budget line item and plot out when the amounts budgeted are payable, week by week. Obviously there is some ‘guesstimation’ involved but a number of the items, like your production crew and cast, are pretty much determined. Once you have plotted the outflows, you then estimate all the inflows of payments. A number of these inflows may stretch far into the future with certain payments due on or after delivery to your broadcasters or distributors. Looking down each column, you can see where your shortfall (or surplus) is in each week. You may also want to take some preliminary estimates of interest and financing costs and calculate that into your cash flow since you will have to cover these costs unless someone is indeed “cash flowing” your project. A sample production cash flow follows at the end of this section. Production financing is discussed in more detail below.

If you are approaching a bank or financial institution about production financing, they will take your summary (or weekly totals) and input it into their program, add in the interest and loan cost calculations and develop a drawdown schedule.

You should know that withholding tax on foreign pre-sales plays an important role in determining how much cash you have. Withholding tax is a percentage of the gross purchase price which is deducted from the price and remitted to the government of the buyer or licensee. As a rule, withholding tax is payable by most foreign buyers when paying guarantees or license fees to sellers outside of their country. Video only deals are exempt from withholding tax but there must be a specific amount payable for the video rights. Withholding tax can be pretty substantial. Canada has treaties with a number of countries, including the United States, under which the rate of withholding tax is reduced. You can check the specific tax treaties or with a tax accountant to determine the various withholding tax rates. With the US, the rate is reduced to 10%. The payee or seller, i.e. the Canadian producer, can apply for a credit but will be required to file tax returns in that territory which very few producers or companies ever do. Consequently, you should deduct withholding tax from the gross sale price because you will not see the cash. Several sophisticated foreign sales or distribution companies have established methods of structuring transactions to minimize the bite of withholding tax but most smaller producers cannot afford to do this.

## **INTERIM AND PRODUCTION FINANCING**

If a substantial portion of your budget, provided by equity investments or other payments flow at the start of production and a lesser portion covered by distribution advances or pre-sales is payable later but from bankable sources, you

may be able to borrow against or “bank” just the latter receivables and limit the amount of interest and bank fees payable.

Where you are seeking to finance one or two specific contracts only (usually payable within 12 to 18 months), you are seeking interim or bridge financing. This may be television pre-buys, distribution guarantees or tax credits. There are several institutions that engage in this form of banking including Rogers Telefund, and Equicap, as well as the banks. Telefilm no longer has an interim loan fund. Certain organizations will only bank certain kinds of paper on certain conditions. You will have to shop around. The bank or financial institution will not give you 100% of the contract amount. They discount the contract amount for the risk they determine is involved and for the time value of money, i.e. they are paying you now for a contract that is payable in a year. Typically tax credits are discounted by at least 25%. Foreign contracts are more difficult to finance and not many organizations will bank these, except those contracts with the most substantial, well-known companies, because the banks are not familiar enough with such companies. If the bank does finance them, they may discount them by as much as 50%. There are a few (usually American or American branches of European) banks and outfits like Imperial Bank which specialize in production financing and are familiar with most bankable players. Traditionally you must be seeking to bank at least \$1 million before such institutions will consider a loan. The fees are usually commensurate with the risk of collecting foreign receivables.

Canadian bank fees (and attendant legal fees) are considerably lower than US bank fees but the Canadian banks tend to be somewhat more conservative.

For more long-term production financing, there are different variations and new financing schemes being developed all the time such as insurance deals and gap deals (although these may already be on the wane with depressed markets). These various schemes are not discussed here. They are fairly sophisticated and will require the involvement of lawyers and accountants and frequently foreign bankers or intermediaries. Unless you are producing a small production and have the resources to cover shortfalls in cash during production yourself, you will likely need some third party production financing. Usually, in seeking a production loan, you will approach a bank or other institution with your financing plan, cash flow and pertinent information about your company. You will need a lot of lead time (preferably at least two months) if you hope to close the banking before the start of principal photography. Even if you do not have all your paperwork in order (and 99% of the time, producers cannot hope to be that organized so far ahead), you should start by introducing the project to the bank and letting them know what they can expect to see. Initially, deal memos or even draft deal memos are sufficient to get the ball rolling.

The bank will take security over the entire project and all contracts with financiers. They will usually require security representing more than 100% of the loan amount

(including interest) to cover the risk. This will often mean that at least a portion of your fees and probably your overheads are deferred until a date at which the risk to the bank is reduced, usually about the time of delivery. You will have to pay a loan fee, sometimes a “set-up” fee (which is just another bank charge), the bank’s legal fees (which you should seek to cap), various bank charges (such as wire transfer fees, statement fees, cheque fees, activity fees – these usually total a few thousand dollars) and interest. In gap deals, there is also a “gap fee” which represents a percentage of the “gap” (that portion of the budget not covered by financing other than unsold territories and distributors estimates).

The bank will calculate an interest reserve based on when they believe the revenues they are banking will be paid. Tax credits are paid between a year to two years after production so you will have to factor this in. The bank’s first advance of funds includes monies to the production account, the loan fee (always paid up front), the bond fee and the legal reserve.

All contracts for sales (and perhaps investments as well) will be assigned to the bank. For larger pre-sales, the bank may require an inter-party agreement (mentioned also under the section Completion Guarantees) so there is a direct contractual relationship between the buyer and the bank. You will need to let your investors or buyers know you are banking their agreement(s) to ensure their cooperation. The bank will need to be a beneficiary under the completion bond and will want to be named as an additional insured on the entertainment insurance policies. You will need legal counsel to complete a bank loan (since you will generally require a legal opinion), so all the details are not discussed here. Most if not all the pre-requisites to advancing the loan will be laid out in a commitment letter issued by the bank.

You may wish to note that foreign bank costs may reduce your Ontario tax credits or disqualify the production altogether if these costs are such that they reduce your Ontario or Canadian expenditures below 75% of your budget.

You should also be careful that your producer fees are not delayed beyond the delivery date when they may be considered deferrals since deferrals will also reduce tax credits.

**SAMPLE FINANCING PLAN TELEFILM PREFERRED LAYOUT**

**"Title of Film"**

Canada-European Co-production

67:33 split

**Financing scenario**

US Dollar Exchange US \$1 = \$1.538

<u>Canadian Financing</u>	Equity	Total	% of Cdn	% of total	% C equity
Telefilm Canada equity	1,250,000	1,250,000	31.3%	20.8%	41%
Astral equity	500,000	500,000	12.5%	8.3%	16%
Harold Greenberg Fund equity	200,000	200,000	5.0%	3.3%	7%
Canadian distribution advance		400,000	10.0%	6.7%	
Canadian Producer equity*	1,100,000	1,100,000	27.5%	18.3%	36%
Asian presale		50,000	1.3%	0.8%	
Other european presale		500,000	12.5%	8.3%	
Total Canadian	3,050,000	4,000,000	100.0%	66.7%	
<u>European Financing</u>					
Equity investment**	2,000,000	2,000,000		33.3%	
Total Canadian and European financing		6,000,000		100%	

\*\*Supported by a presale/investment from Large euro distributor



**ABC Productions  
The Picture  
Detailed Cashflow**

	Prep. Oct. 19	Prep. Oct. 26	Prep. Nov. 2	Prep. Nov. 9	Shoot Nov. 16	Shoot Nov. 23	Shoot Nov. 30	Shoot Dec. 7	Shoot Dec. 14	Wrap Dec. 21	Post. Jan. 15	Post. Feb. 28	Post. Mar. 31	Post. Apr. 30	Totals	
Scenario				5,000	108,183										113,183	
Development costs	11,043	11,043		11,043	11,043										44,170	
Producer					40,000										502,000	
Director		3,721		24,700	3,721	24,700	3,721	24,700	40,000	3,721	24,700	40,000		302,000	121,125	
Stars				188,329	188,329	188,329	188,329	188,329	188,329	3,721	24,700	40,000		5,000	946,646	
Total 'A'															1,727,124	
Costs															178,831	
Extras					12,140	12,140	12,140	12,140	12,140	35,766	4,346				60,689	
Production staff				5,000	15,000	33,475	33,475	33,475	33,475	5,000					192,373	
Design Labour				2,000	4,000	6,607	6,607	6,607	6,607	4,000					43,037	
Construction Labour				2,286	2,286	2,286	2,286	2,286	2,286						16,000	
Set Dressing Labour				2,000	3,000	4,434	4,434	4,434	4,434	3,000					30,169	
Property Labour				1,000	2,500	3,385	3,385	3,385	3,385	2,500					23,423	
Special Effects Labour				3,333	3,333	3,333	3,333	3,333	3,333						20,000	
Wrangling Labour				2,000	3,000	4,346	4,346	4,346	4,346	3,000					1,000	
Wardrobe Labour				2,000	3,000	4,354	4,354	4,354	4,354	3,000					29,741	
Makeup/Hair Labour				4,000	10,000	15,371	15,371	15,371	15,371	4,354					29,771	
Camera Labour					9,895	9,895	9,895	9,895	9,895						90,866	
Electrical Labour					7,517	7,517	7,517	7,517	7,517						49,476	
Grip Labour					3,921	3,921	3,921	3,921	3,921						37,583	
Production Sound Labour				4,000	5,000	10,814	10,814	10,814	10,814						19,607	
Transportation Labour					1,027	1,027	1,027	1,027	1,027						68,070	
Fringe benefits				3,740	3,740	3,740	3,740	3,740	3,740						5,133	
Production office expenses															37,389	
Studio / Bucket expenses					1,360	1,360	1,360	1,360	1,360	3,740					6,800	
Site expenses				18,166	18,166	18,166	18,166	18,166	18,166						108,997	
Unit expenses				11,243	11,243	11,243	11,243	11,243	11,243						67,460	
Transportation					28,986	28,986	28,986	28,986	28,986						144,928	
Construction Material					2,600	2,600	2,600	2,600	2,600						13,000	
Art Supplies				1,975	1,975	6,860	6,860	6,860	6,860						3,950	
Set Dressing															34,300	
Props				12,233	12,233	4,900	4,900	4,900	4,900						36,700	
Special Effects/Stunts															24,500	
Animals						750									750	
Wardrobe Supplies				9,842	9,842										29,525	
Makeup/Hair Supplies				1,633	1,633										4,800	
Video Studio facilities															0	
Video Remote Tech. Inc.															0	
Camera equipment				6,140	6,140	6,140	6,140	6,140	6,140						36,840	
Electrical equipment				10,505	10,505	10,505	10,505	10,505	10,505						63,030	
Grip equipment				6,453	6,453	6,453	6,453	6,453	6,453						38,720	
Sound equipment				1,695	1,695	1,695	1,695	1,695	1,695						10,168	
Production Laboratory				18,465	18,465	18,465	18,465	18,465	18,465						147,720	
Total 'B'											18,465				1,705,456	
Editorial Labour				4,283	4,283	4,283	4,283	4,283	4,283				12,848		42,828	
Editorial Equipment				1,795	1,795	1,795	1,795	1,795	1,795				5,385		17,950	
Video post production (picture)													1,550		1,550	
Post production lab													19,038		95,188	
Film post production sound													27,667		85,000	
Music													16,667		50,000	
Titles / Opticals / Stock Footage													6,068		18,204	
Total 'C'															308,720	
Unit publicity					6,040	6,040	6,040	6,040	6,040						30,200	
General Expenses				1,500	38,000	1,500	1,500	10,000	10,000						68,500	
Indirect costs															25,000	
Total 'D'														25,000	123,700	
Completion Guarantee					50,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	50,000	
Contingency															200,000	
Union Deposits															0	
Weekly Totals	0	14,782	50,887	94,661	765,339	506,204	566,083	504,954	584,452	243,962	30,772	103,165	117,943	138,958	66,039	327,000
Cumulative Totals - CS	0	14,782	65,469	160,130	925,469	1,431,673	1,997,756	2,502,710	3,087,161	3,331,123	3,361,895	3,465,060	3,583,003	3,721,961	3,788,000	4,115,000
Bank charges / interest															375,000	
Total															4,490,000	

SAMPLE SUMMARY CASH INFLOW AND OUTFLOWS

ABC Productions  
Cashflow  
The Picture

Interest Rate 9.00%

	Outflows		Inflows				Total Inflows
	Telefilm CTC/PEIP	Cdn Dist	German Dist	Foreign dist	Tax Credits		
Oct. 12	0						0
Oct. 19	0						0
Oct. 26	14,782						14,808
Nov. 2	50,687	132,649					(67,270)
Nov. 9	94,661	165,812					(138,660)
Nov. 16	765,339	75,000					552,631
Nov. 23	506,204						1,060,662
Nov. 30	566,083		162,000				1,467,274
Dec. 7	504,954	132,649					1,842,754
Dec. 14	584,452						2,431,395
Dec. 21	243,962		75,000				2,604,846
Dec. 31	30,772						2,644,716
Jan. 31	221,108	132,649					2,753,674
Feb. 28	136,958						2,914,326
March 31	66,038						3,002,717
Apr. 30							3,025,237
May 99							3,047,927
June 99			150,000	405,000			1,758,530
July 99				810,000			955,644
Aug 99							962,811
Sept. 99							970,032
Oct. 99							977,307
Nov. 99	327,000			810,000	691,753		(197,446)
Totals	4,115,000	663,247	300,000	810,000	2,025,000	691,753	4,490,000
Financing	375,000						4,490,000

Cumulative Loan plus period inflows (outflows)	Period Interest	Cumulative Interest	Cumulative Loan End of period
0	0	0	0
0	0	0	0
14,782	26	26	14,808
(67,154)	(116)	(90)	(67,270)
(138,421)	(239)	(329)	(138,660)
551,679	952	623	552,631
1,058,835	1,828	2,450	1,060,662
1,464,745	2,528	4,979	1,467,274
1,839,579	3,175	8,154	1,842,754
2,427,206	4,189	12,343	2,431,395
2,600,357	4,488	16,832	2,604,846
2,635,618	9,098	25,930	2,644,716
2,733,175	20,499	46,429	2,753,674
2,892,632	21,695	68,123	2,914,326
2,980,364	22,353	90,476	3,002,717
3,002,717	22,520	112,996	3,025,237
3,025,237	22,689	135,686	3,047,927
1,745,439	13,091	148,777	1,758,530
948,530	7,114	155,891	955,644
955,644	7,167	163,058	962,811
962,811	7,221	170,279	970,032
970,032	7,275	177,554	977,307
(197,446)	177,554	177,554	(197,446)

## VI COMPLETION GUARANTEES

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As discussed in the Budgets section, where a financier or investor is involved, you will generally be required to obtain a third party completion bond. The completion bond guarantees delivery of the production to the distributor provided that all the production financing that producer says is in place, is actually in place. The bond also protects the investors or other parties that advance money to the production before delivery, such that in the unlikely event the production is abandoned, the investors receive their money back. In fact, according to its terms, the bond cannot actually be called upon until all the production financing is made available. Since in most instances, portions of the production financing are payable on the occurrence of certain milestones such as screening of fine cut or delivery, this is unlikely to be the case until delivery or afterwards.

The requirement for a completion guarantee is set out in Telefilm's letter agreement under "General Matters". It states the completion guarantee must be obtained prior to delivery of Telefilm's Investment/Advance agreement and shall be in effect prior to the first day of principal photography. This is rather a Catch-22 and as a matter of course, this virtually never happens. To have your completion guarantee released to the beneficiaries, you have to have all your financing elements in place. Very few if, any productions, have all the financing in place prior to commencement of principal photography.

The completion guarantor may enter into agreements with some of the larger buyers and the production financier. This is usually a requirement of the bank. The agreement (known by the non-descriptive name of an "Inter-party Agreement") has the buyer sign off on some of the pre-conditions like approvals and chain of title and states that if delivery of the agreed items is made, they cannot avoid paying the bank the guaranteed amount. Buyers are not particularly keen on these agreements but most of them understand they are necessary to arrange financing. Some bonders will exclude most paperwork items other than music cue sheets. Different bonders relate to items like continuity scripts or press and publicity materials or credit obligations differently. You should check your prospective bond company's policy in this regard. It will make a difference in dealing with certain buyers. There is generally an arbitration provision for disputes about delivery.

It is valuable to build a relationship with a completion guarantor. The completion bonding business has become relatively competitive and a knowledgeable bonder can be a great help on a production. Although some bonders are more competitively priced, fees should not be the only determinant. The bond company rarely rejects a picture or project – it will seek to work with the producer to determine what is required to make the project bondable. Its risk assessment is

principally based on assessing the production people and their experience and whether the project is properly budgeted and scheduled. People with poor records of staying on time and on budget or who are determined by the guarantor to be too junior may require that additional help be brought in for which there would be a consequent fee. Guarantors often employ experienced producers who are sympathetic to the issues that can arise on production and if kept informed, will often be able to offer some solutions. Their goal is not to take over the production or look over the producer's shoulder. Areas where the guarantor may be of particular assistance are in identifying production and post-production problems and solutions when it is still early enough to plan solutions; arbitrating issues between various parties including co-production partners, distributors, and financiers; and helping ensure that insurance claims, if any, are realistic.

The rate you will pay is based on your track record, your relationship with the bonder, the competition, and the bonder's work load, i.e. whether they need and can handle the business. Telefilm recognizes that the completion bond rebate (see Budgets section for discussion of rebates) may be payable to the producer in excess of approved producer fees in the budget. When the net premium is paid, generally, the producer will not be allowed to draw its fees until the production is far enough along that the guarantor is comfortable that there will be no premium call.

Telefilm allows an exception to the completion bond requirements in certain cases. The exceptions permitted are smaller non-dramatic one-off productions – mostly documentaries, and the arrangement is dependent on the track record of the producer. Telefilm has two alternative arrangements. The first is a deferral of fees where basically the producer does not draw down an agreed amount of his fees (and corporate overhead, and perhaps director fees if he is also the director) until approval of final costs. The second scenario is where such fees are actually placed in escrow with an escrow agent such as the producer's lawyer, again, to be drawn down or released upon Telefilm's approval of final costs. The fees are to be applied to cover cost overruns, if any. A sample escrow agreement acceptable to Telefilm is attached as is the sample deferral agreement.

**SAMPLE ESCROW OF FUNDS AGREEMENT**

This Escrow Agreement is made as of the \_\_ day of \_\_\_\_\_, 200\_\_.

AMONG:

PRODUCER CO, a company incorporated under the laws of the Province of Ontario  
(the "Producer")

-and-

CANADIAN FILM DEVELOPMENT CORPORATION  
(“Telefilm”)

-and-

LAW FIRM NAME, of the City of Toronto  
(the "Escrow Agent")

WHEREAS:

The Producer is producing a one-hour television documentary (the "Program") tentatively entitled "\_\_\_\_\_";

- A. By letter agreement dated \_\_\_\_\_ (the "Letter Agreement") between Producer and Telefilm, Telefilm has, among other things, agreed to become an equity investor in the Program and that in lieu of a third party completion guaranty of the Program it will accept the deposit of funds by the Producer with an escrow agent as security for the due performance by Producer of its obligations to Telefilm under the Letter Agreement and under the contemplated long-form agreement mentioned in the Letter Agreement to produce and deliver the Program; and
- B. Producer and Telefilm have agreed upon the terms of escrow and to the appointment of the Escrow Agent, who is the solicitor for the Producer and who, in turn has agreed to act as such agent.
- C. The parties acknowledge they have each received good and valuable consideration for their obligations hereunder.

In consideration of the mutual covenants and agreements herein, the parties agree to the following terms:

- 1. Producer shall immediately pay the sum of \$XXX (the "Escrow Amount") to the Escrow Agent pursuant to the escrow terms herein set out.

2. The Escrow Agent shall immediately upon receipt of the Escrow Amount, hold such sums in trust in an interest bearing account or term deposit with a Canadian chartered bank or trust company, the interest to accrue to the benefit of Producer, pending release in accordance with the terms of Escrow Agreement.
3. Upon delivery of the Program to the Canadian Broadcaster (“Broadcaster”) in accordance with the terms of the Broadcaster license agreement dated \_\_, Producer shall provide Telefilm with proof of such delivery together with an irrevocable direction in writing to the Escrow Agent to release 25% of the Escrow Amount to Producer, for countersignature by Telefilm.
4. Provided Telefilm is satisfied with the proof of delivery, it shall immediately countersign the direction and deliver an original to the Escrow Agent who may rely on such direction without further inquiry and shall, upon receipt, release the said sum to Producer.
5. Producer agrees to prepare a final cost report relating to the cost of production of the Program in accordance with the Letter Agreement as amended or superseded by the contemplated long-form agreement, and to deliver it to Telefilm with an additional irrevocable written direction to Escrow Agent to release the balance of the Escrow Amount and any accrued interest, to Producer.
6. Upon Telefilm being satisfied with the final cost report, it shall immediately countersign the direction and deliver an original to the Escrow Agent who may rely on such direction without further enquiry, and who shall, upon receipt of the direction, release the balance of the Escrow Amount with all accrued interest to the Producer.
7. The agreed form of direction shall be as follows:

To: LAW FIRM

Re: Escrow Agreement made as of the \_\_ day of \_\_\_\_\_, 200\_\_, with respect to the documentary entitled “\_\_\_\_\_”.

The undersigned, irrevocably direct and authorize you to release the sum of \$XXX from the Escrow Amount to Producer (or to a third party as the case may be) and this will serve as your good and sufficient authority for so doing.

Dated at City this \_\_ day of \_\_\_\_\_, 200\_\_.

Production Co.

\_\_\_\_\_

Acknowledged this \_\_ day of \_\_\_\_\_, 200\_\_.

Canadian Film Development Corporation

\_\_\_\_\_

8. Producer acknowledges that the provisions of this Escrow Agreement have been accepted by Telefilm in lieu of a third party completion guarantee, and that the Program will be completed and delivered in accordance with the various agreements in that regard, and Producer shall not unreasonably withhold its consent to the release of all or part of the Escrow Amount to parties other than the Producer to effect the completion and delivery of the Program if requested to do so by Telefilm.
9. The parties agree to attempt to resolve all disputes relating to any aspect of this Escrow Agreement in prompt good faith negotiations.
10. The Escrow Agent shall not release any part of the Escrow Amount except as aforesaid with signatures of both parties on an irrevocable direction or except as directed by a court of competent jurisdiction.
11. The Escrow Agent reserves the right to make payment into court and/or interplead in any court proceedings should any dispute arise concerning this Escrow Agreement or the disposition of the Escrow Amount.
12. Producer shall be responsible for all fees payable to the Escrow Agent for acting in such capacity.
13. The Escrow Agent shall not be liable for anything done by it in the performance of its duties herein other than its willful default or neglect and each of the other parties shall indemnify and save harmless Escrow Agent from any and all actions, proceedings, suits, liabilities, claims, cost and expense arising out of its performance and its duties, save as mentioned above.
14. This agreement shall be governed by the laws of the Province of Ontario and each of the parties agree to attorn to the exclusive jurisdiction of Ontario.

15. This agreement shall be binding upon the parties, their heirs, legal representatives, successors and assigns. The obligations hereunder may not be assigned in whole or in part by a party without the written consent of the other parties hereto. This agreement may not be amended or altered except in writing signed by all parties hereto.

As evidence of their agreement, the parties have executed this agreement on the date set opposite their respective names.

\_\_\_\_\_ PRODUCTION COMPANY  
\_\_\_\_\_ CANADIAN FILM DEVELOPMENT CORPORATION  
\_\_\_\_\_ LAW FIRM



**SAMPLE DEFERRAL AGREEMENT**

Date

Name and address  
of production company

Dear Sir or Madam:

This will confirm that I/we agree to defer payment of the following fees:

**(recite fees or expenses to be deferred with dollar amounts attached)**

I/We understand that the above service/equipment/services deferral will be payable from revenue earned from whatever source from marketing and distribution of the Production in accordance with the recoupment provisions set out in section 6 of the Letter Agreement between Telefilm Canada and the Producer dated \_\_\_\_\_. ***[To avoid having those parties deferring from reading all the investment agreements, you could just excerpt the provision of the agreement and attach it as a schedule].*** All revenue will be shared on a pro rata and pari passu basis among those entitled to receive such revenue respectively in each tier of recoupment.

***The party deferring may want to know what the total deferrals are or even require a recoupment schedule to see where they fall in the scheme of things. See section on recoupment.***

Your execution and return of one fully executed copy of this deferral agreement to the undersigned, shall confirm the terms of this agreement.

Yours truly,

\_\_\_\_\_

Agreed and accepted this \_\_\_ day of \_\_\_\_\_ 200\_\_.

\_\_\_\_\_

## VII DISTRIBUTION AGREEMENTS

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Aside from the physical film or television program itself, the majority of the value of a production lies in the various ways in which the program can be exploited. The basic means of exploitation is through the various audio-visual media. The “traditional” route for the exploitation of feature films is the so-called “orderly marketplace” which is theatrical, video, pay-per-view, pay television, and cable or free television. Somewhere along this line there is also non-theatrical, airlines and hotel sales. Of course, considering many of the media included in the line up have come into use in the last 10 to 25 years and that there are constantly new forms of distribution being added such as video on demand, satellite television, internet, etc., there is little that remains orderly. It is somewhat simpler for programming made specifically for television as there are a few less distribution options, but there are many cases where television programming has gone to video or to the internet and vice versa and a few feature length shows have even gone theatrical after a television broadcast.

As with the chain of title issues, the key here is to ensure you have all the rights you need to grant to the distributor(s) or licensee(s). For example, If you carve out rights by pre-selling your film to Canadian pay television, and you are also granting all the Canadian distribution rights to a distributor, either (a) the pay television deal must be assigned to the distributor; or (b) the distributor is granted the rights excluding pay television (and pays you a smaller advance as a result). Because there are more windows (media) for feature films, the question of who has what rights and when tends to be a bit more complicated than television programming. However, the issue of “overspill”, i.e., broadcasting over national borders, also arises for television programming. When you are entering distribution or license agreements with more than one party, you must ensure that your grants of rights do not conflict or overlap. A new means of exploitation that has yet to become part of the regular marketplace, is internet rights. No one has yet found a satisfactory means of earning revenue from film and television programming over the internet since there are still significant issues regarding copyright infringement (particularly limiting reception to a particular territory) and convenience. At this juncture, the most common use of the internet in connection with traditional programming, is advertising and promotion. Distributors can show potential buyers around the world a promotional excerpt or producers and distributors can promote awareness of the production through a website. Distribution agreements are quite different for film and for television. Agreements also vary depending on whether the agreement is entered prior to completion of the production (a “pre-sale”) or after completion of the production. The greatest difference is the amount of detail. Generally, distribution agreements for features prior to completion are quite hefty. These are the agreements that Canadian producers are most often faced with. Some of the reasons for this include the fact that most of these agreements were

adapted from US models; there are a greater number of rights granted for features; and feature distribution involves extensive delivery materials.

For both film and television, buying an incomplete product is a much bigger risk as the distributor is seeking to define what it is buying. The distributor therefore will usually require an extensive number of approvals over elements it believes will influence the production.

A discussion of distribution agreements can go on for volumes. For most producers, there are only a few areas that they will get the opportunity to negotiate or change and it is worth focussing your efforts on these. However, it is also useful to know the reason for many of the other clauses. This is by no means an exhaustive explanation of distribution agreements or everything you need to know about them. Hopefully it hits the highlights. It is worthwhile to read through the whole sample agreement at least once. You should ask questions about the purpose of provisions in distribution agreements if they are unclear. American distribution companies and one or two larger Canadian companies tend to have extremely onerous distribution agreements. You should have such agreements reviewed by an entertainment lawyer. Most Canadian distribution companies have incorporated provisions required by Telefilm when it is an investor, but not always.

Frequently there will be schedules attached to standard terms of the distribution agreements. There are schedules for delivery materials, a form of lab access letter, and usually, the specific deal terms which includes all those terms referenced, as listed in Schedule "A" in the sample agreement. Numerous agreements have a list of definitions as a separate schedule and possibly a schedule of distribution expenses. Any particular conditions such as requirement to broadcast or release within a prescribed time or caps on expenditures or pre-approved elements, etc. can simply be set out in the attachments. The distribution fees are frequently set out in a schedule.

Distribution fees range generally from about 10% (more often for a sales agent and usually when there is no guarantee paid) to 50%. Fees for non-theatrical and certain ancillary rights can be 50%. Theatrical fees range from 35% to 50%. Pay television fees are generally 20% to 30% and may depend upon whether the distributor or producer made the sale. In Canada, it is fairly common for the producer to have secured pay television and perhaps free television licenses which it then assigns to the distributor. Free or specialty television sales often command a higher commission because they may require multiple smaller sales. For foreign distribution agreements covering multiple territories, there is usually only one fee stipulated as that distributor may be selling all rights in a given territory to another distributor. Your distributor will take its fee off the sale to the local distributor and its unlikely you will see much in the way of reporting or accounting beyond the party with whom you are in contractual relationship. Usually fees are a percentage of gross receipts but they may also be calculated

after deduction of costs (known as a “costs off the top” deal). Video is more often a royalty arrangement. The producer gets a percentage of the wholesale selling price (with various and sundry adjustments), e.g. about 25% of the price the video rental company pays the distributor. There is a different rate for “sell-through” (the direct sale of video cassettes or DVDs to the public). The royalty for sell-through is usually 10-12% for the producer. The prices for the video cassettes or DVDs (and the profit margins) are lower. All of the costs of manufacturing and advertising are the distributor’s responsibility and come from the distributor’s 75% share of the royalty. This is why the percentage is so high for the distributor. Distribution reports do not account for video expenses but your share of royalty still will be applied toward recoupment of distribution advances, if any.

The key points of any distribution agreement include:

- **Term** – Some distributors will seek to acquire rights in perpetuity or virtually in perpetuity. The distributor is looking at this property as an asset that is part of its library. Most of the value of the property would be derived in the first few years but some properties have a long shelf life or become cult favourites or the director or an actor becomes famous and triggers interest in the production at some point down the road. Some of the things you want to think about is the reputation of this distributor for continuing to report to you, the likelihood this distributor will be in business in 10 or 20 years and whether you are building your own library. A sales agent will typically take only a few years to make initial sales of the production in various territories. The sales they make may exceed the term of their appointment but this is usually done with approvals. Additional comments will be found in the sample agreement
- **Territory** – This may be very easily determined if the distributor only operates in one territory or is only interested in Canadian rights but when dealing with a distributor that sells internationally, the question of which territories the distributor takes may be a negotiating point. When you have no track record and few resources, you are likely seeking to sell worldwide rights to one or two distributors and hope for the best. When you have contacts in different territories or with different distributors or sales agents you may be able to afford to piece off different territories to different distributors to maximize your pre-sales or revenues. This is not something that should be undertaken lightly or without real preparation. There are reasons the business is littered with defunct and bankrupt distribution companies.
- **Rights granted** – The distributor may only be seeking to acquire traditional audio-visual rights but many distributors may seek to secure any right that may generate revenue such as retransmission rights, music publishing, soundtrack rights, pre-quels, sequels, series, merchandising and new media. You should consider what the distributor may have done in the past in these individual areas on productions similar to yours, ie. if they are in a position to exploit

these rights or whether you are; if there is any likely value in these individual rights. For instance, in music publishing (a large topic in itself) even if you do not have an exciting score, there are music publishing revenues to be had if you own at least part of the music publishing rights and the production is broadcast in different countries. Performing rights revenues and mechanical rights revenues will be generated by broadcasts (and possibly other media in certain territories), collected by collection societies (such as SOCAN or SARDEC in Canada) and if you are the registered publisher, you would receive them. This does require monitoring and follow up including knowing where your production has been sold or broadcast.

- Advances or minimum guarantees – Aside from satisfying the pre-requisites to qualifying for other sources of money such as tax credits or most Telefilm equity, this is the main reason producers seek to negotiate a deal with a Canadian distributor. Frequently, the producer has secured sales to broadcasters (pay, free or specialty or all of them) and is looking for the distributor to improve this total and provide a better cash flow. You may also seek to secure pre-sales from other territories which usually requires the producer have some sort of track record as the distributor is buying a pig in a poke. The amount of an advance or minimum guarantee is dependent on the budget, the director, stars, and other interest in the project. Canada is only a small fraction of the ostensible value of the world but for Canadian content, Canada pays a disproportionate share largely because Canadian broadcasters are required to buy a certain amount or spend a certain amount on Canadian content. Many other countries will also pay a premium for material that qualifies as content in their country, such as France, and/or has particular elements that work in their territory such as a famous German star in Germany.
- Payment schedule – The producer’s goal is to negotiate as much money as possible during production to have cash flow and reduce interest costs of borrowing. Usually you will have payments due on certain milestones such as first day of principal photography, mid-way through principal photography, completion of principal photography, assembly, fine cut, delivery. You want your final payment to be due on delivery. A distributor wants to have as little of the monies advanced ahead of delivery. Over the next few years (by 2004-2005) Telefilm is planning to phase out assistance to distributors for the acquisition of rights. This may well impact on the amount of distribution advances as well as payment schedules for distribution advances.
- Distribution Fees – discussed above
- Approvals – As mentioned above, these approvals may be very extensive or just covering the basics. Here is an example of the former: “Distributor shall

have the right to approve the script, screenwriters, production budget, completion guarantor, interim financier, production financing, producer, production manager, all key creative elements including the director(s), principal performers, DOP, editor, production designer, art director, composer, stills photographer, unit publicist, production accountant, all on screen and paid ad credits, music supervisor, all source music, the rough assembly, fine cut and broadcast-ready tape, and all press releases and promotional materials. Distributor will not withhold its approval unreasonably, but refusal by Distributor to approve the replacement of a Material Element shall not be deemed unreasonable.”

Here is another example of a less extensive approval provision “All of Distributor's obligations hereunder including its obligations to advance funds, are conditioned upon Distributor's approval of the following elements in its entire discretion, provided that this approval shall not be unreasonably withheld:

- (a) A Completion Guarantee, naming Distributor as a beneficiary;
- (b) The Final Shooting Budget;
- (c) The Principal Cast (X and Y are herein approved); should this casting be modified, then Distributor shall have meaningful consultation for any substitute. It is hereby understood that any substitution will be of the same level as those cast already pre-approved;
- (d) The Director (Z is herein approved);
- (e) Proof of all financing arrangements and deferral agreements that Producer shall make with respect to the Picture and the production thereof;
- (f) All chain of title documents.

Each of the aforesaid approvals shall be deemed given if no objection is made in writing by Distributor within five (5) business days of receipt. In the event of an advance being made by Distributor prior to the exercise of all its approval rights, Distributor shall have the right to require reimbursement of the Minimum Guarantee should it ultimately not approve of all of the aforesaid; until such reimbursement, Distributor shall retain all of the distribution rights herein granted.”

You want the distributor to approve everything possible in advance and have a workable mechanism for any additional or replacement approvals. Some approvals might stop you from proceeding or cost you an inordinate amount of time and money. Elements identified as “essential elements” or possibly “material elements” generally mean the distributor does not need to agree to any replacement. This will often require you secure “essential elements insurance” which is extremely costly.

- Delivery items – discussed in section following the distribution agreement

## SAMPLE THEATRICAL DISTRIBUTION AGREEMENT

### STANDARD TERMS AND CONDITIONS OF DISTRIBUTION

**NOW THEREFORE WITNESSETH** that in consideration of Two Dollars (\$2.00) and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged) the parties hereto agree as follows:

#### 1 THE PICTURE

The term "Picture" refers to the theatrical motion picture more particularly described in Schedule "A". The Licensor warrants and represents that the running time of the Picture, including titles and credits, is not less than 90 minutes not more than 120 minutes.

***The length of the picture is important for theatrical distribution so you don't want it too short or too long. Requirements may be more restrictive than this one. Frequently, the format of the film and the ratio is specified and once in a while the brand of film stock (eg. Super 35mm or 1.66:1, shot on Kodak..). Make sure this accurately reflects your plans.***

#### 2 TERRITORY AND TERM

2.1 The "Term" of this agreement commences on the date hereof and expires on the anniversary provided in Schedule "A".

***This can be a negotiable point and is dependent on the distributor's practice and the amount of the advance they are putting up. Frequently a distributor will want the useful life of the picture of about 20 to 25 years. Many American distributors take 30 years or perpetuity. It is possible you can negotiate terms as short as 10 years but that's hardly long enough to get through the "orderly marketplace" even once since most European broadcasters will require 7 years. If you allow a year for theatrical, at least 6 months for video, 3 months for pay-per-view, and up to 18 months for pay television, you don't have enough time. A possibility is having an automatic extension if the Distributor hasn't recouped its advance or guarantee by the end of the original term.***

2.2 The "Territory" is as provided in Schedule "A".

### 3 GRANT OF RIGHTS

3.1 Licensor hereby grants to Licensee, throughout the Territory, the sole and exclusive exercise of all rights, subject to any exceptions outlined in Schedule "A", of theatrical exhibition, distribution, non-theatrical distribution, audio-visual cassette, disc or similar method of distribution, commercially or for home use, all forms of television distribution including pay-per-view, pay, free, syndicated, closed-circuit for hotel use or otherwise, CATV, airline use or by and in the form of video cassettes, video discs and all other manners of home viewing and all methods of transmission and delivery, now or hereafter invented or devised, including but not limited to CD-ROM and CD-I in a linear format with or without additional material, on the internet any and all mediums or means whatsoever now known or hereinafter known, developed or invented; and the right to license others to do so, the Picture and trailers thereof, and excerpts and clips therefrom, in any and all languages and versions, including dubbed and subtitled versions, for the Term. Distributor agrees that any exploitation of the Picture on Internet shall be limited to broadcast or transmission of the Picture on a linear, non-interactive form and that such broadcast or transmission shall be technologically secure in order to prevent broadcast or transmission to a recipient outside the Territory. However, Distributor shall have the right to advertise, publicize or promote the Picture on Internet (or authorize others to do so) by permitting users to download excerpts or trailers of the Picture not to exceed four (4) minutes in length in aggregate.

The rights granted herein shall include without limit, the sole and exclusive right:

***Above is a wide grant of rights but limited to audio visual rights. A distributor will generally require all of this. Currently, it is unlikely the distributor could avail itself of the internet rights since it would have difficulty ensuring technological security such that a recipient outside the territory would not be able to receive it. This will become more likely over the course of the term of rights. You might have some limitation on clips or excerpts for promotional or advertising purposes only, or on languages, but most distributors will resist most limitations unless the requests are very reasonable. Although not specifically included here, you may also wish to specify that sequels, prequels and series are to be excluded as well as non-linear CD-I or CD-ROM, music publishing or soundtrack.***

3.1(a) Right to Deal: The complete control of distribution, exhibition and exploitation of the Picture in the media granted in the Territory during the Term, in accordance with the terms hereof and such policies, methods, plans as Licensee, in the exercise of its reasonable business judgment,



determine. Licensee agrees to be available to consult with Licensor in connection with the marketing of the Picture.

***Unless the distributor is not putting up an advance or guarantee, it will insist on control of the distribution. You need real negotiating power to straddle a distributor with particular obligations on how it distributes the picture.***

3.1(b) Titles: To use the title or titles by which the Picture is or may be known, and in consultation with the Licensor, to change the title of the Picture.

***Distributors rarely change the name of the picture unless it is unattractive to buyers or offensive in some territories. Local distributors may also translate the name. You may want to require the Distributor to insure the name under its own errors & omissions (e & o) policy and indemnify and save you harmless from any claims as a result of the new name. You may also want to be informed of all of the name changes (although this is, practically-speaking, unlikely to occur), including translations, so you can track music performance royalties or retransmission royalties and the like. It is very difficult to actually obtain this information since sub-distributors rarely report this to the distributor.***

3.1(c) Other Languages Versions: To make, cause to be made and/or authorize others to make and to exploit other language versions of the Picture.

***Usually sub-distributors or broadcasters will be responsible for dubbing the picture into the language of their territory. For major language groups, it is useful for the distributor to have access to other language versions to enable other buyers use thereof.***

3.1(d) Licensee's Trade Name: To use Licensee's name and trademark and/or the name of any of Licensee's licensees on the positive prints of the Picture and in trailers and in all advertising and publicity relating thereto, in such a manner, position and form as Licensee or Licensee's licensees may elect, consistent with their respective function in connection therewith e.g. presentation, distribution.

3.1(e) Trailers: To cause trailers of the Picture and prints thereof to be manufactured, exhibited and distributed by every means, method and device and in any media whatsoever.

3.1(f) Music and Lyrics: To use and perform any and all music, lyrics and musical compositions contained in the Picture and/or recorded in the soundtrack thereof in connection with the distribution, exhibition, advertising, publicizing and exploiting of the Picture.

***You should ensure you have the right to grant these rights to the distributor. Music clearances should include the right to use the music in the advertising of the picture. If the music licensed is particularly popular this may not be possible or may be too expensive.***

3.1(g) Claims: In the name of the Licensee or otherwise, to institute and prosecute all actions or proceedings which Licensee may deem necessary for the purpose of establishing, maintaining or preserving any of the rights herein granted or purported to be granted to Licensee and similarly to defend any action or proceeding which may be brought against Licensee or assignees, with respect to the Picture or any of the rights herein granted or purported to be granted to Licensee or which in any manner questions or disputes any of the rights of Licensee in and to the said Picture or any of the rights herein granted to it.

3.1(h) Advertising: To publicize, advertise and exploit the Picture and to authorize others to do the same by such means and to such extent as Licensee may elect in its sole discretion, and without limiting the generality of the foregoing:

3.1(h)(i) Radio and television: Broadcast by way of radio or television for advertising purposes and to authorize others to do so, any parts of the Picture not exceeding two minutes in length, and any literary or dramatic material included in the Picture or upon which the Picture was based alone or in conjunction with other literary, dramatic or musical material.

***With the two minute limitation on clips for advertising, you are within the limits of the ACTRA agreement so that no additional fee is payable to actors.***

3.1(h)(ii) Names and Likenesses: Use, license and authorize others to use the names, photographs, likenesses, voices and other simulation or reproduction thereof or of any sound effects, as well as transcriptions, films and other reproductions thereof, of the director, the musicians, the writers, the composers, the authors, all

members of the cast and all other persons rendering services in connection with the Picture, subject to any restrictions in any service contracts, of which Licensor informs Licensee in writing in a timely manner and no event later than Delivery of the Picture.

***This comes up again in the later discussion on delivery materials. You need to advise the distributor in writing of any restrictions in this area. This is generally something the distributor must be able to grant to others.***

3.1(h)(iii) Literary Material: Publish and authorize others to publish in any language, synopses, summaries, adaptations, resumes, stories and excerpts from the Picture and from any literary or dramatic material included in the Picture in book form and in newspapers, magazines, press books and all other media of advertising and publicity not exceeding 7500 words in length taken from the original material.

***If your picture is based on other material such as a novel, you may have restrictions. Make sure synopses are allowed.***

3.1(h)(iv) Editing: To make or to cause such changes, alterations, cuts, interpolations and eliminations as may be required by any duly authorized censorship authority or industry organization. Licensor agrees that it shall not nor shall its agents employees, officers or directors make any public statement, relating to the Modifications without Licensor's prior written approval, which approval shall not be unreasonably delayed or withheld.

***A distributor needs to be allowed to edit the picture to comply with the censorship requirements for international sales or for broadcast timing. Generally this would be done by the local distributor. Some distributors may require the right to edit the picture. Certain companies are notorious for it.***

3.2 Licensor and Licensee hereby confirm, and to the extent necessary, approve the Pre-Existing Agreements and ratify the acts of Licensee in respect thereof.

***This might apply if you have an earlier deal memo with the Distributor or any pre-sales you will be assigning which would be referenced and defined elsewhere.***

#### **4 DELIVERY**

4.1 Licensor shall effect delivery of the Picture to Licensee, in accordance with this agreement ("Delivery"), on or before the Delivery Date specified in Schedule "A".

***Delivery dates should be realistic. This is usually one of the "out" clauses that a distributor can rely on i.e. use as a valid excuse to terminate the agreement if you are late on delivery. It is important particularly if your distributor is targeting particular markets or festivals. An example of such a termination provision can be found in the attached Schedule "A. The completion bond company will want to approve delivery dates to ensure they are realistic.***

4.2 Delivery of the Picture for all purposes hereunder shall consist of:

4.2(a) making physical Delivery of the Picture, as described in Schedule "A" and all "Delivery Items" specified in Schedule "B" by Licensor at Licensor's cost to its forwarding agent or to a bonded common carrier with instructions to ship said materials by bonded air freight, to Licensee, except for those items for which Licensee agrees to accept access;

4.2(b) making Delivery of a "Laboratory Letter" in the form attached as Schedule "C" signed by the lab and Licensor, with a copy to Licensee.

4.2(c) Delivery to the Licensee of evidence of copyright registration in Canada or country of origin, of the Picture, in form satisfactory to Licensee's legal counsel.

4.3 With respect to all prints of the Picture, the Film Materials, advertising accessories and all other material relating to the Picture which shall be delivered to Licensee or to the Laboratory pursuant to this Agreement, Licensor shall pay all costs and expenses in connection with the shipping, transportation and delivery of such prints, Film Materials, advertising accessories and other material to Licensee or the Laboratory and their entry into the Territory if required, including, without limitation, customs duties, packing, forwarding and shipping charges, the cost of reels, cans and containers, brokerage fees, consular fees, censorship fees and insurance.

***Delivery materials will be discussed in connection with the Schedule of Delivery Materials following. Canadian and American distributors generally require the producer to absorb the cost of delivering to the distributor whereas other foreign buyers usually expect to pay their own costs of producing and delivery of materials to themselves.***

4.4 Licensee shall have the right to inspect and examine all Film Materials, documentation and publicity and advertising materials tendered as Delivery hereunder and shall advise Licensor within ten (10) business days after Delivery if and wherein the same is not complete or technically acceptable, whereupon Licensor shall promptly deliver to Licensee such items by which it shall have failed to make adequate Delivery of in the first instance. Acceptance by Licensee of less than all the items required for Delivery and/or release of the Picture prior to Delivery of all the items required, shall in no event be construed to be a waiver by Licensee of Licensor's obligation to deliver any item not delivered. No waiver of Delivery of any item shall be valid or binding unless in writing and signed by Licensee. Delivery shall be deemed not made until Delivery shall have been made in full in accordance with this agreement. Licensee agrees to acknowledge complete Delivery, when effected, if so requested by Licensor. The cost of any item of Delivery required hereunder supplied by Licensee shall be charged to Licensor's share of the receipts, if any, including any and all advances paid hereunder, if any.

***Distributor's examination of materials for technical acceptability is tied to receiving any payment that is contingent on delivery. It is also very important to the bonder who gets off the hook when delivery is accepted. A bonder may require an arbitration clause for situations where the producer argues delivery is made and the distributor disagrees. The quality of the materials is essential to the distributor in that it must in turn be able to effect delivery to all its buyers or distributors and certain territories are very demanding.***

4.5 Any other materials and documents, including any items referred to herein, which Licensee or its counsel may reasonably deem necessary or proper to evidence, maintain or effectuate any or all of the rights granted to Licensee, may be requested of Licensor by Licensee. Should Licensor fail to deliver any such item upon Licensee's request therefore, Licensee may prepare, cause to be prepared, or otherwise obtain said item for and on behalf of Licensor as Licensor's attorney-in-fact and at Licensor's expense. Any expense incurred by Licensee pursuant to this subsection may be charged to Licensor's share of the receipts, if any, including any and all advances or guarantees hereunder, if any.

4.6 In the event of a dispute between the parties as to whether Delivery of a particular item, or in general, has been effected, either party may refer the matter to a mutually agreed arbitrator.

## 5 LICENSOR'S WARRANTIES AND REPRESENTATIONS

***These clauses are all pretty self-explanatory. The distributor must generally give similar warranties to its buyers and it can only rely on the producer who has direct information.***

5.1 Licensor represents, warrants and agrees as follows and acknowledges that the Licensee is relying upon same when entering into this Agreement:

5.1(a) Quality: The Picture, when delivered, will be completely finished, fully edited and titled and fully synchronized with language, dialogue, sound and music and in all respects ready and of a quality adequate for general theatrical release and public exhibition.

5.1(b) Status of Licensor: Licensor is duly organized and validly subsisting under the laws of Licensor's jurisdiction of incorporation; it has the full right and authority to enter into and perform this Agreement and grant to Licensee all of the rights and licenses herein granted to Licensee; that it has taken all necessary action to authorize the execution and delivery of this Agreement; and that the same does not and will not violate any provisions of the constating documents or By-Laws of Licensor, or any agreement to which Licensor is a party.

5.1(c) Claims, Liens, Encumbrances Against the Picture: The Picture, when delivered, will be free and clear of any liens, claims or demands of any kind or character whatsoever which could in any way prejudice, affect or be inconsistent with the rights herein granted to Licensee. Licensee will quietly and peacefully enjoy and possess all of the rights, licenses and privileges granted or purported to be granted to Licensee throughout the Term and the Territory without interference by any third party.

5.1(d) Litigation: To the best of Licensor's knowledge after due inquiry, there is no litigation, proceeding or claim pending or threatened against Licensor or the Picture which may materially adversely affect Licensor's exclusive rights in and to the Picture, the copyright pertaining thereto, or the rights, licenses or privileges granted Licensee hereunder.

5.1(e) Licensor Owns or Will Acquire All Rights: All contracts with artists and personnel, for purchases, licenses, rights, laboratory contracts and all other obligations and undertakings of whatever kind connection to the production of the Picture have been made and entered into by Licensor

(or Licensor's predecessor in title) and by no other party and no obligations shall be imposed upon Licensee thereunder. Licensor shall indemnify and hold Licensee harmless from any expense and liability thereunder. Licensor has acquired all necessary rights to all dramatic, literary and musical properties to produce, distribute and exploit the Picture as contemplated herein;

5.1(f) Music: The Performing rights to all musical compositions contained in the Picture are:

- 5.1(f)(i) controlled by SOCAN, ASCAP, BMI or similar organizations in other countries; or
- 5.1(f)(ii) in the public domain in the Territory; or
- 5.1(f)(iii) controlled by Licensor to the extent required for the purposes of this agreement and Licensor similarly has licenses for any necessary synchronization or recording rights for all media granted herein.

5.1(g) Licensor Will Not Sell or Encumber: That Licensor has not sold and will not sell, assign, convey or encumber any of the rights herein granted to Licensee and Licensor will not do or commit any act or thing that is in derogation of the rights herein granted to Licensee, and that Licensor has not entered into, and will not enter into, any agreement which is inconsistent with any of the provisions of this Agreement, and will not exercise any right to take any action which conflicts with, prejudices or derogates from the rights herein granted to Licensee. The Picture has not heretofore been sold or licensed for distribution or exhibition, and has not been publicly exhibited in the Territory.

Licensor shall not authorize the exhibition of the Picture, outside of the Territory, in a place or way that would interfere with the exploitation of any of Licensee's rights hereunder in the Territory (such as but not limited to, the advertising in the Territory, or by telecasting into the Territory, whether by satellite, CATV, or otherwise).

***If you are not granting all rights to one distributor, this is a tough clause but frequently essential to the distributor. In particular, if there is a separate deal for US rights where the US distributor can run the picture on free television or a super station before you have had your video or pay tv window in Canada, it will destroy the value in Canada. This happens a lot.***

5.1(h) Payment for Services in Connection with Picture: That all persons who performed services in connection with the Picture have received full payment with respect thereto and with respect to any and all uses of the Picture as authorized herein; no fee, compensation or other payment whatsoever will be payable by Licensee or by any parties claiming under Licensee or licensed by Licensee (other than performing rights royalties) to distribute, exhibit or otherwise exploit the Picture or any of the rights granted hereunder, to any producer, director, actor, writer or any other person who performed services or furnished material in connection with the Picture or to any union by reason of the broadcast, exhibition of any other use of the Picture or the exercise of any of the rights granted herein at any time.

***This is an issue with respect to ACTRA and its desire to have the distributor become directly liable for residuals or use payments, which the distributor may resist. See section on Budgets and discussion of Use Fees calculations. Generally a distributor wants to be able to sell the picture without any encumbrances. In the US, distributors are accustomed to assuming the obligations to Screen Actors Guild (“SAG”) and Directors Guild of America (“DGA”). Canadian distributors are less accustomed to this practice. If you do not have a distributor assume this obligation, the producer is responsible for such payments.***

5.1(i) Trademark, Copyright, Slander Violations: The Picture and each and every part thereof, including the sound and music synchronized therewith, and the exercise by any party authorized by the Licensee of any right herein granted to Licensee, will not violate or infringe upon the trademark, tradename, copyright, moral rights, patent, literary, dramatic, music, artistic, personal, private, civil or property right, right of privacy, or any other right of any person or constitute a libel or slander of any person, and the Picture will not contain unlawful material.

5.1(j) Compliance With Laws: That Licensor abided by all applicable federal, provincial, county and municipal laws, ordinances and regulations governing the production of the Picture.

5.1(k) Copyright: That the Picture is duly and validly copyrighted and registered for copyright.

## **6 INDEMNIFICATION**



Each party hereto (the "Indemnifying Party") agrees to indemnify and hold the other (and its affiliates, exhibitors, assignees, licensees and their respective officers and employees) (the "Indemnified Party") harmless from and against any and all actions, claims, demands, losses, liabilities, damages, costs and expenses (including reasonable attorneys' fees) they may suffer or incur as a result of any breach or default of any agreement, warranty, grant, term or condition by the Indemnifying Party hereunder. This indemnification shall survive the termination or expiration of this Agreement. The Indemnified Party agrees to give the Indemnifying Party notice of any claim or action to which the foregoing indemnity may apply, and the Indemnifying Party may participate in the defense of same, at the Indemnifying Party's expense, through counsel of its choosing; however, the final control and disposition of same (by settlement, compromise, or otherwise) shall remain with the Indemnified Party. The Indemnifying Party agrees to pay the Indemnified Party on demand any amounts for which it may be proven responsible under the foregoing indemnity, and/or the Indemnified Party may recoup any such amount from any sum otherwise due to the Indemnifying Party hereunder.

***Most of the referenced obligations, warranties and representations which would require indemnification here are the producer's.***

## **7 LICENSEE'S RIGHTS AND OBLIGATIONS**

7.1 Status of Licensee: Licensee represents, warrants and agrees as follows and acknowledges that the Licensor is relying upon same when entering into this Agreement: Licensee is duly organized and validly subsisting under the laws of Licensee's jurisdiction of incorporation; it has the full right and authority to enter into and perform this Agreement and grant to Licensor all of the rights and licenses herein granted or purported to be granted and agreed to be granted or purported to be granted to Licensor; that it has taken all necessary action to authorize the execution and delivery of this Agreement; and that the same does not and will not violate any provisions of the constating documents or the Articles of Incorporation or By-Laws of Licensee, or any contract, or any other agreement to which Licensee is a party.

### 7.2 Licensee's Authority:

7.2(a) Licensee agrees that in exercising the rights and licenses granted hereunder, it will distribute and exploit the Picture in accordance with its sound business judgment, exercised in good faith on a non-discriminatory basis. Licensee agrees to diligently promote the Picture in the Territory, but Licensee makes no representations or warranties, express or implied,

as to the manner or extent of exploitation or the amount of money to be derived therefrom.

In no event shall Licensee incur any liability to Licensor or others hereunder based upon any claim by Licensor or anyone claiming through or under Licensor that Licensee has failed to realize receipts or revenue which should or could have been realized.

***Unless there is an undertaking to attain certain targets, which would be unusual unless there is no advance or guarantee paid by a distributor, a producer would be hard pressed to claim that a distributor did not do well enough in exploiting the picture.***

7.2(b) Without limiting the generality of the foregoing, it is agreed that:

7.2(b)(i) the Picture may be distributed singly or with a group of other pictures, and if so distributed or otherwise disposed of as part of a group, the gross receipts allocated to any individual Picture shall be reasonably fixed, provided that nothing shall require the Licensee to prefer the Picture over any other Picture it distributes. If Licensee advertises, publicizes, or promotes the Picture as a group, or as a group or otherwise with a group of other pictures, the costs of such advertising, publicity and promotion shall be allocated between the Picture and such other pictures, if any, taking into consideration the proportion that the advertising, publicity and promotion of the Picture or any picture bears to the total advertising, publicity and promotion used for the entire group, but, in any event the percentage of such costs allocated to the Picture within the group shall be proportionate to the revenues allocated to the Picture within the group.

***This isn't a particularly scary provision. In many territories, no matter how wonderful your picture is, it may be sold as a commodity with several other products. It may be an advantage to do so where a sale would not otherwise be realized. Usually, for the first round in the major territories, pictures are sold and priced individually.***

7.2(b)(ii) Licensee may make all bookings, leasing and rental contracts for the exhibition of the Picture, and sell territorial rights in them outright and grant to others the right to distribute and exhibit the Picture or any part thereof. Notwithstanding the

foregoing, all rights granted by Licensee to its licensees or sub-distributors or agents pursuant to the terms of this Agreement shall be subject to all of the terms, conditions and limitations imposed upon Licensee under this Agreement;

7.2(b)(iii) Licensee may make and cancel contracts in connection with any of the foregoing and adjust and settle disputes and give allowances and credits with and to Licensee's licensees, exhibitors, and other persons as Licensee may in its sole discretion determine;

7.2(b)(iv) Licensee may incur any expenses it deems appropriate in connection with the Picture and the exercise of its rights hereunder.

***This clause is usually tempered by the wording of definitions of expenses, etc. in Section 10.4 below.***

7.3 Transfer of Agreement: The Picture may be distributed, marketed or dealt with as contemplated hereunder by Licensee or Licensee's corporate subsidiaries or affiliates. Licensee may also transfer or assign this Agreement, or all or any part of Licensee's rights hereunder, to any person, firm, or corporation, with the Licensor's consent which shall not be unreasonably withheld. This Agreement shall inure to Licensee's benefit and the benefit of Licensee's successors and permitted assigns.

***With all the changes in the distribution business, this clause isn't unusual since it allows a distributor to sell its library in which case you will find yourself with a new distributor.***

7.4 Damage to Prints: In the event of any loss, theft or destruction of any print of the Picture or any trailer thereof, Licensee shall furnish to Licensor certification of such loss, theft or destruction as soon as possible after such event.

7.5 Title to Material: Legal title to all prints, pre-print material and other material delivered to Licensee hereunder and in and to any material relating to the Picture (including, without limitation, dubbed or superimposed prints and/or pre-print material) created by, for or at the instance of Licensee and all rights thereto (including, without limitation all copyrights) shall at all times rest in Licensee during the Term solely for the purpose of exercise of the rights granted herein. Licensee shall not sell, assign, pledge or in any manner encumber any of the

negatives, prints or other material delivered or prepared hereunder or create any lien thereon. Licensee shall not "dupe", copy or duplicate, or permit or suffer the "duping", copying or duplication of, all or any part of any print of the Picture, or any trailer thereof except as permitted in this Agreement.

**7.6 Redelivery at Expiration or Termination of Agreement:** Upon the termination of this Agreement pursuant to its terms, Licensee shall have no further right to distribute or exploit the Picture, and Licensee shall at its own cost deliver to Licensor all prints and pre-print material delivered to Licensee hereunder, in as good condition as when delivered, subject to reasonable wear and tear, and all dubbed sound tracks and subtitling material, and all optional and magnetic sound tracks, which were manufactured by, for or at the instance of Licensee, whether or not any of said sound tracks, material or positive prints are actually used by Licensee in connection with the exercise of rights granted hereunder, and all cue sheets, dialogue lists, advertising material and accessories and other documents and material delivered or prepared hereunder. Licensor, however, in its sole discretion, may require that the prints and other items referred to above in this paragraph or any of them be destroyed and in such event Licensee shall deliver to Licensor a duly authenticated certificate of destruction for each and every such item which Licensor requires to be destroyed. Except as approved by Licensor, provided under paragraph 2.2 above, Licensee agrees not to enter into any exhibition or sub-distribution agreements or contracts with respect to the Picture that extend beyond the Term.

**7.7 Credits:** Licensor shall provide Licensee with a schedule of screen and advertising credits for the Picture, Licensee shall adhere to such credit schedule on the main and/or end titles of the Picture and in all advertising and publicity with respect to the Picture. Should Licensor not provide such a credit schedule, then Licensee shall follow the billing and credits appearing in the prints (or pre-print material) delivered to Licensee hereunder on the screen and in any advertising or publicity with respect to the Picture, and the credits for the Picture appearing on the screen and in any such advertising or publicity shall be of the same relative size and prominence of type, and in the same position and order, as they appear in the prints (or pre-print material) and advertising material with respect to the Picture delivered to the Licensee hereunder. All claims, actions and causes of action arising as a result of failure of Licensor to deliver such a statement to Licensee or as a result of compliance with such statement by Licensee or as a result of any error in any such notice shall be deemed to be claims, actions and causes of action with respect to which Licensee is to be indemnified by Licensor. No casual or inadvertent failure by Licensee or any of its sub-distributors or licensees to comply with the statement of credits shall constitute a breach of this

agreement.

***Be sure to create a credit list with all the contractual obligations included in the order in which the credits appear on screen. It is also important to create a credit or billing block as the credits should appear on a poster or one sheet to ensure correctness. Distributors usually require a presentation credit which you would usually want to apply in its territory only unless it is providing a major portion of the production financing. Occasionally a distributor will seek individual credits for executives. This should be commensurate with what the distributor is providing.***

7.8 Use of Licensee's Name on the Picture: Licensee shall have the right but not the obligation to include on the main and end titles of the Picture and in all advertising and publicity material for the Picture, the words "Presented by" or "Distributed by" Licensee or its affiliate or use Licensee's logo.

7.9 Government Requirements: If Telefilm Canada ("Telefilm") has provided financial support to the Picture at any stage of its production or distribution, and Licensor so advises Licensee in writing and provides Licensee with a Canadian content number or qualification, then:

7.9(a) there shall be a theatrical release of the Picture in Canada within one year of Delivery (or if the Picture is seeking and will qualify for OFTTC and Licensor so advises Licensee in writing, then there shall be a release in Ontario within one year of Delivery) and unless otherwise agreed between the Licensee and Telefilm Canada, the Picture shall be released theatrically in at least three major centres in English and French Canada;

***This provision or one similar is a requirement for CTF funding and Telefilm funding. The release in a number of cities is usually a requirement of pay tv pre-sales. You will want to ensure that your distributor assumes the obligations of any licenses it is assuming.***

7.9(b) Licensee will not sub-distribute or assign rights in Canada to any non-Canadian-controlled entity;

7.9(c) Canada shall not be cross-collateralized with any other territories and shall be treated as a distinct territory as to revenues and expenses;

7.9(d) Licensee shall version the Picture in French, by dubbing or sub-titling if such dubbing or sub-titling has not been provided for in the Budget for the Picture.

***Telefilm requires that either versioning is provided in the budget or that the distributor undertakes to version the picture. Dubbing runs in the range of \$40,000+ so unless there are French language sales likely in Canada, a distributor will be hesitant to undertake it. There is no longer a versioning assistance program at Telefilm.***

7.9(e) Licensee and Licensor shall cooperate to provide Telefilm Canada with marketing plans in connection with its distribution policies.

***From a practical perspective, this is actually a lot harder to obtain from the distributor than it would seem. Telefilm requires a preliminary marketing plan as part of the application for equity financing and another on delivery of the picture. Telefilm also requires these documents be agreed to by the producer.***

7.9(f) In the event of a default by Licensee with Telefilm, the Telefilm portion of any payments payable by Licensee to Licensor may be made directly to Licensor by Telefilm; and

7.9(g) In the event of a disagreement or dispute arising between Licensor and Licensee hereunder, both agree to refer such matters for resolution to an independent and mutually agreed upon Arbitrator.

7.9(h) Any Distribution Expenses or Costs deducted pursuant to 10.4 shall be net of any non-recoupable contributions of government or sponsors.

7.9(i) Neither Licensor or any of its principals are in default with Telefilm Canada. This warranty and representation shall continue until 60 days following payment of the Advances.

***These are all requirements of Telefilm.***

## **8 CENSORSHIP**

8.1 Promptly upon the arrival and/or the manufacture of the first print or prints of the Picture in the Territory, Licensee shall apply for censorship licensing and approval thereof to all required and competent agencies and organizations in the Territory. If any such required licensing or approval shall be withheld or refused, Licensee shall immediately advise Licensor thereof and identify any scenes which are required to be deleted as a condition of securing censorship approval

and Licensee shall promptly make or cause to be made deletions in prints of and resubmit the Picture for censorship approval. To the maximum extent possible all such deletions shall be made by the Licensee or parties affiliated with the Licensee. Licensee shall use reasonable business efforts to secure censorship approval as regards the Picture, including applying for rehearings and appeals and undertaking other available remedies in the event of any refusal of or imposition of onerous deletion conditions to said approval or licensing. If the exhibition of the Picture in any significant portion of the Territory (and either of the provinces of Ontario or Quebec shall be deemed to be "a significant portion of the Territory") has been banned by a censorship authority, or prevailing legislation (whether or not deletions are made) then this Agreement shall, at Licensee's option, be terminated with respect to the Picture and Licensee shall promptly make disposition of prints and materials thereof in accordance with Licensor's instructions and at Licensor's expense and Licensee shall be entitled to be repaid the sums theretofore paid Licensor by Licensee in respect of such Picture together with Licensor's Distribution Expenses incurred.

## **9 ADVANCES**

9.1 Subject to Licensor substantially performing its obligations hereunder, Licensee agrees to pay an advance ("Advance") as provided in Schedule "A".

9.2 Subject to the provisions of the paragraph entitled "Government Requirements" (if applicable) the Advances shall be fully recoupable by Licensee out of Licensor's share of Gross Receipts on a cross-collateralized basis as provided under Section 10 below.

***Telefilm requires that Canada not be cross-collateralized as to revenues or expenses with any other territory. In other words, it will not allow the distributor to recover expenses incurred or advances paid for other territories from Canadian revenues and vice versa. A distributor will generally require all revenues and expenses to be cross-collateralized because it allows the distributor to spread its risk. With Telefilm's requirement that Canada be separate, a portion of the guarantee or advance is allocated to Canada and only Canadian revenues will be applied to repaying it. It may be possible to negotiate a separate allocation against another territory. This means if your picture does well in France and Germany but tanks in Canada, the distributor will only be able to recoup its guarantee and expenses for the foreign territories against those revenues so there may be a profit to you even if there are losses in Canada.***

## **10 LICENSOR'S SHARE OF RECEIPTS**

10.1 "Gross Receipts" means the aggregate of the following:

10.1(a) Theatrical Gross Receipts: All film rentals earned and received by Licensee on a percentage basis or from flat rentals from those exhibiting the Picture in the Territory theatrically herein after giving effect to any adjustments with exhibitors for rebates, credits, allowances, or refunds.

10.1(b) Television Gross Receipts: All monies earned and received by Licensee in connection with the exhibition of the Picture on television in the Territory excluding advances unless same are non-refundable or until earned, whether the exhibition fee is a fixed sum or otherwise. "Television" as used in this subparagraph shall mean free television, pay-per-view television, pay television, television syndication and any other form of television distribution.

10.1(c) Video Gross Receipts: Included in Gross Receipts is all monies received by Licensee from video sub-distributor excluding advances until earned or unless non-refundable, and taking into account any adjustments for discounts, credits, deductions or reserves for returns.

10.1(d) Miscellaneous Gross Receipts: All monies earned and received by Licensee from its sublicensees and other sources (except as otherwise provided for in sub-paragraphs 10.1(a), 10.1(b) and 10.1(c) above) in connection with the Picture in the Territory, whether a fixed sum or otherwise, (e.g. proceeds from trailers, proceeds derived from commercial tie-ups, and the net proceeds received by reason of the infringement or interference by third persons of or with the Picture or any part thereof, and proceeds of distribution of the Picture through substandard gauges) or any of the other rights herein granted to Licensee.

10.2 "Net Receipts" of the Picture means "Gross Receipts" less the amounts provided in 10.2(a), 10.2(b) and 10.2(c) below, deducted in the following order of priority:

10.2(a) Licensee's distribution fees as a percentage of Gross Receipts as set forth in Schedule "D".

10.2(b) Licensee's Distribution Expenses. All Distribution Expenses shall be cross-collateralized between all media and unless the provisions of 7.9(c) apply, all expenses shall be cross-collateralized between Canada



and other territories.

10.2(c) Any Advances actually paid under this Agreement.

***This is a pretty standard order of recoupment. The distributor takes its fees, then recoups its expenses, and then recoups its guarantee against the revenues from the territory. Anything left is the producer's. (For more detailed discussion, see section on Recoupment Schedules.)***

10.3 Net Receipts shall be paid to Licensor.

10.4 Distribution Expenses: "Distribution Expenses" shall include all third party, out-of-pocket costs and expenses incurred in connection with distribution, advertising, exploitation and turning to account of the Picture of whatever kind or nature, except as provided in 7.9(h), or which are customarily treated as distribution expenses in connection with accepted accounting procedures in the motion picture industry. Without limiting the generality of the foregoing, the following particular items shall be included in Distribution Expenses hereunder:

10.4(a) Release Prints, Etc.: The cost of release prints and parts or replacements thereof, dupe negatives, fine grains, interpositives, internegatives, sound, music or effects tracks, matrices, tapes in connection with the Picture and the television and the theatrical trailers thereof, and all costs in processing, inspecting, packing, storing and shipping and insuring said material throughout the Territory. Licensor agrees that the Licensee shall have the right to order as many prints of the Pictures for use in the Territory as Licensee deems commercially advisable.

10.4(b) Advertising and Exploitation: The cost of advertising, publicity and exploitation (including co-operative and theatre level advertising) including but not limited to: conception, preparation, supervision and execution of advertising plans and campaigns, sales promotion bonuses, theatrical and television trailers, recordings and radio transcriptions, trade advertising and advertising for regional, national and fan magazines and newspapers, pressbooks, all publicity, promotion and exploitation items, personal appearances by actors, directors, producer and other production and/or publicity personnel, artwork, posters, still photographs and other advertising material.

***Telefilm generally requires that the distribution agreement include a minimum commitment for prints and advertising expenditure to support the initial theatrical release. Most distributors are loathe to make such a commitment until they see how the picture has turned out.***

10.4(c) Government Levies: The costs of any import, duties, fees and licenses, and other similar requirements to secure the right to import and distribute the Picture in the Territory; tariff, customs and similar duties; withholding or remittance loss, sales taxes, however denominated, levied by any duly constituted taxing authority.

10.4(d) Censorship: The costs of securing or seeking censorship approvals.

10.4(e) Recutting: The costs of reassembling, modifying, and recutting the Picture for meeting censorship requirements or for any other purpose.

10.4(f) Checking: The costs of checking attendance and receipts at theatres where the Picture may be exhibited.

10.4(g) Other Language Versions: The costs of other language versions, whether dubbed and/or subtitled.

10.4(h) Other costs and Expenses: The costs of any of the following: search of copyright for title records, or of obtaining copyrights; changing the titles; music copyright and/or sound royalties; litigation, including reasonable attorneys' fees incurred in connection with defending Distributor's rights hereunder or prosecuting the infringement of same by third parties; duties or similar impositions relating to materials furnished by licensor to Licensee or relating to release prints or other physical materials of the Picture; the costs and expenses incurred in collecting Gross Receipts including reasonable attorney fees incurred by Licensee in connection with the Picture.

10.4(i) Interest On Advances: Amounts on account of the cost of interest on any and all moneys advanced (until the same is recouped) by Licensee hereunder (other than sums contributed through Distributor's line of credit with Telefilm Canada) at the prime rate charged, from time to time, by the Royal Bank of Canada, plus 1%.

10.4(j) Telephone and Postage: The costs of telephone, telex, telegraph,

telefax, courier and postage expenses incurred by Licensee, reasonably allocated by Licensee to the Picture.

10.4(k) Delivery Expenses: Expenses incurred by Licensee relating to Delivery.

10.4(l) Prior Consultation For Other Expenses: Licensee agrees to be available to consult with Licensor with respect to expenses that are not enumerated above.

***Nothing very unusual here. Telefilm usually requires interest to stop running on the date of delivery of the picture which has no relationship to when the distributor will recover its advance. You can try to negotiate a limit on the interest period with the distributor. Sometimes there is a limit on the advertising expenses as well since this is easily the biggest ticket item. It is not necessarily in the producer's interest to limit this since you will want all the promotion and advertising you can get for your picture.***

## **11 ACCOUNTING, AUDITING AND SETTLEMENT**

11.1 Books and Records: Licensee shall maintain in its office, at its address set forth above, books of account and records of the distribution of the Picture, together with copies of all agreements and contracts relating thereto, all of which shall be available upon five (5) business days prior written notice to Licensee, at reasonable times during business hours to a duly authorized representative of Licensor who may examine the same and make copies of or take excerpts from such books, agreements, and contracts and request explanation thereof from executives of Licensee familiar therewith all at the expense of the Licensor. The Licensor agrees during such inspection not to unduly disrupt or interfere with the business of the Licensee.

11.2 Statements and Payments: Licensee shall deliver to Licensor, at Licensor's address above set forth, a written statement in respect of Gross Receipts for such period to which the statement pertains. Each such statement shall show reasonable details relating to the period to which it pertains, including, among other things, Gross Receipts and the sources thereof, description and breakdown or deductions therefrom, and moneys thereof to be paid to Licensor, together with any overall accumulation including all prior statements delivered to Licensor hereunder. Licensee shall accompany each such statement with a remittance to Licensor or its designees of such sums as may be due to Licensor under the terms of this Agreement. Licensee may make reasonable reserve provisions

relating to returns. During the first six (6) months following release of the Picture in the Territory, the Licensee shall account to Licensor not later than the thirtieth (30th) day after the end of each month. During the next consecutive eighteen (18) months, the Licensee shall account to the Licensor within thirty (30) days of the end of each quarter. Thereafter the Licensee shall account to the Licensor within sixty (60) days after the end of June and December in each year during the Term.

***Reporting is important. The vast majority of the revenue from a picture is received in the first few years of exploitation. If in fact the picture is to be theatrically released, monthly statements make sense although most Canadian pictures have a very short release period. Telefilm generally requires quarterly reporting for the first two years. Frequently distributors will not report unless there is income. You are obliged to report to your investors and possibly to profit participants, so you want to have the best reporting and audit provisions you can obtain.***

11.3 Payments To Third Parties: Upon the written request of Licensor, Licensee shall make any payment to which Licensor is entitled, for the account of Licensor to any other persons, firms or corporations designated by Licensor. Upon the making of any such payment by Licensee to any such designees, Licensee shall have fully complied with all of its obligations hereunder, with respect to the making of such payment to the Licensor.

11.4 Withholding Taxes: Any payments hereunder, whether it may be the Licensee's share of Net Receipts, Advances or otherwise, shall be subject to any and all applicable taxes, such as, but not limited to, withholding tax requirements.

***You should be aware that most countries impose withholding taxes (ranging from 10% and up) on remittances leaving the country (see Financing section). With the US, there is no withholding on video royalties or advances but they have to be segregated. Some distributors have set up companies in countries outside Canada to reduce withholding taxes. Taxes are set off against income from that country but a company would have to file tax returns there to be able to claim it which is pretty unusual. This will otherwise just become an expense.***

11.5 Blocked Funds: In the event remittance of Gross Receipts is prevented by currency exchange controls or any other government action, Licensee will make its best business efforts to transfer Licensor's entitlement hereunder to a bank account in Licensor's name in the territory from which remittance of Licensor's share of Gross Receipts is prevented.

## 12 **TERMINATION:**

12.1 The following shall constitute an "event of default":

- (a) If Licensee fails to make payment of any part of the Advance within 30 days after receiving notice of such failure; or if Licensee becomes insolvent; or
- (b) if a petition under any bankruptcy act is filed by or against Licensee (which petition if filed against Licensee is not dismissed within ninety (90) days thereafter) or if Licensee executes an assignment for the benefit of its creditors; or if a receiver, trustee, liquidator, custodian or other officer is appointed for all or a substantial part of the assets of Licensee; or if Licensee abandons the business of distribution of motion pictures; or if Licensee petitions for or consents to any relief under any applicable insolvency or moratorium statute or other like statute.

12.2 Licensor may, by giving written notice of any event of default to Licensee at any time after the occurrence of such event of default (providing that the same is not cured after notice is provided as provided for above) elect to terminate this agreement, provided that any termination shall be without prejudice to Licensor's rights to retain all sums received by it hereunder or to recover damages or exercise any other right in the event of Licensee so breaching this Agreement. Licensor shall not be entitled to terminate this Agreement for any reason other than as aforesaid.

12.3 Upon termination of this Agreement pursuant to clauses 12.1 (a) or (b) above, the Licensor may take over from the Licensee the management and administration of any sub-license or other agreement in relation to the Film entered into by the Licensee prior to the date of termination and may collect and retain for Licensor's own account (subject to 12.5) all monies due or to become due to the Licensee under any such sub-license or agreement. In the event that the Licensor elects to take over the management and administration of any sub-license or agreement such sub-license and agreement and all moneys payable thereunder shall automatically and is hereby assigned to Licensor and in such event Licensee shall execute acknowledge and deliver to the Licensor any and all further assignments and instruments deemed by the Licensor necessary or desirable to evidence or effect such assignment.

12.4 In the event of termination of this Agreement for whatsoever reason, the Licensor will in the exercise of its rights pursuant to 12.3 hereof, honour all

agreements and other commitments which are a proper exercise of the license hereunder and which have been entered into by the Licensee provided that there is no breach of such agreements and that all payments properly due to the Licensor are duly and promptly made to the Licensor.

12.5 Upon termination the Licensee shall remain entitled to receive its share of Gross Receipts and/or Distribution Fees payable up until and including the date of termination but the Licensee shall not be entitled to receive its share of Gross Receipts and/or Distribution Fees otherwise payable thereafter except to the extent that the Licensee remains unrecouped in respect of any Advance or Guarantee or Licensee's Expenses paid all of which the Licensee may continue to recoup until they are fully set-off.

12.6 The Licensor shall upon termination be entitled to the return of all Delivery Items delivered to the Licensee (which Delivery Items shall be in as good condition as when delivered, subject to usual wear and tear).

***Most distributors will not allow termination by producer once the advance is paid. A distributor cannot afford to have any rights it has granted to others terminated or no one would make deals with them. The whole area of bankruptcy is a difficult one and it may be impossible to extract your picture from a distributor that has gone bankrupt. Review termination provisions with your legal counsel.***

### **13 GENERAL PROVISIONS**

13.1 No waiver by either party hereto of any breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same provision or any breach of any other provision of this Agreement, and no waiver shall be effective unless made in writing and then only to the extent specifically set forth. The exercise of any right granted to either party hereunder shall not operate as a waiver of any default or breach on the part of the other party hereto. Each and all of the several rights and remedies of the parties hereunder shall be construed as cumulative and no one of them as exclusive of the others or of any right or priority allowed by law.

13.2 Nothing contained in this Agreement shall constitute either party the agent of the other. Neither party will hold itself out contrary to the terms of this paragraph and neither party shall become liable by any representation, act or omission of the other contrary to the provisions hereof. Except as specifically set forth herein this Agreement is not for the benefit of any third party and shall not be deemed to give any right or remedy to any such party, whether referred to herein

or not.

13.3 Nothing contained in this Agreement shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision of this Agreement and any material statute, law or ordinance, contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the provision of this Agreement affected shall be curtailed and limited only to the extent necessary to bring it within the legal requirements. Paragraph headings and any underlining in this Agreement are inserted solely for convenience and are not relevant in interpreting or construing this Agreement.

13.4 This Agreement has been entered into in and shall be interpreted and construed under and pursuant to the laws of the Province of Ontario, and the parties hereto irrevocably attorn to the exclusive jurisdiction of the courts of said jurisdiction. All monetary references are to Canadian dollars unless specifically stated otherwise.

13.5 Any controversy or claim arising out of or relating to this Agreement, or the performance or breach thereof, may be settled by arbitration in the Province of Ontario, in accordance with the rules of the Arbitrations Act, and judgement upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

***This may be a more economical and expeditious route to proceed than court.***

13.6 This Agreement (including this paragraph) may not be altered, changed, waived or modified except by written instrument duly executed by both Licensor and Licensee, and this provision may not be waived except by written instrument duly executed by both Licensor and Licensee. This Agreement is complete and embraces the entire understanding between the parties with respect to the Picture, all prior understandings, whether oral or written, having been merged herein. No representations or warranties of any kind or nature have been made by either of the parties to the other to induce the making of this Agreement, except as in this Agreement specifically set forth and each of the parties hereto agrees not to assert to the contrary.

13.7 All notices or other documents which may be required to be given or delivered hereunder by either party to the other shall be sufficiently given if delivered personally or sent by telex, telegraph or telefax or registered post addressed to the other at such address as the other may hereafter notify as its address for such service or if none, to the address at the head of this Agreement.

Any notice posted shall be deemed to have been received five (5) days (excluding Sunday) after the time of posting or at the time of actual receipt if earlier. Any notice sent by telex, telegraph or telefax shall be deemed to have been received upon receipt of an intelligible answerback.

13.8 Failure by either party to perform its obligations or delay in such performance as a result of an Act of God, war, strikes, lock-outs, shortened working hours, other industrial action, machine breakdown, fire, flood, explosion, injunctions, judgments, adverse claims or any other cause beyond its reasonable control shall not constitute a breach of the terms of this Agreement provided that such party shall use all reasonable endeavours to resume the performance of its obligations hereunder as soon as practicable after the conditions (as aforesaid) causing such failure have ceased.

13.9 Licensor agrees to duly execute, acknowledge and deliver, or procure the due execution, acknowledgement and delivery to the Licensee of any and all further instruments, in form approved by Licensee's legal counsel, that may be necessary or expedient to carry out and effectuate the purposes and intent to this Agreement in all countries throughout the Territory, and to convey to the Licensee all rights herein granted to, during the subsistence of this Agreement. In the case of the failure or refusal of the Licensor to so execute and deliver or cause to be so executed and delivered any instrument herein contemplated, then the Licensee shall be deemed to be, and the Licensor hereby nominates, constitutes and appoints the Licensee, the true and lawful attorney-in-fact of the Licensor, irrevocably, to execute and deliver all such instruments in the name of Licensee, or otherwise.

## 14 **SCHEDULES**

The contents of the Schedules attached to this Agreement form part of this Agreement as though fully set out herein.

### **SCHEDULE "A" – THE PICTURE**

#### 1. **PICTURE**

TITLE:

EXECUTIVE PRODUCER(S):



PRODUCER:

WRITER:

DIRECTOR:

STARS:

RUNNING TIME:

The following conditions exist in favour of the Licensee, and each may be waived by it in its sole discretion:

- a. The amount spent in direct production costs for the Picture shall not be less than \$\_\_\_\_\_;
  - b. Licensee shall have approved, in writing, the final script, production budget, principal performers and key production personnel (such approvals not to be unreasonably delayed or withheld);
  - c. The Picture shall:
    - i. be certified by the Canadian Audio-Visual Certification Office (“CAVCO”) as a “Certified Canadian Production” and will have at least 6 out of 10 points;
    - ii. comply with the requirements of the Ontario Film Review Board at the time of Delivery; and
    - iii. comply with United States and Canadian network television censorship requirements at the time of Delivery.
2. **TERM:** expires on the \_\_\_ anniversary of Delivery of the Picture.
3. **TERRITORY:** \_\_\_\_\_, including ships and airplanes flying flags of the countries of the Territory or served therefrom, military installations in and out of the countries of the Territory.
4. **DELIVERY:** Complete Delivery of the Picture pursuant to the provisions of

Section 4 shall be no earlier than \_\_\_\_\_ and no later than \_\_\_\_\_.

5. **ADVANCES:**

For the territory of \_\_\_\_\_: \$\_\_\_\_\_.

Payable:

- (i) \$\_\_\_\_\_, upon first day of principal photography;
- (ii) \$\_\_\_\_\_, upon last day of principal photography;
- (iii) \$\_\_\_\_\_, upon complete Delivery.

6. **EXCLUDED (IF ANY):**

7. **HOLDBACKS (IF ANY):**

8. **TERMINATION:** If Licensor does not have commitments for all production financing on or before \_\_\_\_\_ or has not commenced principal photography on or before \_\_\_\_\_, Licensee shall be entitled to terminate this agreement upon 5 business days notice. Upon such termination, any monies advanced by Licensee shall until termination be immediately repayable by Licensor.

## SAMPLE THEATRICAL DELIVERY LIST

*This is a sample delivery list for a feature film. Very few producers pay any attention to this until they have to try and comply with the list at the time of delivery. Feature film deliveries are vastly more complex and expensive than television deliveries. You will need to become familiar with the materials and requirements, and ensure you have budgeted for proper delivery or you will not get the payments that are conditional on making complete delivery. A number of items on delivery lists are negotiable depending on what rights are being granted and what the distributor expects to do with your film. Certain completion guarantors will only guarantee delivery of physical materials, not paperwork, other than music cue sheets. The completion guarantor should review your delivery schedules. The guarantor is familiar with delivery items and can be of assistance in your negotiations with the distributor. There are a number of business practices that impact on delivery. For instance, most foreign buyers (excluding the US) expect to pay for materials. The US almost always demands the producer pay for the cost of materials and they are the most demanding on paperwork. Certain companies or countries have extremely demanding technical standards and you may find yourself trying to correct technical problems or meet certain standards you have not budgeted for which becomes very costly. Telefilm requires that all delivery items specified in existing distribution, broadcast or other agreements must be fully budgeted.*

## SCHEDULE "B" - DELIVERY ITEMS

### 1 FILM AND VIDEO ELEMENTS

The Picture materials shall be fully cut, titled and assembled, with the soundtrack printed thereon in perfect synchronization throughout with the photographic action. Neither the negative nor the print shall contain any physical damage, including, but not limited to, spots, scratches, abrasions, dirt, cracks or tears. The quality of the picture image and soundtrack shall be first class.

- |                       |     |                                                                                                                                                                                                                                                                                                                                           |
|-----------------------|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b><u>Picture</u></b> | 1.1 | <u>Laboratory Access</u> - to (1) wholly original picture negative, cut, titled and assembled and conformed in all aspects to the answer print. As well as all pre-print and protection materials, including foreign language overlay titles and intermediate negatives, related to the Picture being held by the laboratory or facility. |
|                       | 1.2 | <u>Laboratory Access</u> - to the original negative of all cutouts,                                                                                                                                                                                                                                                                       |

deletions, trims, unprinted "B" negative, and all other material photographed in connection with the production of the Picture.

***You may want to limit any access to this material to a few years at most since you will be bearing the storage costs of this bulky and largely unused material.***

- 1.3 Laboratory Access - to one (1) 35mm interpositive and one (1) 35mm internegative of the textless backgrounds to the main, credit, insert, and end titles of the Program and of any scenes with superimposed titles. All titles to be cut and conformed to the final cut negative.
- 1.4 Laboratory Access - to all production dialogue, music and effects soundtracks used in the dubbing of the soundtrack negatives, cut, assembled and conformed in all respects to the composite positive print and in perfect synchronization with the original picture negative, together with the dubbing cue sheets relating thereto.
- 1.5 Laboratory Access - to all original 1/4" (quarter inch) magnetic tapes of the synchronous and non-synchronous production sound recorded on the set of the Picture.
- 1.6 Physical Delivery - Release Print (if theatrical rights are obtained) of one (1) complete, first class 35mm colour composite release print of quality meeting commercially acceptable standards, fully titled and assembled, created from the original fully cut negative and fully mixed with the sound track negative in perfect synchronization.
- 1.7 Laboratory Access - to one (1) 35mm interpositive made from the original picture negative referred to in 1.1, properly balanced.

***Some distributors may require the interpositive or the internegative (below) on loan, depending on their plans for theatrical release. You will want to have back up for any materials on loan.***

- 1.8 Laboratory Access - to one (1) 35mm internegative made from the interpositive referred to in 1.7 above, properly balanced.
- 1.9 Physical Delivery, where the rights granted under the Agreement extend to the Province of Quebec, and if available, a French-language dubbed or subtitled version of the print referred to in

***You will want the distributor to agree to prepare a french language version or if there is a pre-sale to France, you might seek free or inexpensive access to such version. This is an expensive item.***

***Laboratory access to materials will generally be cheaper since it only requires one set of materials be retained at the lab. However, frequently you may have to deliver or loan an interneg to an American or foreign buyer if a real theatrical release is contemplated. Each item such as an interneg or an interpos runs about \$10,000+.***

The following is another delivery schedule for film elements by way of contrast:

1. **Original Negative Feature.** Access to wholly Original Eastman Kodak 35mm Feature Negative, fully cut with main and end titles, edited, scored and assembled and in synchronization with Optical Sound Track Negative. The Original Negative shall not contain any physical damage, and shall be of technically first-class quality, and all splices in the Negative shall be sound and secure and transparent when viewed by transmitted light. Prior approval from Distributor must be received in writing, for features filmed in the Super 35mm or 16mm format.

***Note here that the type of film is specified. This happens once in a while and if you are using Fuji or Agfa you would necessarily want to delete or substitute the appropriate stock. Formats other than 35mm are still the exception and this must be clarified and agreed to up front.***

2. **Answer Print of Feature.** Delivery of 1 (one) x technically first-class quality 35mm composite Dolby SR / SRD (and DTS, SDDS if applicable) (Mute Answer Print for Super 35mm) positive print, fully cut, main and end titled, edited, scored and assembled with soundtrack printed thereon in perfect synchronization throughout the Film, with the photographic action thereof and fit and ready for exhibition. The Answer Print shall be of technically first class quality and contain no splices. It must also have been fully approved, with regard to timings/grading and overall quality by the Director and Producer of the Film.

***Note that non-Dolby is not even contemplated for the answer print. The Dolby license is a significant budget item, and may depend on the type of release planned and where it is purchased. When licensing in North America you are usually dealing with Dolby in New York.***

3. **Interpositive Feature.** Delivery of 1 (one) x 35mm Feature Interpositive, to be produced from the Original Negative of Feature, fully cut with main and end titles, edited, scored and assembled and in synchronization in all respects with the

composite Answer Print, Original Negative of Feature and Optical Sound Track Negative of Feature. The Interpositive shall be of technically first class quality and contain no splices.

***Ideally, you do not want to deliver an interpositive to anyone, just keep it at the lab and provide access.***

4. **Internegative Feature.** Delivery of 2 (two) x 35mm Internegatives of Feature. To be produced from the Interpositive of Feature, fully cut with main and end titles, edited, scored and assembled and in synchronization in all respects with the composite Answer Print, Original Negative of Feature and Optical Sound Track Negative Feature. The Internegatives shall be of technically first class quality and contain no splices.

***If you have multiple buyers and a reasonable likelihood of theatrical distribution you will likely have to provide for 2 interpositives. A number of buyers will insist on taking the internegative on loan in which case you will always have to leave one at the lab.***

5. **Check Print of Feature.** Delivery of one (1) x 35mm composite Dolby SR/SRD (and DTS, SDDS if applicable) technically first-class quality Check Print of Feature, fully cut, main and end titled, edited, scored and assembled with soundtrack printed thereon in perfect synchronization throughout the Film with the photographic action thereof and fit and ready for exhibition. The Answer Print shall be of technically first class quality and contain no splices. The Check Prints are to be made from each of the contractual delivery Internegatives and corresponding Optical Sound Track Negatives.
6. **Textless Backgrounds of Feature - Original Negative.** Access to the Original Film Negative of Backgrounds of the entire main credit, insert and end titles of the Film, and of any photographic overlay titles thereof. The Original Film Negative of the Backgrounds shall be supplied in the correct order as a separate reel of Film Negative. If the Original Negative has been used within the cut negative, an optically produced internegative of this scene or scenes should be made and inserted in this reel in its place. The spacing between each section of negative is to be clearly marked as to which reel, title, or insert title the material corresponds to.
7. **Textless Backgrounds of Feature - Interpositive.** Delivery of 2 (two) x 35mm Interpositives of Backgrounds of the entire main credit, insert and end titles of the Film, and of any photographic overlay titles thereof. The spacing between each section of Interpositive is to be clearly marked as to which reel, title, or insert title the material corresponds to.



-a head slate and exterior label identifying the production company, the name of the production, the track assignments, the length, the date of creation and any other relevant information relating to the identification of the finished product.

Track Assignments: Stereo Left and Right (Full Mix) on Channels 1&2 and Stereo Music and Effects (M&E) on Channels 3&4.

This must be a full frame (i.e. Non-letterboxed) new, first generation version.

2.2 Laboratory Access - Dolby or Ultra Stereo Soundtrack

(a) One (1) 35mm four (4)-track magnetic master of the final stereo dub;

Physical Delivery - Stereo M&E Track

(b) One (1) 35mm four track magnetic master, stereo M&E track, with the effects in this dub fully filled and mixed in the same manner as the 4-track magnetic master; and

(c) A copy of an executed license agreement between Producer and Dolby Laboratories Inc., or Ultra Stereo Labs Inc., as applicable in connection with the Picture.

2.3 Physical Delivery of one (1) NTSC Digital Betacam or one (1) NTSC D2 Master, colour corrected videotape transfer of the Television version of the Picture, with a list of changes from the original theatrical feature, ideally 96 minutes in length, with requirements as follows:

-at least 1 minute of colour bars and tone at the head

-a head slate and exterior label identifying the production company, the name of the production, the track assignments, the length, the date of creation and any other relevant information relating to the identification of the finished product.

Track Assignments: Stereo Left and Right (Full Mix) on Channels 1&2 and Stereo Music and Effects (M&E) on Channels 3&4.

This must be a full frame (i.e. Non-letterboxed) new, first generation version.

\* Delivery to follow within 90 days of delivery of other items.

***Depending on the content of your picture (sex, nudity, language) you may have to prepare a television version. You must plan for this ahead of time to ensure you have cover shots and/or ADR that allows for the creation of a television version. This must also be budgeted.***

2.4 Physical Delivery of one (1) NTSC 1/2" VHS cassette copy of the Picture made from the Video Master referred to in (1.1) with Track



1 and 2 fully mixed audio and address track time code.

**Trailer**      2.5      Laboratory Access - to one (1) 35mm release print of the theatrical trailer, if available.

***Your distributor might agree to cut its own trailer. If so, you may want to be involved in the process.***

2.6      Physical Delivery of one (1) NTSC Digital Betacam or one (1) NTSC D2 Master video transfer of the trailer which adheres to industry standards of technical specifications including:  
 - at least 1 minute of colour bars and tone at the head;  
 - a head slate and label identifying the production company, the name of the production, the length, the frame code mode, the date of creation and any other relevant information relating to the identification of the finished product;  
 Track Assignments: Stereo Left and Right (Full Mix) on Channels 1&2 and Stereo Music and Effects (M&E) on Channels 3&4.  
 This must be a full frame (i.e. Non-letterboxed) new, first generation version.

2.7      Laboratory Access - of one (1) 35mm internegative and soundtrack negative of the trailer if available.

2.8      Physical Delivery - of one (1) 35mm music and effects track of the trailer.

**Other**      2.9      Physical Delivery - of one (1) first class 35mm composite positive print of each dubbed or subtitled version of the Picture.

2.10      Physical Delivery - of one (1) NTSC D2 Master video transfer of each dubbed or subtitled version of the Picture, if available, which adheres to industry standards of technical specifications including:  
 -at least 1 minute of colour bars and tone at the head;  
 -a head slate and exterior label identifying the production company, the name of the production, the track assignments, the length, the date of creation and any other relevant information relating to the identification of the finished product;  
 Track Assignments: Stereo Left and Right (Full Mix) on Channels 1&2 and Stereo Music and Effects (M&E) on Channels 3&4.  
 \*This must be a full frame (i.e. Non-letterboxed) new, first generation version.

2.11      Physical Delivery - of one (1) NTSC Digital Betacam or NTSC D2

Master video transfer of each dubbed or subtitled TV version of the Picture, if applicable.

Track Assignments: Stereo Left and Right (Full Mix) on Channels 1&2 and Stereo Music and Effects (M&E) on Channels 3&4.

\*This must be a full frame (i.e. Non-letterboxed) new, first generation version.

***You would probably want to negotiate out of these last requirements.***

An alternative and more extensive list of sound and video materials follows:

**SOUND – Feature *This has been edited by removal of most of the specs.***

1. **Magneto Optical Disc feature.** Delivery of 1 (one) x Magneto Optical Disc of Feature Soundtrack containing the 6 (six) track SRD and 2 (two) track SR mix.
2. **DTS Copy of Master CD-ROM.** Delivery (If applicable) of 1 (one) copy of Master DTS CD-ROM
3. **Optical Sound Track Negative of Feature.** Delivery of 2 (two) x Dolby SRD/Dolby SR (SDDS/DTS if applicable) 35mm Optical Sound Track Negatives of Feature.
4. **Printmaster Feature 35mm.** Delivery of 1 (one) x 35mm, 24 fps Magnetic Dolby SR N/R encoded six track (AKA 5.1) original language fully mixed digital version of sound track of feature.
5. **Printmaster Feature DA88.** Delivery of 1 (one) x DA88 Film Speed @ 24 fps Timecode @ 25fps. Sample Rate: 48 kHz Dolby SR N/R encoded six track (AKA 5.1) plus 2 track SVA mix original language fully mixed digital version of sound track of Feature.
6. **Music and Effects Feature (Digital Six Track) 35mm.** Delivery of 1 (one) x 35mm 24 fps Magnetic Dolby SR N/R encoded six track (AKA 5.1) 100% Fully Filled International Music and Effects Track of Feature.
7. **Music and Effects Feature (Digital) DA88.** Delivery of 2 (two) x DA88 Film Speed @ 24 fps, Timecode @ 25fps. Sample Rate: 48 kHz Dolby SR N/R encoded six track (AKA 5.1) plus 2 track SVA mix of 100% Fully Filled International Music and Effects Track of Feature.
8. **Music and Effects Feature (4+2) 35mm.** Delivery of 1 (one) x 35mm 24 fps Magnetic Dolby SR N/R encoded 4+2, (in 6 x track format) 100% Fully Filled International Music and Effects Track of Feature.
9. **Music and Effects Feature (4+2) DA88.** Delivery of 1 (one) x DA88 Film Speed @ 24 fps, Timecode @ 25fps. Sample Rate: 48 kHz Dolby SR N/R encoded 4+2, 100% Fully Filled International Music and Effects Track of Feature.
10. **DME Feature (3 track) 35mm.** Delivery of 1 (one) x 35mm 24 fps Magnetic Dolby SR N/R encoded 3 x track DME of Feature.
11. **DME Feature (3 track) DA88.** Delivery of 1 (one) x DA88 Film Speed @ 24 fps Timecode @ 25fps. Sample Rate: 48 kHz Dolby SR N/R encoded 3 x track DME

- of Feature.
12. **Cram Master Feature DA88.** Delivery of 1 (one) x DA88 Film Speed @ 24 fps, Timecode @ 25fps. Sample Rate: 48 kHz Dolby SR N/R encoded Cram Master of Feature.
  13. **Music Elements.** Delivery of 1 (one) DAT of all music (both score and songs, including third party) recorded for the Film, suitable for reproducing technically first-class stereophonic phonograph records, tapes or other recordings therefrom, plus all tracking masters and all mix masters. These shall be of entire songs/pieces.
  14. **Feature Audio Stems.** Access to all original production dialogue, music and effects soundtracks, predubs/stems and digital multiple magnetic tracks, that were used in the dubbing of the Soundtrack Negatives: being cut, assembled and conformed in all respects to the composite sample positive print and likewise in perfect synchronisation with the wholly Original Film Negative, together with dubbing cue sheets relating thereto.

### **VIDEO MASTERS - Feature**

Delivery of 1 (one) x Digital Beta master, direct telecine master of Feature with continuous Timecode and ononetape two part masters will not be accepted, in each of the following format/ratios. All of the following video transfers are to be produced directly from the Feature Interpositive and appropriate master Digital sound elements.

- PAL Full Frame
- PAL Letterbox
- PAL 16/9 Original Projection aspect ratio
- PAL 16/9 Full Height Anamorphic
- PAL Full Frame TV/Airline Version
- NTSC Full Frame
- NTSC Letterbox
- NTSC 16/9 Original Projection aspect ratio
- NTSC 16/9 Full Height Anamorphic
- NTSC Full Frame TV/Airline Version

Each tape must have passed a 100% full quality control check before final delivery. A copy of the QC report must accompany all tapes on delivery. The Quality of the grading, pan and scan, framing, etc. must be approved by the Director / Director of Photography / Producer before delivery.

All audio channels must be checked before delivery with a 100% quality control report. A copy of the audio QC report must accompany all tapes on delivery.

5.1 DA88 Delivery.

Conformed DA88 masters with matching timecode to the 1 (one) part 16: 9 Original aspect ratio PAL and NTSC Digital Beta masters need to be delivered to the following specification for both the 5.1 Full Audio Mix and the M & E

DA88 PAL Specification: -

DA88 NTSC Specification: -

***As you can see from the preceding list of sound and video elements, this is for***

***an international delivery and provides every element the distributor might need. With the greater variety of means of delivery, distributors are requiring a greater variety of versions and you will need to review this list in detail with an experienced post production person and seek to reduce the number of elements since each represents additional costs. You may be able to negotiate for the Distributor to pick up the cost of some of these items as recoupable distribution costs.***

### **3 DOCUMENTATION**

- 3.1 Access letters in substantially the form set out in Schedule "C" signed by Licensor and by the laboratories holding any or all of the materials identified as "Access to" in Paragraph 1 and 2 above.

***Access letters must be executed and delivered once the materials are on deposit with the lab. Usually you will require a list of materials held at the lab, to be attached to the letter. This letter should be executed in triplicate with one original going to each of the producer, the distributor and the lab. You will need an access letter with each lab or facility where materials are located so that the distributor will have access. If your outtakes are in storage, you will also want an access letter for them.***

- 3.2 One (1) typewritten copy of a detailed combined dialogue and action continuity and spotting list for each version of the completed Picture and trailer, conforming in all respects to and with the action and dialogue contained in each such version, in a form and condition suitable for use in dubbing, subtitling and submission to censorship authorities in the Territory.

***A lot of producers forget about this item. You need to plan ahead of time since it may take several weeks to have it done. It is required for producing foreign language versions or may also be required if a buyer is cutting a trailer or promo.***

- 3.3 (a) Clearly legible photostatic copies of the U.S. (and, where applicable, Canadian) copyright registration certificate(s) for the Picture. If registration has not been completed at time of Delivery, the application for registration and a receipt therefore with final registration to follow as soon as possible.

***US copyright registration takes about 8 months, so you will only want to deliver the application and the receipt, if available. If you are selling into the US, you will want US copyright registration (which is still approximately US \$20). Many foreign buyers require the copyright certificate as well. Canadian copyright is not***

***always registered.***

- (b) A schedule, certified correct by an officer of Licensor, showing the date of original copyright of the Picture, the exact copyright notice which appears on the Picture.
- (c) Clearly legible photostatic copies of all chain-of-title documents evidencing Licensor's proper ownership and permitting the use of any and all literary dramatic, musical and other material used in the production of the Picture or upon which the Picture and/or screenplay may be based, including but not limited to certificates of authorship; contracts, assignments, and agreements in connection with the acquisition of the necessary rights in and to such material and the exercise of all options related thereto; and to the distribution rights in and to the Picture.

***This is often required before any payments are made and may be delivered at the time of contracting. Where there is an inter-party agreement (an agreement between the production banker, the bonder and a substantial pre-buyer or distributor), it will require that the buyer/distributor sign off or accept as many conditions precedent to their obligations, usually including the chain of title.***

- 3.4 One (1) typewritten, English language music cue sheet in standard form showing particulars of all music synchronized with the Picture (all versions) and trailer including composer, publisher and their respective affiliations with a composers' or publishers' society.

***A music cue sheet is required for every buyer worldwide. It governs the payment of music performance royalties and especially if you own music publishing, you will want to ensure this is prepared and delivered.***

- 3.5 A true copy of a CRTC or CAVCO certificate with a Canadian content number, if applicable. A provisional certificate to be provided at time of delivery with a final certificate to follow within 90 days.
- 3.6 Evidence in form satisfactory to Licensee's legal counsel of a valid and subsisting errors and omissions insurance policy including title coverage with limits of at least One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the aggregate. Licensor shall:
  - a) keep such policy in effect for at least three (3) years from the date of the Delivery of the Picture to Licensee;

- b) cause Licensee to be added to such policy as an additional insured, also naming as additional insured as follows:  
Distributor, their respective subsidiaries, related companies, affiliates, licensees, and the agents, employees, officers and directors of each;
- c) cause the insurance carrier to give written notice to Licensee at least thirty (30) days prior to any suspension or termination of such policy or increase in any deductible or decrease in the amount of coverage; and
- d) deliver a copy of said policy and certificate of additional insured to Licensee.

***Generally, the insurers will recommend this be in place no later than commencement of principal photography although it is a good idea to have it as soon as there is any public activity on the project because that is when you would start hearing of any claims. Usually the distributor will want at least 3 years from the date of delivery which would mean the total term is more than what was budgeted. Many larger distributors have a form of blanket e & o insurance which allows them to add titles after the expiry of the producer's original e & o policy. If this is the case with your distributor, you will likely find a better reception in limiting the term of the original policy to 3 years from commencement of production. The cost of renewing an individual policy is steep.***

- 3.7 A statement of any restrictions as to the dubbing of the voice of any player, including dubbing dialogue in a language other than the language in which the Picture was recorded. This is not binding on Licensee unless such restrictions are set out in writing.

***You will want to avoid having restrictions in performer agreements. You may need to negotiate the right to dub a performer's voice in case someone is unavailable or incomprehensible or if you just hate the voice.***

- 3.8 A statement of any photo or other approval requirements of any key personnel with a statement of the Producer that such approvals have been obtained.

***This is essential. Your production personnel (or business affairs people) should be aware of these approvals when negotiating agreements. Photo approvals restrict your freedom in creating artwork for the film and are generally a pain. Try to ensure that a star must approve no less than 50% of photos and 75% of group shots and try to obtain approvals during production.***

- 3.9 A complete statement of all screen and advertising credit obligations, together with photostatic copies of excerpts from all

agreements defining and describing both the form and nature of the required credits and such obligations, restrictions and approval rights attached thereto.

***This is easily one of the most troublesome areas. When you have name stars with complicated credit obligations there is always something that will cause you grief. You will want the credit list commenced by the production coordinator before they leave the job. Someone always gets omitted or misspelled and corrections really cost a fortune. Have as many people as possible review the credits for accuracy. There is a proper way to present credit obligations and that is, in the correct order as they are to appear on screen or in paid ads (there should be two separate obligation lists) with the appropriate contractual excerpt following their name.***

- 3.10 Clearly legible photostatic copies of the fully-executed composers agreement(s) (if any) and valid music licenses for the performance and synchronization with the Picture (all versions) and trailer(s) of all compositions and recordings contained in the soundtrack(s) thereof.

***Music licenses take five times longer than you think they will. Start this process early, during pre-production or before.***

- 3.11 Clearly legible photostatic copies of all agreements or other documents relating to the engagement of all key personnel and principal cast in connection with the Picture including those for individual producer(s), the director, all artists, music composer(s) and conductor(s), if requested by Licensee.

***Many US licensees will require delivery of absolutely everyone's agreement. Be prepared.***

- 3.12 If the Territory includes the United States, a copy of an MPAA rating certificate.

***Be aware that the MPAA rating is required by many licensees and costs several thousand dollars. You must apply for a rating while you are in production to have any hope of getting one by delivery. This is an item you should discuss with the distributor. Most producers cannot afford it.***

## **4 PUBLICITY AND ADVERTISING MATERIALS**

- 4.1 Copies of all available print media reviews, and all pressbooks (other than the pressbook referred to below), stories and other promotional material prepared for the Picture.
- 4.2 Information to assist Licensee in scheduling of publicity tours and interviews for director and leading actors.
- 4.3 (a) Black and white photostat (or artwork) of title treatment.  
(b) Black and white photostat (or artwork) of any and all logos.
- 4.4 Negative (or transparencies) and a number of positive prints of all still photographs taken in connection with the Picture, including but not necessarily limited to:

***Having a stills photographer is not an item to forget. This is how all the promotional materials for your film will be created and it is the producer's responsibility. There are US or foreign agreements requiring 200 or even 300 stills and slides for delivery (and don't forget, often many are subject to approval of your stars).***

- (a) Not less than fifty (50) different black and white stills of action and/or publicity photos (20 if rights granted for Canada only).
  - (b) Not less than one hundred (100) different 35mm transparencies or colour slides of action and/or publicity photos (20 if rights granted for Canada only).
- 4.5 Sample copy of the one-sheet posters prepared for the release of the Picture together with a reproduction-quality textless colour transparency of the full colour key art used in the one-sheet posters.

***Usually the distributor will make the one-sheet so you would delete this requirement.***

- 4.6 Complete lists of the final main and end titles of the Picture and a layout of the proposed paid ad credit billing block.
- 4.7 A reproducible copy of a pressbook, including:



- (a) A synopsis of the Picture;
- (b) A cast list setting forth the name of the character portrayed by each player and a description of the character; and
- (c) Biographies of the individual producer(s), director(s), writer(s) and leading players.

***This is where having a good publicist is really helpful. Much of this should be prepared during production, i.e. collecting bios, etc. It is much harder to collect this stuff after the picture is finished.***

The Materials listed above are to be delivered to: Contact Person, Company, Address, etc.

## **SAMPLE TELEVISION DISTRIBUTION AGREEMENT**

***This television distribution agreement is more detailed than most. Television distribution agreements tend to have more generalized language but the requirements are not so different than those set out below. The greatest difference here, other than the materials, is that there is no advance or minimum guarantee payable, which may or may not be the case for a particular program.***

### **STANDARD TERMS AND CONDITIONS OF DISTRIBUTION**

**NOW THEREFORE WITNESSETH** that in consideration of Two Dollars (\$2.00) and other good and valuable consideration (the receipt and sufficiency thereof being hereby acknowledged) the parties hereto hereby agree each with the other as follows:

#### **1 THE PROGRAM**

The term "Program" refers to the [children's television production] more particularly described in Schedule "A".

***The description of the program would include the length and number of episodes e.g. 13 episodes x 30 minutes.***

#### **2 TERRITORY AND TERM**

2.1 The "Term" of this agreement commences on the date hereof and expires on the anniversary provided in Schedule "A".

***Television distribution terms are often shorter than theatrical distribution terms and certainly so when there is little or no advance payable.***

2.2 The "Territory" is as provided in Schedule "A".

#### **3 GRANT OF RIGHTS**

3.1 Licensor hereby grants to Licensee, throughout the Territory the sole and exclusive exercise of right to distribute, license, sub-license, market and exploit the Program in all media now known or hereafter devised including without limitation, all forms of television including free, pay, cable and satellite, interactive

devices electronically read in linear form and digitized, interactive and computer based or computer assisted systems and devices read in linear form such as but not limited to CD-ROM, CD-I, Video-on-demand, interactive cable, the Internet, the World Wide Web and other on-line or other service which makes such transmissions, up-loads or downloads available electronically for either a subscription per-use fee or other fee or free of charge non-theatrical distribution, audio-visual cassette, disc or similar to method of distribution, commercially or for home use, non-theatrical and airline use (collectively, the "Rights").

***The grant of rights includes recent means of distribution (but limits interactive type uses to linear format which means it does not include game forms where the material is manipulated by the user).***

***The grant of rights will usually include similar related rights as set out in the Theatrical Distribution Agreement such as the right to edit and cut for time requirements or censorship. Different broadcasters have different requirements for a broadcast half hour or hour depending on how much time, if any, is devoted to commercials. The range can be significant. Sometimes you will be preparing different length versions for different broadcasters, particularly for series.***

***Often, and particularly for series, the distributor will want to have at least 'a first right of refusal, last right to match offers' to distribute subsequent episodes or productions. The value of the rights increase with the number of episodes available and the buyers of the initial episodes will want the right to acquire subsequent episodes as well. Conversely, the value of the initial episodes is diminished if someone else is selling the same show but different episodes. Ancillary and allied rights for additional related productions (MOWs, prequels, sequels, mini-series, remakes and games, publishing rights, merchandising, soundtracks, music publishing) will also be the subject of negotiation. If the project takes off, these additional rights can be valuable and it is worth assessing whether the distributor has any expertise in these areas. Some distributors only stick to the core business of selling television. Others are more integrated and involved in related businesses.***

#### **4 DELIVERY**

Licensor shall effect delivery of the Program to Licensee, in accordance with this agreement ("Delivery"), on or before the Delivery Date specified in Schedule "A".

***Delivery for television is a much simpler and less expensive process than delivery for feature films. There are only a fraction of the materials and issues for***

***television. Television series delivery will often take place over a period of time with delivery dates for each episode to meet broadcast requirements.***

## **5 LICENSOR'S WARRANTIES AND REPRESENTATIONS**

***Again these clauses are pretty self-explanatory.***

5.1 Licensor represents, warrants and agrees as follows and acknowledges that the Licensee is relying upon same when entering into this Agreement:

5.1 (a) Status of Licensor: Licensor is duly organized and validly subsisting under the laws of Licensor's jurisdiction of incorporation; it has the full right and authority to enter into and perform this Agreement and grant to Licensee all of the rights and licenses herein granted to Licensee; that it has taken all necessary action to authorize the execution and delivery of this Agreement; and that the same does not and will not violate any provisions of the constating documents or By-Laws of Licensor, or any agreement to which Licensor is a party.

5.1(b) Claims, Liens, Encumbrances Against the Program: The Program, when delivered, will be free and clear of any liens, claims or demands of any kind or character whatsoever which could in any way prejudice, affect or be inconsistent with the rights herein granted to Licensee. Licensee will quietly and peacefully enjoy and possess all of the rights, licenses and privileges granted or purported to be granted to Licensee throughout the Term and the Territory without interference by any third party.

5.1(c) Litigation: To the best of Licensor's knowledge after due inquiry, there is no litigation, proceeding or claim pending or threatened against Licensor or the Program which may materially adversely affect Licensor's exclusive rights in and to the Program, the copyright pertaining thereto, or the rights, licenses or privileges granted Licensee hereunder.

5.1(d) Licensor Owns or Will Acquire All Rights: All contracts with artists and personnel, for purchases, licenses, rights, laboratory contracts and all other obligations and undertakings of whatever kind connection to the production of the Program have been made and entered into by Licensor (or Licensor's predecessor in title) and by no other party and no obligations shall be imposed upon Licensee thereunder. Licensor shall indemnify and hold Licensee harmless from any expense and liability thereunder. Licensor has acquired all necessary rights to all dramatic,

literary and musical properties to produce, distribute and exploit the Program as contemplated herein;

5.1(e) Music: The Performing rights to all musical compositions contained in the Program are:

- 5.1(f)(i) controlled by SOCAN, ASCAP, BMI or similar organizations in other countries; or
- 5.1(f)(ii) in the public domain in the Territory, or
- 5.1(f)(iii) controlled by Licensor to the extent required for the purposes of this agreement and Licensor similarly has licenses for any necessary synchronization or recording rights for all media granted herein.

5.1(f) Licensor Will Not Sell or Encumber: That Licensor has not sold and will not sell, assign, convey or encumber any of the rights herein granted to Licensee and Licensor will not do or commit any act or thing that is in derogation of the rights herein granted to Licensee, and that Licensor has not entered into, and will not enter into, any agreement which is inconsistent with any of the provisions of this Agreement, and will not exercise any right to take any action which conflicts with, prejudices or derogates from the rights herein granted to Licensee. The Program has not heretofore been sold or licensed for distribution or exhibition, and has not been publicly exhibited in the Territory.

Licensor shall not authorize the exhibition of the Program, outside of the Territory, in a place or way that would interfere with the exploitation of any of Licensee's rights hereunder in the Territory (such as but not limited to, the advertising in the Territory, or by telecasting into the Territory, whether by satellite, CATV, or otherwise).

5.1(g) Payment for Services in Connection with Program: That all persons who performed services in connection with the Program have received full payment with respect thereto and with respect to any and all uses of the Program as authorized herein; no fee, compensation or other payment whatsoever will be payable by Licensee or by any parties claiming under Licensee or licensed by Licensee (other than performing rights royalties) to distribute, exhibit or otherwise exploit the Program or any of the rights granted hereunder, to any producer, director, actor, writer or any other person who performed services or furnished material in connection with the Program or to any union by reason of the broadcast, exhibition of any

other use of the Program or the exercise of any of the rights granted herein at any time.

***Again, the ACTRA residuals will be an issue between the producer and distributor, if the distributor has worldwide (or close to worldwide) rights. This should certainly be worked out in advance of production to determine what percentage pre-payment is to be made.***

5.1(h) Trademark, Copyright, Slander Violations: The Program and each and every part thereof, including the sound and music synchronized therewith, and the exercise by any party authorized by the Licensee of any right herein granted to Licensee, will not violate or infringe upon the trademark, tradename, copyright, moral rights, patent, literary, dramatic, music, artistic, personal, private, civil or property right, right of privacy, or any other right of any person or constitute a libel or slander of any person, and the Program will not contain unlawful material.

5.1(i) Compliance With Laws: That Licensor abided by all applicable federal, provincial, county and municipal laws, ordinances and regulations governing the production of the Program.

5.1(j) Copyright: That the Program is duly and validly copyrighted and registered for copyright.

## **6 INDEMNIFICATION**

Each party hereto (the "Indemnifying Party") agrees to indemnify and hold the other (and its affiliates, exhibitors, assignees, licensees and their respective officers and employees) (the "Indemnified Party") harmless from and against any and all actions, claims, demands, losses, liabilities, damages, costs and expenses (including reasonable attorneys' fees) they may suffer or incur as a result of any breach or default of any agreement, warranty, grant, term or condition by the Indemnifying Party hereunder. This indemnification shall survive the termination or expiration of this Agreement. The Indemnified Party agrees to give the Indemnifying Party notice of any claim or action to which the foregoing indemnity may apply, and the Indemnifying Party may participate in the defense of same, at the Indemnifying Party's expense, through counsel of its choosing; however, the final control and disposition of same (by settlement, compromise, or otherwise) shall remain with the Indemnified Party. The Indemnifying Party agrees to pay the Indemnified Party on demand any amounts for which it may be proven responsible under the foregoing indemnity, and/or the Indemnified Party may recoup any such amount from any sum otherwise due to the Indemnifying Party hereunder.

***Most of the referenced obligations, warranties and representations which would require indemnification here are the producer's.***

## **7 LICENSEE'S RIGHTS AND OBLIGATIONS**

7.1 Status of Licensee: Licensee represents, warrants and agrees as follows and acknowledges that the Licensor is relying upon same when entering into this Agreement: Licensee is duly organized and validly subsisting under the laws of Licensee's jurisdiction of incorporation; it has the full right and authority to enter into and perform this Agreement and grant to Licensor all of the rights and licenses herein granted or purported to be granted and agreed to be granted or purported to be granted to Licensor; that it has taken all necessary action to authorize the execution and delivery of this Agreement; and that the same does not and will not violate any provisions of the constating documents or the Articles of Incorporation or By-Laws of Licensee, or any contract, or any other agreement to which Licensee is a party.

7.2 Licensee's Authority: Licensee agrees that in exercising the rights and licenses granted hereunder, it will distribute and exploit the Program in accordance with its sound business judgment, exercised in good faith on a non-discriminatory basis. Licensee agrees to diligently promote the Program in the Territory, but Licensee makes no representations or warranties, express or implied, as to the manner or extent of exploitation or the amount of money to be derived therefrom.

In no event shall Licensee incur any liability to Licensor or others hereunder based upon any claim by Licensor or anyone claiming through or under Licensor that Licensee has failed to realize receipts or revenue which should or could have been realized.

***Even though there is no guarantee here, it would be difficult to get any undertaking by the distributor as to revenues. You might try to negotiate that if certain targets have not been attained by a certain time, the distribution agreement comes to an end.***

7.3 Transfer of Agreement: The Program may be distributed, marketed or dealt with as contemplated hereunder by Licensee or Licensee's corporate subsidiaries or affiliates. Licensee may also transfer or assign this Agreement, or all or any part of Licensee's rights hereunder, to any person,

firm, or corporation, with the Licensor's consent which shall not be unreasonably withheld. This Agreement shall inure to Licensee's benefit and the benefit of Licensee's successors and permitted assigns.

***If you choose a distributor because of a personal relationship or because of some individual with the distribution company, you should be aware that usually the distributor will be entitled to transfer its assets to others or the control of the company could change, etc. It would be rare for a distributor to allow restrictions on this right since it would make its rights less valuable.***

7.4 Title to Material: Legal title to all tapes and other material delivered to Licensee hereunder and in and to any material relating to the Program created by, for or at the instance of Licensee and all rights thereto (including, without limitation all copyrights) shall at all times rest in Licensee during the Term solely for the purpose of exercise of the rights granted herein. Licensee shall not sell, assign, pledge or in any manner encumber any of the negatives, prints or other material delivered or prepared hereunder or create any lien thereon. Licensee shall not "dupe", copy or duplicate, or permit or suffer the "duping", copying or duplication of, all or any part of any tape of the Program except as permitted in this Agreement.

***Usually, you will not want all materials returned. It is frequently less expensive to destroy or de-gauze the tapes.***

7.5 Redelivery at Expiration or Termination of Agreement: Upon the termination of this Agreement pursuant to its terms, Licensee shall have no further right to distribute or exploit the Program, and Licensee shall at its own cost deliver to Licensor all material delivered to Licensee hereunder, in as good condition as when delivered, subject to reasonable wear and tear, and all cue sheets, dialogue lists, advertising material and accessories and other documents and material delivered or prepared hereunder. Licensor, however, in its sole discretion, may require that the tapes and other items referred to above in this paragraph or any of them be de-gauzed or destroyed and in such event Licensee shall deliver to Licensor a duly authenticated certificate of destruction for each and every such item which Licensor requires to be destroyed. Except as approved by Licensor, provided under paragraph 2.2 above, Licensee agrees not to enter into any exhibition or sub-distribution agreements or contracts with respect to the Program that extend beyond the Term.

***A distributor may want the right to enter into agreements with third party buyers***



***up to the end of the term, which agreements would extend past the term. It should be clear whether or not such agreements are permitted.***

7.6 Use of Licensee's Name on the Program: Licensee shall have the right but not the obligation to include on the main and end titles of the Program and in all advertising and publicity material for the Program, a presentation credit or to include "distributed by" Licensee or its affiliate or use Licensee's logo.

## 8 **ALLOCATION OF GROSS RECEIPTS**

8.1 "Gross Receipts" means all valuable consideration, including any and all sub-distribution receipts, actually received by or on behalf of Licensee from any and all media out of or in connection with the exercise of the Rights granted herein. In no event shall the receipts of any broadcaster, sub-distributor or other licensee be included in the Gross Receipts unless any such third party is not dealing at arm's length to Licensee, in which case such third party's receipts shall be deemed to be the Gross Receipts hereunder unless otherwise agreed by Licensor in each instance. Gross Receipts shall be applied as follows:

1. First, to payment to Licensee of its Distribution Fees;
2. Secondly, to recoupment by Licensee of its Distribution Expenses, plus interest (as defined below);
3. The balance, if any, shall be deemed Net Receipts and shall be payable to Licensor.

8.2 Distribution Expenses: "Distribution Expenses" shall include all third party, out-of-pocket costs and expenses incurred in connection with distribution, advertising, exploitation and turning to account of the Program of whatever kind or nature.

***Even if the expenses are not specifically listed, you may want to state that overheads and salaries shall not be included. The words "third party" should exclude such costs.***

***Interest may be charged on unrecouped distribution expenses and/or advances. Not all distributors charge interest, particularly on expenses but you might try to negotiate its deletion.***

## 9 **ACCOUNTING, AUDITING AND SETTLEMENT**

9.1 Books and Records: Licensee shall maintain in its office, at its address set

forth above, books of account and records of the distribution of the Program, together with copies of all agreements and contracts relating thereto, all of which shall be available upon five (5) business days prior written notice to Licensee, at reasonable times during business hours to a duly authorized representative of Licensor who may examine the same and make copies of or take excerpts from such books, agreements, and contracts and request explanation thereof from executives of Licensee familiar therewith all at the expense of the Licensor. The Licensor agrees during such inspection not to unduly disrupt or interfere with the business of the Licensee.

9.2 Statements and Payments: Licensee shall deliver to Licensor, at Licensor's address above set forth, a written statement in respect of Gross Receipts for such period to which the statement pertains. Each such statement shall show reasonable details relating to the period to which it pertains, including, among other things, Gross Receipts and the sources thereof, description and breakdown or deductions therefrom, and moneys thereof to be paid to Licensor, together with any overall accumulation including all prior statements delivered to Licensor hereunder. Licensee shall accompany each such statement with a remittance to Licensor or its designees of such sums as may be due to Licensor under the terms of this Agreement. Licensee shall account to Licensor not later than the forty-fifth (45th) day after the end of each calendar quarter for the first three years of the Term. Thereafter the Licensee shall account to the Licensor within sixty (60) days after the end of June and December in each year during the Term.

9.3 Withholding Taxes: Any payments hereunder, whether it may be the Licensee's share of Net Receipts, Advances or otherwise, shall be subject to any and all applicable taxes, such as, but not limited to, withholding tax requirements.

9.4 Blocked Funds: In the event remittance of Gross Receipts is prevented by currency exchange controls or any other government action, Licensee will make its best business efforts to transfer Licensor's entitlement hereunder to a bank account in Licensor's name in the territory from which remittance of Licensor's share of Gross Receipts is prevented.

## 10 TERMINATION:

10.1 The following shall constitute an "event of default":

- (a) If Licensee fails to make payment due hereunder within 30 days after receiving notice of such failure; or if Licensee becomes insolvent; or

(b) If a petition under any bankruptcy act is filed by or against Licensee (which petition if filed against Licensee is not dismissed within ninety (90) days thereafter) or if Licensee executes an assignment for the benefit of its creditors; or if a receiver, trustee, liquidator, custodian or other officer is appointed for all or a substantial part of the assets of Licensee; or if Licensee abandons the business of distribution of motion Programs; or if Licensee petitions for or consents to any relief under any applicable insolvency or moratorium statute or other like statute.

10.2 Licensors may, by giving written notice of any event of default to Licensee at any time after the occurrence of such event of default (providing that the same is not cured after notice is provided as provided for above) elect to terminate this agreement, provided that any termination shall be without prejudice to Licensor's rights to retain all sums received by it hereunder or to recover damages or exercise any other right in the event of Licensee so breaching this Agreement. Licensor shall not be entitled to terminate this Agreement for any reason other than as aforesaid.

10.3 Upon termination of this Agreement pursuant to clauses 10.1 (a) or (b) above, the Licensor may take over from the Licensee the management and administration of any sub-license or other agreement in relation to the Film entered into by the Licensee prior to the date of termination and may collect and retain for Licensor's own account (subject to 10.5) all monies due or to become due to the Licensee under any such sub-license or agreement. In the event that the Licensor elects to take over the management and administration of any sub-license or agreement such sub-license and agreement and all moneys payable thereunder shall automatically and is hereby assigned to Licensor and in such event Licensee shall execute acknowledge and deliver to the Licensor any and all further assignments and instruments deemed by the Licensor necessary or desirable to evidence or effect such assignment.

10.4 In the event of termination of this Agreement for whatsoever reason, the Licensor will in the exercise of its rights pursuant to 10.3 hereof, honour all agreements and other commitments which are a proper exercise of the license hereunder and which have been entered into by the Licensee provided that there is no breach of such agreements and that all payments properly due to the Licensor are duly and promptly made to the Licensor.

10.5 Upon termination the Licensee shall remain entitled to receive its share of Gross Receipts and/or Distribution Fees payable up until and including the date of termination but the Licensee shall not be entitled to receive its share of Gross

Receipts and/or Distribution Fees otherwise payable thereafter except to the extent that the Licensee remains unrecouped in respect of any Advance or Guarantee or Licensee's Expenses paid all of which the Licensee may continue to recoup until they are fully set-off.

10.6 The Licensor shall upon termination be entitled to the return of all Delivery Items delivered to the Licensee (which Delivery Items shall be in as good condition as when delivered, subject to usual wear and tear).

***Most distributors will not allow termination by a producer once the advance is paid. Where no advance is payable, you may be able to seek a right of termination for breach of any obligation. It is possible to have a term that either party may terminate for breach or bankruptcy of the other party.***

## **11 GENERAL PROVISIONS**

11.1 No waiver by either party hereto of any breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same provision or any breach of any other provision of this Agreement, and no waiver shall be effective unless made in writing and then only to the extent specifically set forth. The exercise of any right granted to either party hereunder shall not operate as a waiver of any default or breach on the part of the other party hereto. Each and all of the several rights and remedies of the parties hereunder shall be construed as cumulative and no one of them as exclusive of the others or of any right or priority allowed by law.

11.2 Nothing contained in this Agreement shall constitute either party the agent of the other. Neither party will hold itself out contrary to the terms of this paragraph and neither party shall become liable by any representation, act or omission of the other contrary to the provisions hereof. Except as specifically set forth herein this Agreement is not for the benefit of any third party and shall not be deemed to give any right or remedy to any such party, whether referred to herein or not.

11.3 Nothing contained in this Agreement shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision of this Agreement and any material statute, law or ordinance, contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the provision of this Agreement affected shall be curtailed and limited only to the extent necessary to bring it within the legal requirements. Paragraph headings and any underlining in this Agreement are inserted solely for

convenience and are not relevant in interpreting or construing this Agreement.

11.4 This Agreement has been entered into in and shall be interpreted and construed under and pursuant to the laws of the Province of Ontario, and the parties hereto irrevocably attorn to the exclusive jurisdiction of the courts of said jurisdiction. All monetary references are to Canadian dollars unless specifically stated otherwise.

11.5 Any controversy or claim arising out of or relating to this Agreement, or the performance or breach thereof, may be settled by arbitration in the Province of Ontario, in accordance with the rules of the Arbitrations Act, and judgement upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

11.6 This agreement (including this paragraph) may not be altered, changed, waived or modified except by written instrument duly executed by both Licensor and Licensee, and this provision may not be waived except by written instrument duly executed by both Licensor and Licensee. This Agreement is complete and embraces the entire understanding between the parties with respect to the Program, all prior understandings, whether oral or written, having been merged herein. No representations or warranties of any kind or nature have been made by either of the parties to the other to induce the making of this Agreement, except as in this Agreement specifically set forth and each of the parties hereto agrees not to assert to the contrary.

11.7 All notices or other documents which may be required to be given or delivered hereunder by either party to the other shall be sufficiently given if delivered personally or sent by telex, telegraph or telefax or registered post addressed to the other at such address as the other may hereafter notify as its address for such service or if none, to the address at the head of this Agreement.

Any notice posted shall be deemed to have been received five (5) days (excluding Sunday) after the time of posting or at the time of actual receipt if earlier. Any notice sent by telex, telegraph or telefax shall be deemed to have been received upon receipt of an intelligible answerback.

11.8 Failure by either party to perform its obligations or delay in such performance as a result of an Act of God, war, strikes, lock-outs, shortened working hours, other industrial action, machine breakdown, fire, flood, explosion, injunctions, judgments, adverse claims or any other cause beyond its reasonable control shall not constitute a breach of the terms of this Agreement provided that such party shall use all reasonable endeavours to resume the performance of its

obligations hereunder as soon as practicable after the conditions (as aforesaid) causing such failure have ceased.

11.9 Licensor agrees to duly execute, acknowledge and deliver, or procure the due execution, acknowledgement and delivery to the Licensee of any and all further instruments, in form approved by Licensee's legal counsel, that may be necessary or expedient to carry out and effectuate the purposes and intent to this Agreement in all countries throughout the Territory, and to convey to the Licensee all rights herein granted to, during the subsistence of this Agreement. In the case of the failure or refusal of the Licensor to so execute and deliver or cause to be so executed and delivered any instrument herein contemplated, then the Licensee shall be deemed to be, and the Licensor hereby nominates, constitutes and appoints the Licensee, the true and lawful attorney-in-fact of the Licensor, irrevocably, to execute and deliver all such instruments in the name of Licensee, or otherwise.

## 12 **SCHEDULES**

The contents of the Schedules attached to this Agreement form part of this Agreement as though fully set out herein.

## **TELEVISION DELIVERY LIST**

***This sample is for a one-of-a-kind, completed television program.***

### **SAMPLE 1**

1. Errors & omissions insurance certificate naming Distributor as an additional insured, including title coverage, for a term of not less than three (3) years and a deductible of not more than \$10,000 with coverage of at least \$1,000,000 per occurrence and \$3,000,000 in the aggregate.
2. Final credit list with character names alongside actor names.

***You may also be required to deliver credit obligations or any restrictions on use of talents' names, voices, biographies, and likenesses in conjunction with any promotion or publicity, commercial tie-ins or merchandising.***

3. Press kit for the program including synopsis, bios for principal cast and crew, and any press coverage.
4. A selection of black and white and colour slides and/or stills.

***Certain distributors will have specific requirements for the amount and types of slides and stills but generally, the requirements are minimal compared to feature film deliveries.***

5. A screening cassette.

***You may have to deliver several screeners.***

6. First generation broadcast quality format tape.

***Depending on the distribution rights granted, it may be either access to or delivery of the broadcast master. Formats change regularly and, lately, the most acceptable format is digital betacam or betacam SP but you may still be able to get the distributor to accept a one inch (1") format. This item must generally meet numerous technical specifications.***

7. Music cue sheet indicating title, duration, composer, lyricist, publisher and performing rights affiliation for each musical work contained in the program.

***This is one of the items that is always included since every broadcaster requires it.***

8. Music license agreement(s).

***These agreements provide evidence that the Producer has the right to incorporate the music in the program for broadcast at least for the term of the license. If existing music is incorporated, include license(s) for master use rights as well. If music is commissioned for the program, you would provide the composer agreement including the synchronization and master use rights.***

9. Chain of title.

***Chain of title and other documents such as Certificates of Origin or Certificates of Attestation may be required for foreign sales.***

10. Music and Effects (M & E) track.

***This is required so the program can be dubbed into foreign languages.***

***There are numerous other possible items that may be required for television delivery depending on the kind of program, the extent of the distributor's rights and the distributor's practices. A sample of the more extensive deliveries for a large budget series follows.***



**SAMPLE 2****Series delivery to a major US television distributor and broadcaster.**

- A. Audio/visual materials (a detailed description of the materials is not included here)

The following Delivery Items must be delivered per Episode of the Series/Show:

1. Two (2) Digital Betacam Masters (final cut - mixed audio)
2. One (1) BetaSP Master (Final cut – mixed audio)
3. One (1) Digital Betacam Master (Final cut – split track audio)
4. One (1) BetaSP Master (Final cut of debut episode only)
5. One (1) ¾" Videotape with window code (Final cut – split track audio)
6. Five (5) VHS Videotapes (with window code)
7. One (1) VHS Videotape (without window code)
8. Two (2) DA-88 Digital 8-Track Cassettes
9. One (1) Closed Caption Disk

***In the US, there is a government funded service that close captions for no charge to production companies.***

10. One (1) Raw Behind the Scenes Footage/B Roll (BetaSP)
11. One (1) DAT Master of Musical Score
12. One (1) Audio Cassette of Musical Score

If Distributor has international rights, the following item must also be delivered:

13. One (1) Digital Betacam Master (Final cut – mixed audio) PAL format

***Although there are numerous delivery items, as compared with film deliveries, these items are inexpensive and relatively uncomplicated.***

- B. Paper Materials

The following Delivery Items must be delivered per Episode of the Series/Show:

1. Two (2) Program Timing Sheets
2. One (1) Synopsis
3. One (1) As-recorded Final Script
4. One (1) Set of Loglines
5. One (1) Copyright Registration Certificate
6. One (1) Set of Complete Music Cue Sheets
7. One (1) Set of Composer Service Documents
8. One (1) Set of Synchronization Licenses
9. One (1) Set of Master Use Licenses
10. One (1) Set of Lead Sheets of Musical Score (if available)
11. One (1) Combined Dialogue and Action Continuity Script (paper and disk) (if Distributor has international rights)
12. One (1) list of Episode Titles
13. One (1) Main & End Screen Credits (paper and disk)

14. One (1) Credit Statement
15. One (1) Billing Block
16. One (1) list of Production Cast & Crew
17. One (1) Set of the Above-the-line Talent and Crew Contracts
18. One (1) Set of Company/Show Logos
19. One (1) Set of Hi-Resolution Photos (on disk)
20. One (1) Set of Slides/Animation Cels (approximately 6 – 8)
21. One (1) Set of Gallery Photographs of Principal Players
22. One (1) Set of Line Art (black & white/on paper & disk)
23. One (1) Style Guide (on paper & disk)
24. One (1) Key Art/Poster Art
25. One (1) Set of Key Executives and Talent Biographies
26. One (1) Show Bible
27. One (1) Set of Character Descriptions
28. One (1) Electronic Press Kit (EPK)
29. One (1) Set of Chain-of-title documentation
30. One (1) Certificate of E & O insurance
31. One (1) Production Schedule
32. One (1) Delivery Schedule
33. One (1) Copy of Original Budget
34. One (1) Copy of summarized and detailed final cost report
35. One (1) Final negative cost statement
36. One (1) Copy of Final Variance Report
37. One (1) Detailed Bible Report
38. One (1) summarized Trial balance by Account
39. One (1) Final Check Register
40. One (1) Full Set of call sheets
41. One (1) Full Set of Production Reports
42. One (1) Day-out-of-days
43. One (1) Completed Residuals Packet

***Items 31 to 42 are all indicative of a close involvement of the broadcaster/distributor with the production, beyond that of just a distributor. This distributor would have cash flowed its license fees through production and is looking for a complete record of the production, not just what it needs for distribution. As mentioned earlier, US distributors are much more familiar with the assumption of residual obligations to cast and crew than Canadians viz. Item 43.***

## VIII RECOUPMENT SCHEDULES

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Recoupment refers to reimbursement of monies expended. A recoupment schedule is a statement (or in the early stages, a proposal) of what (expected or desired) revenues are paid to which parties and in what priority. A recoupment schedule will include deferrals (which is reimbursement of monies' worth) but (at the request of Telefilm or other financial participants) may also include distributors fees and expenses.

If you have negotiated all parties' deal terms, it is usually quite simple to prepare a recoupment schedule. The schedule can be slightly more complicated when different parties recoup from different markets or territories. The challenge is usually negotiating the recoupment. There are some basic rules or guidelines for recoupment schedules.

The agreement with your distributor(s) usually provides the starting point. There should be a section providing for the allocation of gross receipts or revenues. The traditional order is:

1. Payment of Distributor's fees
2. Recoupment of Distributor's expenses
3. Recoupment of Advance(s) paid
4. Payment of the balance to producer (although this too may be a split if the distributor participates in the back end, i.e. profits)

To the end of number 3 above, the only party that is recouping is the distributor (and frequently, not even the distributor if the revenues are insufficient). When we get to the "balance to producer" we get into the issue of who recoups, when and what amount. The parties we are concerned about here are:

1. Parties deferring, i.e., providers of goods & services used in the production who agree to be paid part or all of the amounts due to them from revenues, but ahead of the sharing of profits
2. Equity investors

Amounts which are not repayable such as license fees, CTF top-up license fees or non-recoupable contributions and grants do not form part of the recoupment schedule.

As to equity investors or parties deferring, the recoupment is pretty well negotiable and is dependent on the mix of people you are dealing with, your track record, the prospects for production revenues and how keen the people are to make a deal with you. Some investors, like government agencies have policies regarding

recoupment which may or may not jibe with the policies or requirements of the other parties involved.

Most of the time, equity investors are looking to get (a) their money back and (b) a return on their investment. Granted, many agencies and broadcast funds are mandated to make investments in Canadian film and television productions and may have other motivations as well but you must be able to provide revenue projections that show a reasonable chance of the investor at least recouping their investment or deferral. Frequently, producers do not think this is terribly relevant or important. Most productions have a terrible track record of returning their original investments, but they must at least have the appearance at the outset of being able to do so.

Deferring parties often have a slightly different perspective than equity investors. If they are receiving monies out of the production budget, deferring parties may view the deferred amount as a bonus. On the other hand, the amount may represent a portion or all of their deferred fees and they may feel quite determined to see such amounts recoup out of first revenues.

Telefilm has set out its recoupment policy in the CFFF guidelines (available online at Telefilm's website) and it is worthwhile to review it thoroughly if Telefilm is part of your financing structures

Some policies that may affect the drafting of a recoupment schedule (in no particular order, subject to change without notice by the relevant parties), include:

- When it is an equity investor, Telefilm does not want to recoup all of its investment behind a distribution advance. Telefilm requires that there be either an "open territory" meaning that there be no advance payable against that territory and usually, that such territory be a substantial territory (in terms of potential revenues) such as the US, Germany or France or that there be a revenue corridor granted by the distributor so that the advance or guarantee is recoupable from less than 100% of world revenues. Canadian distributors are used to this policy and will generally accommodate it. This may become somewhat trickier to negotiate in the case of an international co-production because you have to negotiate with parties who see the whole matter of recoupment differently (see notes below regarding co-productions).
- Telefilm requires that budget overages and service deferrals (e.g., equipment suppliers or post facilities) recoup after Telefilm.
- Telefilm also requires that producers include federal tax credits in the financing of the production, but does not require that Ontario tax credits be included. You can therefore use Ontario tax credits as a specific stream of revenue to

guarantee a repayment (see below). Telefilm will allow producers to both receive tax credits and recoup their investment (which may be a delayed payment of producer fees which is used to interim finance tax credits) but the recoupment of investment may not necessarily be in the same tier as other equity investors. Provincial agencies may have different policies regarding recoupment of tax credits.

- Previously Astral, as an equity investor, required a guaranteed repayment of 50 to 65% of its investment within 24 months of delivery. Astral no longer requires guaranteed recoupment. The Harold Greenberg Fund has also foregone guaranteed recoupment lately. Other private funds may still require it. For small producers, this is quite challenging to satisfy. Telefilm will not accept a less favourable position than pro rata and pari passu (proportionately and ratably or in equal step) with all other financial contributions included. This would mean you would have to offer all equity investors the same type of return. You may have to weigh the value of such an investment paid over the course of production with final payment on delivery of the final cost report, against the considerations that this investment (a) reduces the tax credit federally (at least for now) as the private fund owns part of the equity and (b) requires you to assign a particular source of income payable in the future specifically to such private fund.
- A number of other broadcasters are also seeking some form of guaranteed recoupment when they are making an equity investment beyond their license fees. They may seek to have certain territories where they have relationships with broadcasters, kept “open” or reserved for them to recoup first, in those territories. This may impact on your CTF application in the determination of your ranking although an equity investment does not count for points on the CTF scale.
- Rogers Documentary Fund is treated as a grant and is not recoupable.
- The private broadcast funds like Shaw and the Independent Production Fund generally seek to recoup their investments pari passu (i.e. on an equal footing) with other equity monies.
- When you are negotiating with international co-production partners, they may be less interested or concerned with equity than overall contributions to budget. Whereas Telefilm and other Canadian investors are accustomed to having only the equity participants recoup prior to arriving at profits, foreign financiers may not distinguish between equity, distribution advances and other contributions to the budget. Even if most or all of their contribution is by way of distribution advance, they may wish to divide all revenues according to the co-producing

partners contributions to the budget so if they bring 60% of the financing to the table, they may look to get 60% of world revenues (excluding their territory and Canada) without regard to what proportion of that is equity.

There are no really hard and fast rules for recoupment priorities, and practices change with the business. You should ask the equity players you are involved with if they have particular policies regarding recoupment before you make up a schedule. Then you try and make them all work together.

To give an example of a recoupment schedule using the fictitious financing scenario for the one-hour documentary mentioned in the financing section:

The elements that are not recoupable are:

- Broadcast license fee
- CTF-LFP
- Foreign presale
- Tax credits (where it is producer's investment – see notes above. In this example, we assume the investment is the same \$22,000 as the Ontario tax credit)

The recoupable elements are:

Telefilm equity	\$150,000
Broadcaster equity	\$67,500
Producer's investment	\$26,000

The producer could likely retain the OFTTC but here it was part of the financing scenario. Assuming the producer was entitled to recoup all of its investment (represented by the amount of tax credits) alongside the other equity investors, the recoupment schedule (after distributor's fees, expenses) would be as follows:

	Telefilm	Broadcaster	Producer	Total
1 <sup>st</sup> tier	(56.29%) 150,000	(25.33%) 67,500	(18.38%) 49,000	266,500
Total	150,000	67,500	49,000	266,500

<sup>1</sup> Producer is the only one entitled to the OFTTC.

<sup>2</sup> This amount is the producer's investment which is really the same as the tax credit amount but the producer is 'recouping' this in the tier after the other investors.

The co-production model mentioned in the Financing section is a little more complicated since we can only make assumptions as to recoupment positions of any equity investors.

The non-recoupable elements of the financing plan are:

- UK TV license
- CTF non-recoupable contribution
- Foreign pre-sale
- Tax credits

Assuming all equity investors recoup what they have not recouped from their own territory (i.e., Canadians from recouping from Canada first and English recouping from the UK first) from rest of world, the recoupment schedule might look like this:

World excluding Canada and UK and some other open territory:

	UK Producer	Foreign Distributor	Private Fund	Telefilm	Producer	Total
1 <sup>st</sup> tier		25% fee				*25%
2 <sup>nd</sup> tier		Expenses				*Expenses
3 <sup>rd</sup> tier		180,000				180,000
4 <sup>th</sup> tier	350,000	-	250,000	1,000,000	2655,000	1,865,000
	350,000	*180,000	250,000	1,000,000	265,000	*2,045,000

N.B. The model for Canada would look similar except that the distribution advance would show as \$300,000 and the UK Producer would not be part of the recoupment. There would be the same recoupment schedule as above for the “open territory” except that the distributor’s advance would not be part of it. The sale leaseback proceeds are being treated here as producer equity similar to the Canadian tax credits. Telefilm usually sees sale leaseback proceeds as revenue but more and more these sums are being used in the production financing rather than secured after the fact.

\* The distribution fees are a percentage of whatever the sales are and the expenses will largely be guesswork unless there is a floor or ceiling.

As you can see, there is nothing fancy or tricky in this schedule. There are some slight differences in the various territories, which are not cross-collateralized (otherwise there would be no point in separate advances). You could indeed have some differences in how the parties recoup, especially if a party recoups in a preferred position or is guaranteed a percentage repaid within some period.

Alternatively, if your partner insists that the contributions to the budget are the only relevant matters, the parties may determine that world revenues after recoupment of the foreign advance will be shared 30:70 in accordance with their respective contributions. Telefilm, the private fund and the Canadian producer would then be recouping out of the Canadians’ 70% of revenues.

## IX TAX CREDITS

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There is a lot of material issued by or available on the web from the Canadian Audio-Visual Certification Office (“CAVCO”) and the Ontario Media Development Corporation (“OMDC”) about their respective tax credits. There are also numerous seminars and papers on the topic circulated by various legal and accounting firms. No attempt is made here to provide an overview or to review this area in detail as it changes frequently with new interpretations or amendments to regulations. In March 2001 the Department of Finance and the Department of Canadian Heritage issued a discussion paper of simplification proposals for the Canadian Film or Video Production Tax Credit (CFVPTC). It is likely these proposals or some variations thereof will apply to productions in 2001 onwards. You should check the latest regulations prior to calculating tax credits. The paragraphs following examine a few areas that should be noted after reviewing the guidelines or regulations.

The OFTTC is intended to operate in harmony with the federal tax credit, CFVPTC. Therefore, Ontario will generally follow interpretations and policies made at the federal level. This appears to be the case for the non-Canadian content credit as well. There are still a few significant differences for the Canadian content credit, most particularly, the basis of production costs upon which the credits are calculated. Recently Ontario introduced amendments to the OFTTC to simplify and improve it and to minimize perceived advantages in the operation of the OPSTC (the Ontario Production Services Tax Credit) and the OFTTC such as the elimination on the cap for labour as a percentage of the budget. A number of these simplifications would appear to be included in the proposals being considered federally.

Federally, if you make the 75% Canadian expenditures test and otherwise qualify with points, all your labour costs, Canadian or not, are eligible labour costs. However, this will likely change with the new proposals where only expenditures paid to persons resident in Canada would qualify. In Ontario you still have to make the expenditures test but only the labour costs from Ontario are eligible labour costs. Therefore, if not all your labour costs are Ontario-based, your credit will be less than approximately 10% of your budget (the maximum, assuming your labour costs are approximately 50% of the budget and assuming there is no assistance or other items that may grind the credit). The other significant differences are that Ontario does not exclude certain post-production costs that the federal government does and most importantly, the Ontario credit is not “ground down” by the federal credit but the federal credit is ground down by the Ontario credit. The calculation in Ontario is essentially based on the amount of labour.



A few other points that tax credit administrators are asked repeatedly:

- In the calculation formula, the most important determinant is the ownership percentage and not the copyright percentage. This was unclear in earlier documents issued by the various government agencies. It is quite clear now in the Ontario documents. You must deduct the dollar amount of equity owned by third parties. This is the same federally and in Ontario for government assistance such as Telefilm and NFB. However in Ontario, private agency funds such as The Harold Greenberg Fund, the Independent Production Fund or Astral TV equity is no longer deducted. This same change may be coming federally. Financing that does “grind” or figure into the reduction of the credit includes government equity such as Telefilm investments, NFB equity, grants and forgivable loans. In Ontario these are deducted in the same proportion that the amount of Ontario labour is to the total production costs so that if your Ontario labour is 40% of your budget, you would deduct 40% of your assistance.
- Producer’s equity does not get deducted, however this must be the production company’s equity and not the parent company’s equity. Be careful how this is structured because it can adversely impact your credit if done incorrectly. If in doubt, the OMDC and CAVCO recommend you call them and check it in advance. It cannot be unwound later.
- Advances from the parent company to the production subsidiary will grind your credit unless it is made as a *bona fide* loan with a set repayment date, guaranteed repayment, etc.
- Financing that does not grind the tax credits includes distribution advances and license fees, the CTF license fee top-up or non-refundable contributions for features (if continued), private agency equity vis-à-vis the OFTTC (and possibly the CFVPTC) and the investment made by the applicant production company in that production.
- One of the rulings that has been made by Revenue Canada is that you must deduct 50% of the costs related to food from your production costs including per diems, catering and craft services. This is irrelevant for the OFTTC since the calculation is based on labour and not per se on production costs, except to determine the percentage of government assistance to be deducted as this is a ratio equal to the amount of Ontario labour to the total production cost. Federally the proposal is to have a straight 50% of the assistance be deducted.

You can download the calculation form used to calculate the OFTTC or the CFVPTC from the respective websites, and attached is a budget form incorporating notes on some of the expenditure areas, formatted in MS Excel. The

budget form is a guideline only for calculation of labour costs as the basic rule is: determine what component of the cost represents labour and whether you can support your claim, i.e., provide documentation from, for example, a supplier. In the post-production area for instance, a number of the costs are just guidelines which tend to err on the side of caution. If you can support a greater proportion legitimately, you should be able to claim it. Similarly, “executive producer” fees although included at 100%, must be supportable by someone’s earnings attributable to the project, e.g. you can’t charge \$100,000 in fees and not have someone (or a few people) earn salaries or fees related to that project totaling that amount. With respect to fees paid to corporations, the general rule is that 65% is allowed as labour if the company is a multi-shareholder company and 100% if it is a personal service corporation, i.e., owned solely by the individual whose services you are retaining. This requires you ascertain by means of a declaration (which is part of the declaration of residence) what type of corporation each supplier is.

One of the new provisions introduced in Ontario is a regional bonus. If all principal photography takes place outside of the Greater Toronto Area (the GTA), the credit rate is 30% rather than 20%. If principal photography is both inside and outside the GTA for a one of (or one-off) production, you can still get the whole credit if you have a minimum of five (5) days on location (as opposed to studio shooting) and 85% of that is outside the GTA. For series, the minimum amount on location is a day of location per number of episodes, e.g., if you have a 22 episode series, 22 days must be on location and 85% of those must be shot outside the GTA.

## Certificate of Eligibility

Title of Project

File #

### SCHEDULE B

<b>ESTIMATE CALCULATION OF ONTARIO FILM AND TELEVISION TAX CREDIT</b>		
<b>A. Proportional assessment of Assistance in respect of Production Costs For Labour Costs</b>		
Estimate of Total Production Costs	<u>A</u>	\$ -
Estimate of Total Ontario labour expenditure	<u>B</u>	\$ -
Proportion to Labour	<u>C = B ÷ A =</u>	NA
<b>B. Estimate of Eligible Ontario Labour Expenditure</b>		
Estimate of Total Ontario labour expenditure	<u>D</u>	\$ -
<b>LESS:</b> "Assistance" and "Equity held by Canadian government Film Agencies" <u>in Respect of the Production Costs in Proportion for Labour</u>		\$ -
		\$ -
		\$ -
		\$ -
Total in Respect of the Production Costs	<u>E</u>	\$ -
Proportion to Labour	<u>F = C =</u>	NA
<b>Proportion in respect of Production Costs for Labour Costs</b>	<u>G = E x F =</u>	\$ -
<b>LESS:</b> <u>Assistance Directly in Respect of Labour</u>		\$ -
		\$ -
		\$ -
		\$ -
<b>Total Assistance Directly in Respect of Labour</b>	<u>H</u>	\$ -
<b>LESS:</b> Labour Deferrals		\$ -
		\$ -
		\$ -
		\$ -
<b>Total Deferrals</b>	<u>I</u>	\$ -
Estimate of Eligible Ontario Labour Expenditure	<u>J = +D-G-H-I =</u>	\$ -
<b>C. Calculation of OFTTC Estimate</b>		
Estimate of Eligible Ontario Labour Expenditure	<u>K</u>	\$ -
<u>Applicable?</u>		
yes	<u>L = K x 20%</u>	\$ -
no	<u>M = K x 10%</u>	\$ -
no	<u>N = K x 10%</u>	\$ -
<b>OFTTC Estimate</b>	<u>+L+M+N =</u>	\$ -

ONTARIO FILM AND TELEVISION TAX CREDIT													
CALCULATION OF ELIGIBLE LABOUR EXPENDITURE													Sept 14/98
NUMBER	CATEGORY	TOTAL COST	NON-ONTARIO COSTS	ONTARIO COSTS (A)	RATE FOR LABOUR (B)	% OF LABOUR (C)	TOTAL ONTARIO LABOUR EXPENDITURE (D) [A x B x C]	COMMENTS					
<b>01</b>	<b>STORY RIGHTS</b>												
0101	STORY RIGHTS / ACQUISITIONS												
0195	OTHER												
	<b>Total 01</b>												
<b>02</b>	<b>SCENARIO</b>												
0201	WRITER(S)					100%		From final script stage only					
0205	CONSULTANT(S)					100%		From final script stage only					
0215	STORYBOARD					100%		From final script stage only					
0220	SCRIPT EDITOR(S)					100%		B=100% if series or from final script					
0225	RESEARCH					100%		From final script stage only					
0227	CLEARANCES / SEARCHES					65%		From final script stage only					
0230	SECRETARY					100%		B=100% if series or from final script					
0235	SCRIPT REPRODUCTION					65%		From final script stage only					
0260	TRAVEL EXPENSES												
0265	LIVING EXPENSES												
0290	FRINGE BENEFITS							Only include taxable benefits					
0295	OTHER												
	<b>Total 02</b>												
<b>03</b>	<b>DEVELOPMENT COSTS</b>												
0301	PRE BREAKDOWN / BUDGET & DEV												
0305	CONSULTANT EXPENSES												
0325	OFFICE EXPENSES												
0350	SURVEY / SCOUTING												
0360	TRAVEL EXPENSES												
0365	LIVING EXPENSES												
0370	PROMOTION												
0395	OTHER												
	<b>Total 03</b>												
<b>04</b>	<b>PRODUCER</b>												
0401	EXECUTIVE PRODUCER				100%	100%		Include amount paid to individual only					
0405	PRODUCER				100%	100%		Include amount paid to individual only					
0410	CO-PRODUCER				100%	100%		Include amount paid to individual only					
0415	ASSOCIATE PRODUCER				100%	100%		Include amount paid to individual only					
0425	PRODUCER'S SECRETARY				100%	100%		Include amount paid to individual only					
0460	TRAVEL EXPENSES												
0465	LIVING EXPENSES												
0470	PUBLIC RELATIONS												
0490	FRINGE BENEFITS							Only include taxable benefits					
0495	OTHER												
	<b>Total 04</b>												
<b>05</b>	<b>DIRECTOR</b>												

B is portion related to labour. C is cost to companies less overhead and business expenses. If no percentage provided, use actual labour portion. If percentage is less than actual labour, use actual labour portion. Please see comments for details.

ONTARIO FILM AND TELEVISION TAX CREDIT							CALCULATION OF ELIGIBLE LABOUR EXPENDITURE			Sept 14/98	
NUMBER	CATEGORY	TOTAL COST	NON-ONTARIO COSTS	ONTARIO COSTS (A)	RATE FOR LABOUR (B)	% OF LABOUR (C)	TOTAL ONTARIO LABOUR EXPENDITURE (D) [A x B x C]	COMMENTS			
0501	DIRECTOR				100%	100%					
0505	2ND UNIT DIRECTOR				100%	100%					
0507	DIALOGUE DIRECTOR				100%	100%					
0530	DIRECTOR'S SECRETARY				100%	100%					
0560	TRAVEL EXPENSES										
0565	LIVING EXPENSES										
0590	FRINGE BENEFITS							Only include taxable benefits			
0592	PERMITS										
0595	OTHER										
	<b>Total 05</b>										
<b>06</b>	<b>STARS</b>										
0601	STARS				100%	100%		Add lines as necessary			
0604	RIGHTS PAYMENT ( %)				100%	100%					
0640	POST PRODUCTION LOOPING				100%	100%					
0644	RIGHTS PAYMENT ( %)				100%	100%					
0660	TRAVEL EXPENSES										
0665	LIVING EXPENSES										
0670	INCIDENTAL EXPENSES										
0672	POST PRODUCTION EXPENSES										
0690	FRINGE BENEFITS							Only include taxable benefits			
0692	PERMITS										
0695	OTHER/medical										
	<b>Total 06</b>										
<b>t1</b>	<b>TOTAL ABOVE THE LINE</b>										
<b>10</b>	<b>CAST</b>										
1001	PRINCIPALS				100%	100%		Add lines as necessary			
1004	RIGHTS PAYMENTS				100%	100%					
1010	ACTORS				100%	100%					
1015	OTHER PERFORMERS				100%	100%		Add lines as necessary			
1018	RIGHTS PAYMENTS				100%	100%		Add lines as necessary			
1025	OFF CAMERA PERFORMANCES				100%	100%		Add lines as necessary			
1028	RIGHTS PAYMENTS				100%	100%					
1030	WARMUP PERFORMERS				100%	100%		Add lines as necessary			
1040	POST PRODUCTION LOOPING				100%	100%					
1043	RIGHTS PAYMENTS				100%	100%					
1050	STUNT CO-ORDINATOR				100%	100%		Add lines as necessary			
1052	STUNTS / ADJUSTMENTS				100%	100%		Add lines as necessary			
1055	RIGHTS PAYMENTS				100%	100%		Add lines as necessary			
1060	CHOREOGRAPHER				100%	100%					
1065	UPGRADING				100%	100%					

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ONTARIO FILM AND TELEVISION TAX CREDIT							Sept 14/98	
CALCULATION OF ELIGIBLE LABOUR EXPENDITURE								
NUMBER	CATEGORY	TOTAL COST	NON-ONTARIO COSTS	ONTARIO COSTS (A)	RATE FOR LABOUR (B)	% OF LABOUR (C)	TOTAL ONTARIO LABOUR EXPENDITURE (D) [A x B x C]	COMMENTS
1067	TUTOR(S)				100%	100%		
1070	CASTING DIRECTOR				100%	100%		
1075	CASTING EXPENSES							
1076	REHEARSAL AREA							
1077	VIDEO EXPENSES (CASTING)							Labour portion only
1090	FRINGE BENEFITS							Only include taxable benefits
1092	PERMITS							
1095	OTHER							
	<b>Total 10</b>							
<b>11</b>	<b>EXTRAS</b>							
1101	SPECIAL SKILL EXTRAS				100%	100%		
1110	GENERAL EXTRAS				100%	100%		
1120	STAND-INS / PHOTO DOUBLES				100%	100%		
1170	CASTING DIRECTOR				100%	100%		
1172	CASTING FEE							
1174	CASTING SECRETARY				100%	100%		
1175	CASTING EXPENSES							
1180	TUTOR(S)				100%	100%		
1181	CHILDREN'S CO-ORDINATOR				100%	100%		
1182	GUARDIAN(S)				100%	100%		
1185	COLLECTIVE BARGAINING FEE							
1190	FRINGE BENEFITS / PERMITS							Only include taxable benefits
1195	OTHER							
	<b>Total 11</b>							
<b>12</b>	<b>PRODUCTION STAFF</b>							
1201	PRODUCTION SUPERVISOR				100%	100%		
1205	PRODUCTION MANAGER				100%	100%		
1208	ASSISTANT PRODUCTION MANAGER				100%	100%		
1210	UNIT MANAGER				100%	100%		
1215	LOCATION MANAGER				100%	100%		
1220	1ST ASSISTANT DIRECTOR				100%	100%		
1223	2ND ASSISTANT DIRECTOR				100%	100%		
1228	3RD ASSISTANT DIRECTOR				100%	100%		
1235	PRODUCTION ASSISTANT(S) / TRAINEE(S)				100%	100%		
1243	PRODUCTION CO-ORDINATOR				100%	100%		
1245	PRODUCTION SECRETARY				100%	100%		
1248	TYPIST SERVICES				100%	100%		
1250	PRODUCTION ACCOUNTANT				100%	100%		
1254	BOOKKEEPERS				100%	100%		
1260	LOCAL CONTACT PERSON(S)				100%	100%		
1262	TECHNICAL ADVISOR				100%	100%		

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ONTARIO FILM AND TELEVISION TAX CREDIT							Sept 14/98	
CALCULATION OF ELIGIBLE LABOUR EXPENDITURE								
NUMBER	CATEGORY	TOTAL COST	NON-ONTARIO COSTS	ONTARIO COSTS (A)	RATE FOR LABOUR (B)	% OF LABOUR (C)	TOTAL ONTARIO LABOUR EXPENDITURE (D) [A x B x C]	COMMENTS
1264	INTERPRETER				100%	100%		
1270	GRAFT SERVICES				100%	100%		Include labour only
1280	SCRIPT SUPERVISOR / CONTINUITY				100%	100%		
1295	OTHER				100%	100%		
	<b>Total 12</b>							
<b>13</b>	<b>DESIGN LABOUR</b>							
1301	PRODUCTION DESIGNER				100%	100%		
1310	ART DIRECTOR				100%	100%		
1312	1ST ASSISTANT ART DIRECTOR				100%	100%		
1314	2ND ASSISTANT ART DIRECTOR				100%	100%		
1320	PRODUCTION ASSISTANT/TRAINEE(S)				100%	100%		
1330	DRAFTING				100%	100%		
1335	GRAPHIC ARTIST(S)				100%	100%		
1395	OTHER				100%	100%		
	<b>Total 13</b>							
<b>14</b>	<b>CONSTRUCTION LABOUR</b>							
1401	CONSTRUCTION CO-ORDINATOR				100%	100%		
1420	HEAD CARPENTER				100%	100%		
1425	CARPENTER(S)				100%	100%		
1440	SCENIC PAINTER(S)				100%	100%		
1445	HEAD PAINTER				100%	100%		
1450	PAINTER(S)				100%	100%		
1460	STAND-BY CARPENTER				100%	100%		
1465	STAND-BY PAINTER				100%	100%		
1470	STRIKE CREW				100%	100%		
1475	LABOURER(S)				100%	100%		
1495	OTHER				100%	100%		
	<b>Total 14</b>							
<b>15</b>	<b>SET DRESSING LABOUR</b>							
1501	SET DECORATOR				100%	100%		
1510	ASSISTANT SET DRESSER(S)				100%	100%		
1520	SWING GANG				100%	100%		
1530	LABOURER(S)				100%	100%		
1595	OTHER				100%	100%		
	<b>Total 15</b>							
<b>16</b>	<b>PROPERTY LABOUR</b>							
1601	PROPERTY MASTER				100%	100%		
1610	ASSISTANT PROPERTY MASTER				100%	100%		
1616	PROPERTY BUYER(S)				100%	100%		
1630	OTHER				100%	100%		
	<b>Total 16</b>							

B is portion related to labour. C is cost to companies less overhead and business expenses. If no percentage provided, use actual labour portion. If percentage is less than actual labour, use actual labour portion. Please see comments for details.





ONTARIO FILM AND TELEVISION TAX CREDIT							Sept 14/98	
CALCULATION OF ELIGIBLE LABOUR EXPENDITURE								
NUMBER	CATEGORY	TOTAL COST	NON-ONTARIO COSTS	ONTARIO COSTS (A)	RATE FOR LABOUR (B)	% OF LABOUR (C)	TOTAL ONTARIO LABOUR EXPENDITURE (D) [A x B x C]	COMMENTS
2140	DRIVER(S)				100%	100%		
2145	VIDEO OPERATOR(S)				100%	100%		
2150	VTR OPERATOR(S)				100%	100%		
2155	MAINTENANCE				100%	100%		
2160	GRIPS				100%	100%		
2165	STAGEHAND(S)				100%	100%		
2170	AUTOCUE OPERATOR				100%	100%		
2175	UTILITY PERSON(S)				100%	100%		
2185	TELEVISION ASSISTANT(S)				100%	100%		
2195	OTHER				100%	100%		
	<b>Total 21</b>							
<b>22</b>	<b>CAMERA LABOUR</b>							
2201	DIRECTOR OF PHOTOGRAPHY				100%	100%		
2205	CAMERA OPERATOR				100%	100%		
2210	1ST ASSISTANT CAMERAPERSON				100%	100%		
2212	2ND ASSISTANT CAMERAPERSON				100%	100%		
2220	TRAINEE(S)				100%	100%		
2250	SPECIAL EQUIPMENT OPERATOR(S)				100%	100%		
2260	ADDITIONAL CAMERA OPERATOR(S)				100%	100%		
2263	ADDITIONAL CAMERA 1ST ASSISTANT(S)				100%	100%		
2266	ADDITIONAL CAMERA 2ND ASSISTANT(S)				100%	100%		
2270	STILL PHOTOGRAPHER				100%	100%		
2295	OTHER				100%	100%		
	<b>Total 22</b>							
<b>23</b>	<b>ELECTRICAL LABOUR</b>							
2301	GAFFER				100%	100%		
2310	BEST BOY				100%	100%		
2320	ELECTRICIAN(S)				100%	100%		
2330	DAILIES				100%	100%		
2340	RIGGING / STRIKING				100%	100%		
2350	GENERATOR OPERATOR				100%	100%		
2395	OTHER				100%	100%		
	<b>Total 23</b>							
<b>24</b>	<b>GRIP LABOUR</b>							
2401	KEY GRIP				100%	100%		
2410	SECOND GRIP				100%	100%		
2420	GRIP(S)				100%	100%		
2428	CRANE GRIP				100%	100%		
2430	DAILIES				100%	100%		
2440	RIGGING / STRIKING				100%	100%		
2450	LABOURER(S)				100%	100%		

B is portion related to labour. C is cost to companies less overhead and business expenses. If no percentage provided, use actual labour portion. If percentage is less than actual labour, use actual labour portion. Please see comments for details.

<b>ONTARIO FILM AND TELEVISION TAX CREDIT</b>							Sept 14/98	
<b>CALCULATION OF ELIGIBLE LABOUR EXPENDITURE</b>								
NUMBER	CATEGORY	TOTAL COST	NON-ONTARIO COSTS	ONTARIO COSTS (A)	RATE FOR LABOUR (B)	% OF LABOUR (C)	TOTAL ONTARIO LABOUR EXPENDITURE (D) [A x B x C]	COMMENTS
2470	TELEPROMPTER OPERATOR				100%	100%		
2495	OTHER				100%	100%		
	<b>Total 24</b>							
<b>25</b>	<b>PRODUCTION SOUND LABOUR</b>							
2501	MIXER / SOUND RECORDIST				100%	100%		
2510	BOOM OPERATOR				100%	100%		
2515	CABLE PERSON				100%	100%		
2520	PLAYBACK OPERATOR				100%	100%		
2570	PUBLIC ADDRESS OPERATOR				100%	100%		
2595	OTHER				100%	100%		
	<b>Total 25</b>							
<b>26</b>	<b>TRANSPORTATION LABOUR</b>							
2601	CO-ORDINATOR				100%	100%		
2610	CAPTAIN				100%	100%		
2612	CO-CAPTAIN / HEAD DRIVER				100%	100%		
2620	DRIVERS				100%	100%		
2695	OTHER				100%	100%		
	<b>Total 26</b>							
<b>27</b>	<b>FRINGE BENEFITS</b>							
2701	GOVERNMENT BENEFITS							Only include taxable benefits
2750	UNION / ASSOCIATION BENEFITS							Only include taxable benefits
2795	OTHER							Only include taxable benefits
	<b>Total 27</b>							
<b>28</b>	<b>PRODUCTION OFFICE EXPENSES</b>							
2801	OFFICE RENTALS							
2803	HEAT & LIGHT							
2805	OFFICE FURNITURE							
2807	OFFICE EQUIPMENT							
2810	PHOTOCOPIY							
2815	STATIONERY / SUPPLIES							
2820	TELEPHONE / TELEX / POSTAGE							
2830	COURIER				100%	65%		Include labour portion only
2835	COMPUTER SERVICES							Include labour portion only
2840	OFFICE CRAFT SERVICE							
2845	CLEANING				100%	65%		C=100% if paid directly to individual
2850	SECURITY				100%	65%		C=100% if paid directly to individual
2895	OTHER							
	<b>Total 28</b>							
<b>29</b>	<b>STUDIO / BACKLOT EXPENSES</b>							
2901	STUDIO / BACKLOT RENTALS							
2905	POWER							

B is portion related to labour. C is cost to companies less overhead and business expenses. If no percentage provided, use actual labour portion. If percentage is less than actual labour, use actual labour portion. Please see comments for details.

<b>ONTARIO FILM AND TELEVISION TAX CREDIT</b>									
<b>CALCULATION OF ELIGIBLE LABOUR EXPENDITURE</b>									Sept 14/98
NUMBER	CATEGORY	TOTAL COST	NON-ONTARIO COSTS	ONTARIO COSTS (A)	RATE FOR LABOUR (B)	% OF LABOUR (C)	TOTAL ONTARIO LABOUR EXPENDITURE (D) [A x B x C]	COMMENTS	
2910	CARPENTRY SHOP RENTALS								
2915	OFFICE RENTAL								
2916	TELEPHONE								
2917	DRESSING / HAIR / MAKEUP ROOMS								
2920	STUDIO SPECIAL EFFECTS EQUIPMENT								
2950	SECURITY				100%	65%		C=100% if paid directly to individual	
2955	CLEANING				100%	65%		C=100% if paid directly to individual	
2995	OTHER								
	<b>Total 29</b>								
<b>30</b>	<b>LOCATION OFFICE EXPENSES</b>								
3001	OFFICE RENTALS								
3005	OFFICE FURNITURE								
3007	OFFICE EQUIPMENT								
3010	PHOTOCOPI								
3020	TELEPHONE / TELEX / POSTAGE								
3030	COURIER				100%	65%			
3095	OTHER								
	<b>Total 30</b>								
<b>31</b>	<b>SITE EXPENSES</b>								
3101	SURVEYING / SCOUTING EXPENSES								
3105	SITE RENTALS								
3107	SITE POWER								
3110	SITE ACCESS								
3115	SITE SPECIAL INSURANCE								
3120	REPAIRS / RESTORATION							Include labour portion only	
3142	CLEANING				100%	65%		C=100% if paid directly to individual	
3150	SECURITY				100%	65%		C=100% if paid directly to individual	
3152	POLICE CONTROL				100%	100%			
3160	PUBLIC RELATIONS								
3195	OTHER								
	<b>Total 31</b>								
<b>32</b>	<b>UNIT EXPENSES</b>								
3201	MEAL PAYMENT								
3210	CATERING				35%	65%		Include labour portion only	
3215	CRAFT SERVICE								
3218	TABLES / CHAIRS/ HALLS								
3220	GREEN ROOM								
3225	FIRST AID								
3240	CREW OUTFITTING								
3245	MEDICAL / INSURANCE/ VISA EXPENSE				100%	65%		Include costs for medicals only	
3260	PUBLIC RELATIONS								

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ONTARIO FILM AND TELEVISION TAX CREDIT							Sept 14/98	
CALCULATION OF ELIGIBLE LABOUR EXPENDITURE								
NUMBER	CATEGORY	TOTAL COST	NON-ONTARIO COSTS	ONTARIO COSTS (A)	RATE FOR LABOUR (B)	% OF LABOUR (C)	TOTAL ONTARIO LABOUR EXPENDITURE (D) [A x B x C]	COMMENTS
3295	OTHER							
	<b>Total 32</b>							
<b>33</b>	<b>TRAVEL &amp; LIVING EXPENSES</b>							
3301	FARES							
3310	HOTELS							
3320	PER DIEMS							
3330	TAXIS / LIMOUSINES							
3335	EXCESS BAGGAGE							
3340	SHIPPING							
3350	CUSTOMS / BROKERAGE							
3395	OTHER							
	<b>Total 33</b>							
<b>34</b>	<b>TRANSPORTATION</b>							
3401	PRODUCTION CARS							
3405	TRUCKS / VANS							
3410	BUSES							
3412	MOTORHOMES							
3415	TALENT CARS							
3420	SPECIAL SUPPORT VEHICLES							
3430	GAS							
3432	MAINTENANCE							
3435	REPAIRS					65%		Include labour portion only
3440	TAXIS					65%		Include labour portion only
3445	PARKING							
3447	MILEAGE							
3450	SPECIAL LICENSES / PERMITS							
3455	BROKERAGE DUTY							
3495	OTHER							
	<b>Total 34</b>							
<b>35</b>	<b>CONSTRUCTION MATERIALS</b>							
3510	CARPENTRY RENTALS							
3515	CARPENTRY PURCHASES							
3520	PAINTING RENTALS							
3525	PAINTING PURCHASES							
3545	BACKDROPS / MURALS							
3595	OTHER							
	<b>Total 35</b>							
<b>36</b>	<b>ART SUPPLIES</b>							
3610	DRAWING SUPPLIES							
3612	DRAWING EQUIPMENT							
3615	RESEARCH EXPENSE							

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ONTARIO FILM AND TELEVISION TAX CREDIT							Sept 14/98	
CALCULATION OF ELIGIBLE LABOUR EXPENDITURE								
NUMBER	CATEGORY	TOTAL COST	NON-ONTARIO COSTS	ONTARIO COSTS (A)	RATE FOR LABOUR (B)	% OF LABOUR (C)	TOTAL ONTARIO LABOUR EXPENDITURE (D) [A x B x C]	COMMENTS
3620	STOCK PRINTS / PROCESSING							
3622	BLUEPRINTING							
3695	OTHER							
	<b>Total 36</b>							
<b>37</b>	<b>SET DRESSING</b>							
3710	RENTALS							
3730	PURCHASES							
3740	MANUFACTURING							
3748	REPAIRS / REPLACEMENTS							Include labour portion only
3795	OTHER							
	<b>Total 37</b>							
<b>38</b>	<b>PROPS</b>							
3810	RENTALS							
3830	PURCHASES							
3845	GRAPHICS / SIGNS							
3848	REPAIRS / REPLACEMENTS							Include labour portion only
3860	PICTURE VEHICLES RENTALS							
3855	PICTURE VEHICLE PURCHASES							
3857	PICTURE VEHICLE MODIFICATIONS							Include labour portion only
3859	PICTURE VEHICLE INSURANCE							
3895	OTHER							
	<b>Total 38</b>							
<b>39</b>	<b>SPECIAL EFFECTS</b>							
3910	RENTALS							
3930	PURCHASES							
3940	STUNTS PURCHASES / RENTALS							
3945	ARMAMENTS / PERMIT FEES							
3995	OTHER							
	<b>Total 39</b>							
<b>40</b>	<b>ANIMALS</b>							
4010	RENTALS							Include labour portion for wrangler
4030	PURCHASES							
4040	FEED / STABLING							Include labour portion only
4045	TRANSPORT							
4047	VETERINARY FEES							B = 100% if all labour
4055	CUSTOMS BROKERAGE							
4095	OTHER							
	<b>Total 40</b>							
<b>41</b>	<b>WARDROBE SUPPLIES</b>							
4110	RENTALS							
4130	PURCHASES							

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ONTARIO FILM AND TELEVISION TAX CREDIT							Sept 14/98	
CALCULATION OF ELIGIBLE LABOUR EXPENDITURE								
NUMBER	CATEGORY	TOTAL COST	NON-ONTARIO COSTS	ONTARIO COSTS (A)	RATE FOR LABOUR (B)	% OF LABOUR (C)	TOTAL ONTARIO LABOUR EXPENDITURE (D) [A x B x C]	COMMENTS
4435	GRAPHIC GENERATOR				20%	65%		If labour included in cost
4495	OTHER				20%	65%		If labour included in cost
	<b>Total 44</b>							
<b>45</b>	<b>CAMERA EQUIPMENT</b>							
4510	BASIC PACKAGE RENTALS							
4512	DAILY RENTALS							
4515	SPECIALTY RENTALS							
4525	VIDEO / TELEPROMPTER							
4530	PURCHASES				20%	65%		If labour included in cost
4535	STEADICAM - PANAGLIDE							
4543	SHIPPING / BROKERAGE				20%	65%		If labour included in cost
4595	OTHER							
	<b>Total 45</b>							
<b>46</b>	<b>ELECTRICAL EQUIPMENT</b>							
4610	BASIC PACKAGE RENTALS							
4612	DAILY RENTALS							
4615	SPECIALTY RENTALS							
4626	GENERATOR(S)				20%	65%		If labour included in cost
4630	PURCHASES							
4695	OTHER							
	<b>Total 46</b>							
<b>47</b>	<b>GRIP EQUIPMENT</b>							
4710	BASIC PACKAGE RENTALS							
4712	DAILY RENTALS							
4715	SPECIALTY RENTALS							
4720	CRANE RENTALS				20%	65%		If labour included in cost
4725	SCAFFOLDING							
4730	PURCHASES							
4795	OTHER							
	<b>Total 47</b>							
<b>48</b>	<b>SOUND EQUIPMENT</b>							
4810	BASIC PACKAGE RENTALS							
4812	DAILY RENTALS							
4816	WIRELESS MICROPHONES							
4828	WALKIE / TALKIES							
4830	PURCHASES							
4895	OTHER							
	<b>Total 48</b>							
<b>49</b>	<b>SECOND UNIT</b>							
4901	CREW				100%	100%		Add lines as necessary or attach details
4915	FRINGE BENEFITS							Include taxable benefits only

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<b>ONTARIO FILM AND TELEVISION TAX CREDIT</b>													
<b>CALCULATION OF ELIGIBLE LABOUR EXPENDITURE</b>													Sept 14/98
NUMBER	CATEGORY	TOTAL COST	NON-ONTARIO COSTS	ONTARIO COSTS (A)	RATE FOR LABOUR (B)	% OF LABOUR (C)	TOTAL ONTARIO LABOUR EXPENDITURE (D) [A x B x C]	COMMENTS					
4920	TRAVEL / LIVING												
44925	TRANSPORTATION												
4930	EQUIPMENT												
4940	STOCK												
4942	PROCESSING				15%	65%							
4944	PRINTING				20%	65%							
4995	OTHER												
	<b>Total 49</b>												
<b>50</b>	<b>VIDEOTAPE STOCK</b>												
5001	ORIGINAL SCENES												
5010	FILM TO TAPE TRANSFER STOCK												
5020	SUB-MASTERS WITH TIME CODE				20%	65%							
5035	SOUND TRANSFER 1/4" TO 3/4" DIGITAL				15%	65%							
5040	RUSHES SYNCHRONISATION				20%	65%							
5050	VIEWING COPIES				20%	65%							
5095	OTHER											Include labour portion only	
	<b>Total 50</b>												
<b>51</b>	<b>PRODUCTION LABORATORY</b>												
5101	RAW STOCK												
5110	PROCESSING				15%	65%							
5115	SPECIAL PROCESSING				15%	65%							
5117	VACUMATE				15%	65%							
5120	WORK PRINT				20%	65%							
5122	VIDEO CASSETTES (RUSHES)				20%	65%							
5124	TAPE SELECTION				15%	65%							
5126	SPECIAL PRINTING				20%	65%							
5130	MAGNETIC MASTER STOCK (1/4")												
5135	MAGNETIC TRANSFER				15%	65%							
5140	SYNCHRONIZATION				20%	65%							
5150	EDGE CODING				15%	65%							
5160	RUSHES/DAILIES SCREENING				20%	65%							
5170	CONTINUITY / PRODUCTION STILLS												
5195	OTHER											Include labour portion only	
	<b>Total 51</b>												
<b>t1</b>	<b>TOTAL BELOW THE LINE</b>												
<b>60</b>	<b>EDITORIAL LABOUR</b>												
6001	SUPERVISOR / CO-ORDINATOR				100%	65%						C=100% if personal services corp	
6010	EDITOR				100%	65%						C=100% if personal services corp	
6012	ASSISTANT EDITOR(S)				100%	65%						C=100% if personal services corp	
6018	APPRENTICE EDITOR(S)				100%	65%						C=100% if personal services corp	

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ONTARIO FILM AND TELEVISION TAX CREDIT													
CALCULATION OF ELIGIBLE LABOUR EXPENDITURE													Sept 14/98
NUMBER	CATEGORY	TOTAL COST	NON-ONTARIO COSTS	ONTARIO COSTS (A)	RATE FOR LABOUR (B)	% OF LABOUR (C)	TOTAL ONTARIO LABOUR EXPENDITURE (D) [A x B x C]	COMMENTS					
6020	DIALOGUE EDITORS				100%	65%		C=100% if personal services corp					
6024	SOUND EFFECT EDITOR(S)				100%	65%		C=100% if personal services corp					
6030	MUSIC EDITOR(S)				100%	65%		C=100% if personal services corp					
6035	ASSISTANT SOUND EDITOR(S)				100%	65%		C=100% if personal services corp					
6040	LOOPING SUPERVISOR				100%	65%		C=100% if personal services corp					
6042	OTHER LABOUR				100%	65%							
6050	FRINGE BENEFITS							Only include taxable benefits					
6060	TRAVEL EXPENSES												
6065	LIVING EXPENSES												
6070	DIALOGUE / TRANSCRIPTION				100%	65%		C = 100% if paid directly to individual					
6095	OTHER							Include labour portion only					
	<b>Total 60</b>												
<b>61</b>	<b>EDITORIAL EQUIPMENT</b>												
6101	EDITING ROOMS												
6110	EDITING EQUIPMENT												
6130	PICTURE EDITING PURCHASES												
6135	SOUND EDITING PURCHASES												
6140	POST PRODUCTION OFFICE EXPENSES												
6150	COURIER				100%	65%							
6195	OTHER												
	<b>Total 61</b>												
<b>62</b>	<b>VIDEO POST PRODUCTION (PICTURE)</b>												
6201	PAPER CUT				100%	65%		C=100% if personal services corp					
6205	OFF LINE				30%	65%							
6210	COMPUTER LOAD LIST				15%	65%							
6215	ON LINE				15%	65%							
6220	DIGITAL / OPTICAL EFFECTS MACHINE(S)				15%	65%							
6225	GRAPHICS GENERATOR				15%	65%							
6230	COMPUTER CLEAN				15%	65%							
6240	GRAPHICS				15%	65%							
6245	GRAPHICS CAMERA				15%	65%							
6250	INSERT STUDIO												
6260	PROTECTION COPIES				20%	65%							
6264	DISTRIBUTION COPIES				20%	65%							
6266	ALTERNATIVE COPIES				20%	65%							
6268	VIEWING COPIES				20%	65%							
6270	CLOSED CAPTIONING				100%	65%							
6295	OTHER							Include labour portion only					
	<b>Total 62</b>												
<b>63</b>	<b>VIDEO POST PRODUCTION (SOUND)</b>												
6301	AUDIO MASTER - TIME & STOCK				20%	65%							

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ONTARIO FILM AND TELEVISION TAX CREDIT							CALCULATION OF ELIGIBLE LABOUR EXPENDITURE			Sept 14/98	
NUMBER	CATEGORY	TOTAL COST	NON-ONTARIO COSTS	ONTARIO COSTS (A)	RATE FOR LABOUR (B)	% OF LABOUR (C)	TOTAL ONTARIO LABOUR EXPENDITURE (D) [A x B x C]	COMMENTS			
6305	EDITED MASTER - TIME & STOCK				20%	65%					
6310	VOICE OVER RECORD - STUDIO & STOCK				100%	65%					
6315	PRE-MIX - STUDIO & STOCK				15%	65%					
6320	SWEETENING - STUDIO & STOCK				15%	65%					
6325	MIX - STUDIO & STOCK				15%	65%					
6330	RE-STRIP MASTER(S), PROTECTION(S)				15%	65%					
6335	FOLEY TRACK - STUDIO, MATERIALS				50%	65%					
6340	M&E TRACK				15%	65%			Include labour portion only		
6395	OTHER										
	<b>Total 63</b>										
<b>64</b>	<b>POST PRODUCTION LABORATORY</b>										
6401	SLASH PRINT				20%	65%			C = 100% if paid directly to individual		
6405	NEGATIVE CUTTING				100%	65%					
6410	ANSWER PRINT				20%	65%					
6415	FADES / DISSOLVES				20%	65%					
6420	INTERPOSITIVE				20%	65%					
6425	INTERNEGATIVE				20%	65%					
6430	C.R.I.				20%	65%					
6435	CHECK PRINT(S)				20%	65%					
6440	WET GATE PRINTING				20%	65%					
6445	POLISHING				20%	65%					
6450	RELEASE PRINT(S)				20%	65%					
6455	GOVERNMENT TAXES										
6460	REDUCTION/BLOW-UP PRINTING				20%	65%					
6470	VIDEOCASSETTES				20%	65%					
6480	VAULTS/STORAGE										
6495	OTHER								Include labour portion only		
	<b>Total 64</b>										
<b>65</b>	<b>FILM POST PRODUCTION SOUND</b>										
6501	ORIGINAL EFFECTS RECORDING				100%	65%					
6504	EFFECTS LIBRARY PURCHASES										
6508	SPECIAL SOUND TREATMENT				15%	65%					
6510	NARRATION/ VOICE-OVER STUDIO				100%	65%					
6515	SOUND TRANSFER				15%	65%					
6520	SOUND SLASHES / DUPES				15%	65%					
6522	LIP SYNC BAND				15%	65%					
6525	POST SYNC RECORDING (A.D.R.)				100%	65%					
6530	FOLEY TRACK				20%	65%					
6535	EVALUATION SCREENINGS				25%	65%					
6537	INTERLOCK SCREENINGS				25%	65%					
6540	PRE MIX				15%	65%					

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ONTARIO FILM AND TELEVISION TAX CREDIT							Sept 14/98	
CALCULATION OF ELIGIBLE LABOUR EXPENDITURE								
NUMBER	CATEGORY	TOTAL COST	NON-ONTARIO COSTS	ONTARIO COSTS (A)	RATE FOR LABOUR (B)	% OF LABOUR (C)	TOTAL ONTARIO LABOUR EXPENDITURE (D) [A x B x C]	COMMENTS
7001	UNIT PUBLICIST				100%	65%		C = 100% if personal services corp
7005	PUBLICITY/PRESS EXPENSES							
7020	PHOTO EQUIPMENT							
7025	STILLS/PRINTING/PROCESSING							
7040	PROMOTION							
7045	VIDEO CASSETTES							
7050	PUBLIC RELATIONS							
7095	OTHER							
	<b>Total 70</b>							
<b>71</b>	<b>GENERAL EXPENSES</b>							
7101	INSURANCE							
7105	MEDICAL FEES				100%	65%		
7110	LEGAL FEES				100%	65%		
7120	POST PRODUCTION ACCOUNTING				100%	65%		C = 100% if personal services corp
7125	AUDIT FEE				100%	65%		
7130	BANK CHARGES							
7195	OTHER							
	<b>Total 71</b>							
<b>72</b>	<b>INDIRECT COSTS</b>							
7201	CORPORATE OVERHEAD							
7220	INTERIM FINANCING							
7230	OTHER FINANCING							
7295	OTHER							
	<b>Total 72</b>							
<b>12</b>	<b>TOTAL OTHER</b>							
<b>12</b>	<b>TOTAL ATL, BTL, POST PROD &amp; OTHER COSTS</b>							
<b>80</b>	<b>CONTINGENCY</b>							
8001	CONTINGENCY							Include labour portion only.
	<b>Total 80</b>							
<b>12</b>	<b>SUB TOTAL</b>							
<b>81</b>	<b>COMPLETION GUARANTEE</b>							
8101	COMPLETION GUARANTEE							
	<b>Total 81</b>							
<b>82</b>	<b>COST OF ISSUE</b>							
8201	COST OF ISSUE							
	<b>Total 82</b>							
<b>13</b>	<b>GRAND TOTAL</b>							
<b>Budget Control Total</b>								

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## X COST REPORTS

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A cost report is a progress report of the spending of the budget as it becomes actualized. At some point in time prior to production (and hopefully earlier than that), you lock your budget. Any changes or the substitution of actual numbers thereafter is shown as a variance. You do not keep changing the budget. Rather, you must report the amount spent to date as compared to the locked budget. Telefilm has a format they prefer (largely because there have been some wild variations) which should be acceptable to most other financial bodies to whom you have to report.

A copy of this format is attached. The headings should be self-explanatory and any decent production accountant will be familiar with it.

The key points about cost reports are the following:

- Be certain it is clear how you indicate overages or underages (whether you use brackets or minus signs) and identify which is which. (Yes, people do this differently).
- Variances require explanation, particularly if the variance is in any way sizeable. For example, if it is overtime or that the actors arrived late or that someone had an accident and everything had to be delayed, or that you really underestimated the hair and makeup, etc. Someone who is not combing the production reports for each incident or who is not familiar with all the twists and turns of the production will need to see written explanations attached to the cost report rather than guess. Your funder may even delay payments if the explanations are not satisfactory.
- It is not advisable to deduct overages against your contingency until you are nearing completion of principal photography. The completion bond agreement may have various guidelines such as, not more than 60% of the contingency can be used prior to end of principal photography.
- The cost report requires review by the production manager, the accountant and the producer. There are numerous areas of discretion in cost reporting and the final responsibility will lie with the producer.

Cost reports are the key manner in which the bonder, investors and financiers keep track of the production and its costs. Late or unclear cost reports flag problems and may delay the release of drawdowns from financiers.

**SAMPLE COST REPORT EXCERPT**

Acct #	Description	Pd to Date	Pay-ables	Cost to Date	Est. to Complete	Total Cost	Budget	+ / -
2.01	Writer	7,500		7,500	1,000	8,500	8,500	0
3.00	Development Costs	30,000		30,000	0	30,000	30,000	0
4.05	Producer			0	15,000	15,000	15,000	0
4.15	Associate Producer	2,000		2,000	2,000	4,000	4,000	0
5.01	Director	7,500		7,500	22,500	30,000	30,000	0
	<b>TOTAL A:</b>	<b>47,000</b>	<b>0</b>	<b>47,000</b>	<b>40,500</b>	<b>87,500</b>	<b>87,500</b>	<b>0</b>
<b>10.00</b>	<b>Cast</b>							
10.25	Off Camera V.O.			0	2,500	2,500	2,500	0
<b>10.00</b>	<b>Total Cast</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2,500</b>	<b>2,500</b>	<b>2,500</b>	<b>0</b>
<b>12.00</b>	<b>Production Staff</b>							
12.05	Production Manager	8,000		8,000	16,000	24,000	24,000	0
12.15	Location Manager	5,000		5,000	0	5,000	6,000	-1,000
12.35	Prod. Asst/Trainees	3,960		3,960	0	3,960	3,000	960
12.50	Production Account.	1,370		1,370	1,030	2,400	2,400	0
12.60	Local Contact	1,600		1,600	0	1,600	2,000	400
12.64	Interpreter	3,303		3,303	1,000	4,303	2,000	2,303
<b>12.00</b>	<b>Total Prod. Staff</b>	<b>23,233</b>	<b>0</b>	<b>23,233</b>	<b>18,030</b>	<b>41,263</b>	<b>39,400</b>	<b>1,863</b>
<b>22.00</b>	<b>Camera Labour</b>							
22.01	D.O.P.	4,650	7,000	11,650	1,000	12,650	10,000	2,650
22.70	Still Photographer	1,650		1,650	1,000	2,650	1,000	1,650
<b>22.00</b>	<b>Total Camera Lab.</b>	<b>6,300</b>	<b>7,000</b>	<b>13,300</b>	<b>2,000</b>	<b>15,300</b>	<b>11,000</b>	<b>4,300</b>

With every cost report, there should be an explanation for each substantial overage and/or underage, such as the following:

**12.64 Interpreters:** Due to the sensitive nature of the shoot it was difficult to find reliable interpreters who would respect the confidentiality of the material. They were also more expensive than we originally anticipated.

**22.01 DOP:** Part of this overage is due to rescheduling that was required. We also determined that a more experienced DOP than originally planned would ultimately be more economical.

You can also present your explanations in short form such as:

12.64 Fee for interpreter was higher than anticipated (2,303)

22.01 Increased costs due to shoot cancellations, re-shoots and more expensive DOP than budgeted (2,650)