

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**THE ONTARIO EDUCATIONAL  
COMMUNICATIONS AUTHORITY**

**AND**

**THE SOCIETE DES AUTEURS, DE RADIO,  
TELEVISION ET CINEMA**

1305800

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**RECOGNITION AND APPLICATION**

The Ontario Educational Communications Authority (hereinafter referred to as TVOntario) is a non-commercial educational broadcaster. TVOntario's mission is to encourage learning and understanding, extend opportunities for individual growth, and help Ontarians develop the skills they require to participate and compete successfully in a world of rapid change and global challenge, by providing educational programming services in English and French, using television and other communications technologies.

- 1.1** TVOntario recognizes the Société des auteurs, de Radio, Television et Cinéma (hereinafter referred to as SARTEC) as the exclusive bargaining agent for all writers as defined herein who are engaged by TVOntario.
- 1.2** SARTEC does not claim jurisdiction over writers engaged or commissioned to write in the English language.
- 1.3** This Memorandum does not apply to:
  - (a) a person employed by TVOntario on a salary where the term of employment is for more than three (3) months;
  - (b) a student enrolled in an educational institution in a normal learning situation;
  - (c) a person holding or a candidate for public office when writing for a program on political affairs in which such person appears;
  - (d) a member of the Canadian forces who prepares written material for any program primarily for the purpose of displaying military ceremony or procedures or for the purpose of recruitment, education or information relating to the Armed Forces;
  - (e) a recognized specialist who writes a non-dramatic script the contents of which relate to the specialist's own special field, except that

this exclusion shall not apply to a specialist after such a specialist has written five (5) such scripts in a twelve month period;

(f) a person who writes a non-dramatic script directly related to that person's own experience for a program in which the person appears, or an amateur athlete who writes a non-dramatic script for a program related to the amateur athlete's own particular sport in which the athlete appears except that such exclusion shall not apply to a member of either of these groups after such a person has made written contributions to five (5) programs in any twelve month period;

(g) a person paid out of public funds who is prevented, by statute or the terms of that person's employment, or a person who is prevented under the terms of that person's employment, from being remunerated for writing for TVOntario;

(h) a person who is a member of another external union or collective including but not limited to the Ontario Confederation of University Faculty Associations (OCUFA), Ontario Public Service Employees' Union (OPSEU), Ontario Teachers' Federation (OTF) including present or past affiliates.

**1.4** a) A member of SARTEC shall have an amount equal to two and one-half per cent (2.5%) deducted from gross fees and TVOntario shall remit such deductions to SARTEC monthly.

b) A non-member of SARTEC shall have an amount equal to five per cent (5%) deducted from gross fees and TVOntario shall remit such deductions to SARTEC monthly.

**1.5** This Memorandum sets forth minimum rates and working conditions. However, nothing in the Memorandum shall be deemed to prevent the writer from obtaining more favorable rates and conditions than those provided herein; for example, limitations on TVOntario's editorial control, and/or the right to control promotional uses of the program material, etc. A person engaged at rates or on terms or conditions in excess of or more favorable than the minimum provided herein shall continue to have the benefit and protection of all the provisions of the Memorandum.

**1.6** SARTEC shall provide TVOntario with a national membership list capable of being directly entered into TVOntario's computerized systems upon written request by TVOntario once per year. The list

shall be provided without cost to TVOntario and shall include members' names, addresses, SARTEC numbers, social insurance numbers and other information that TVOntario might reasonably require for the efficient administration of this Memorandum.

## DEFINITIONS

- 2.1 Adaptation: A script based on a work already in dramatic form with the proviso that an adaptation by a writer of the writer's own work be classed as an original script.
- 2.2 Auxiliary: Study guides, handbooks, audio tapes, film loops, slide programs, film strips, multi-media kits, the preparation of material for use as computer-aided instruction, or other aids for use only in conjunction with a program or programs.
- 2.3 Broadcast: To broadcast means to transmit a program either live or by means of a recording or pre-recording during the broadcast day as defined by the CRTC license.
- 2.4 Continuity: Material written to link prestructured program elements which are not written by the writer.
- 2.5 Contract Fee: The fee for a completed script as specified in a contract executed between TVOntario and the writer.
- 2.6 Cutting: To cut is to delete portions of work without rewrite or major transposition.
- 2.7 Date of Production: The day or dates on which the production of a script takes place.
- 2.8 Draft Script: The first delivered version of a script which ordinarily will be a complete draft of the script in continuity form including full dialogue if required.
- 2.9 Dramatization: A script in dramatic form developed from work(s) not already in dramatic form, with the proviso that a dramatization by a writer of the writer's own work be classed as an original script.
- 2.10 Educational Use: For the purposes of this Memorandum, educational use is use of a program in such a context as to provide learning opportunity aimed at the acquisition or improvement of knowledge or the enlargement of understanding of members of the public to whom such programming is directed or under circumstances such that the

acquisition or improvement of such knowledge or the enlargement of such understanding is capable of supervision or assessment by an appropriate educational organization, by appropriate means. The intent of this provision is to ensure that all such uses, taken as a whole, are for the purpose of furnishing educational opportunities and not merely general entertainment.

- 2.11** Final Script: A final version of a script with individual scenes, full dialogue or monologue (including narration in connection therewith) and camera setups if required, provided however, that if TVOntario desires any script to consist in part of suggested or indicated dialogue or action (so that an actor portraying a role may extemporize therefrom) such suggested or indicated dialogue or action shall be deemed to satisfy the requirement of "full dialogue" or "monologue".
- 2.12** Format: A format is a treatment for a series or serial.
- 2.13** Gross Revenue to TVOntario: Gross revenue received by TVOntario from distribution of programs less twenty percent (20%) to cover withholding taxes, rebates and bad debts.
- 2.14** Lecture: An academic or teaching program delivered basically by one person.
- 2.15** Narration: Means written material which may be read on or off camera and used to explain or relate segments or action.
- 2.16** Net Sales Revenue (Cassettes): The revenue received by TVOntario from the sale of cassettes less manufacturing costs and retail distribution costs, if these costs have been met by TVOntario.
- 2.17** One-Time Show: A program, intended for use as an entity and not as a program in a series or serial, as defined herein.
- 2.18** Outline: Material submitted in a mutually agreed form embodying an idea or ideas for a program, with suggestions for the development of the idea/ideas into a script.
- 2.19** Pilot Script: Means a script which is written as one of a projected series to enable TVOntario to determine whether it will produce the series.
- 2.20** Polish: Minor improvements to the script which shall not include changes in the structure, addition or deletion of characters, alteration of plot, if any, or rewording of more than five per cent (5%) of the dialogue.

- 2.21 Producer: The individual or individuals designated by TVOntario to be responsible for the production of a program within the terms of reference laid down by TVOntario.
- 2.22 Program: A program is a produced entity either live or recorded by any means whatsoever.
- 2.23 Resource Materials Bank: Educational materials produced and collected for use by teachers, educational administrators and students in study, evaluation and experimental learning situations.
- 2.24 Script: Written material being the work of a writer in a format suitable for use in the production of a program.
- 2.25 Script Research: For the purposes of this Memorandum, script research means the collecting and organizing of such material as is necessary to the writing of scripts and may include preparing background notes and questions. It is acknowledged that script research normally forms an integral part of the script writing process and that the writer's fee will cover normal research requirements.
- 2.26 Serial: A series of programs in which, generally, the same characters carry on a continuing narrative.
- 2.27 Series: A series of programs, each complete in itself, held together by the same title or identifying device or character or a personality common to all the programs in the group.
- 2.28 Talk: A Non-dramatic monologue written by the person who is to deliver it.
- 2.29 Team: Two writers contracted by TVOntario at the same time who have agreed to collaborate on a script or scripts. A team may consist of three such writers if they deliver to SARTEC a letter confirming their desire to work together as a team.
- 2.30 Treatment: Means a fully developed brief for a program that includes the objectives to be achieved, the full factual material to be included, an outline of the educational or pedagogical content, the completely developed outline for the characters (if any) that are to be included, together with the general plan or scheme by which these various elements are to be combined in the program.
- 2.31 TVOntario: Means the Ontario Educational Communications Authority.

- 2.32 **Writer:** A person whom WONTARIO has engaged or engages to write script material including adaptations, continuity, dramatizations, formats, lectures, research as defined in Clause 2.25, serials, series, talks, treatments, for the production of a program or programs.

## COMPLAINTS AND GRIEVANCES PROCEDURE

- 3.1 TVONTARIO and SARTEC agree to form a joint committee of four (4) members of whom each will delegate two (2) representatives. This committee shall be responsible for examining any issue on which this Memorandum is silent or which has been dealt with unsatisfactorily in the opinion of either party. Joint recommendations shall be made on unanimous decisions. These recommendations shall not be binding. However, the parties agree that these recommendations, where agreed by TVONTARIO and SARTEC, may become appendices to this Memorandum.
- 3.2 *Any* complaint concerning the interpretation or the application of this Memorandum should be submitted to the permanent joint Committee, and settled if possible, at the time of its occurrence. It may also give rise to a grievance.
- 3.3 The minutes of these joint Committee meetings must be prepared, read and signed by the representatives of the two (2) parties before the meeting closes.
- 3.4 Any grievance must be submitted in writing ;grievances shall be duly signed by the party raising them. SARTEC shall submit all grievances to Manager Industrial, and Employee Relations or other designated officer of TVOntario, or TVONTARIO shall submit them to SARTEC's authorized representative, as the case may be.
- 3.5 The parties shall agree upon the appointment of a single arbitrator. Failing such agreement, either party may request the Minister of Labour of Canada to appoint an arbitrator.
- 3.6 **An** arbitrator shall hear the case and, if possible, render a decision within thirty (30) days following the end of the hearing.
- 3.7 The decision of the arbitrator shall be final and binding and shall in no way alter this Agreement.

- 3.8 The expenses of the arbitrator shall be borne equally by the parties, but no other expenses shall be shared except by mutual consent.
- 3.9 The arbitrator may call witnesses at the request of either party.

### **NON-DISCRIMINATION**

- 3.10 Non-Discrimination : The parties agree that any person(s) exercising his / her rights under this Memorandum does so without prejudice to his / her relationship or fear of discipline by either of the parties to this Memorandum, or its agents.
- 3.11 TVOntario and SARTEC agree not to discriminate against any writer in accordance with the prohibited grounds under the Ontario Human Rights Code.

### **COPYRIGHT**

- 4.1 A writer shall hold the copyright in all materials furnished by the writer pursuant to an engagement, subject however to TVOntario's exclusive right to use all such materials for the purposes, and on the terms and conditions of the said engagement, during its currency and during any period for which it is renewed. It is understood **and** agreed that all rights granted by any individual contract between a writer and TVOntario shall ordinarily be in the form of a license from the writer to TVOntario.
- 4.2 Every writer shall provide TVOntario at the earliest possible time with a written list of those materials included in the writing furnished as part of an engagement which are subject to, or suspected by the writer to be subject to, copyright interests belonging to one or more third parties. TVOntario shall be responsible for obtaining all requisite clearance for any such materials included in the list so provided and accepted by TVOntario and for any copyright clearance in materials supplied by TVOntario. Where the writer's claim to copyright is identified on scripts or copies of scripts supplied by the writer to TVOntario, TVOntario shall not reproduce copies of such scripts or any substantial portion thereof without also reproducing such copyright identification.



## SCRIPT ALTERATIONS

- 5.1 The writer of a script shall be consulted in regard to changes, modifications, additions or deletions affecting meaning, intent, theme characterization or plot development of the script and editorial changes of a major nature unless the writer is not available. It is further agreed that, unless the writer is not available, the writer will be asked to do this work.
- 5.2 TVOntario reserves editorial freedom to make script changes with regard to production and educational needs, subject only to consultation with the writer unless the writer is not available and to any provisions in an individual contract which give a writer greater editorial control.
- 5.3 The writer may indicate in the script elective cuts for timing purposes.

## CONTRACTS

- 6.1 It is agreed that no purely verbal agreement shall be binding nor shall it constitute grounds for an investigation of a complaint by either of the parties concerned. Therefore, it is a principle of this Memorandum that both parties have the right to the protection afforded by a written contract and that such contract shall be signed before the work begins on a commissioned script or other work covered by this Memorandum and commissioned by TVOntario, and before any requested revision is begun, or before production begins, whichever is sooner, on a non-commissioned script.
- 6.2 Except in the case of writers engaged as a team (who are engaged on a single contract), when two or more writers are involved in the writing of a script, each writer shall have an individual contract with TVOntario.
- 6.3 A copy of every fully executed contract between a writer and the TVOntario shall be sent by TVOntario to SARTEC at the end of each month.
- 6.4 When a writer's contract cannot be continued at any state of development owing to a change in TVOntario policy, personnel or intent, one hundred per cent (100%) of the total contract fee shall be paid and any copyright held by the writer shall remain with the writer, subject to TVOntario's exclusive license in Article 4.1.

## CREDITS

- 7.1 The minimum requirements for credits are as follows:
- (a) On each program for which the writer is contracted, TVOntario shall give a visual credit unless the writer notifies TVOntario in writing prior to the final editing of the program that no credit is to be given. The writer may substitute a pen name, provided TVOntario is notified in writing prior to the final editing of the program.
  - (b) Whenever TVOntario excerpts script material for use in support materials, the writer shall be given a credit.
- 7.2 The parties recognize that it is the responsibility of the producer to supervise the writing of the script and to suggest changes where warranted. Discharging such responsibility in and of itself does not entitle the producer to a credit as a writer.

## OBLIGATIONS OF TVONTARIO

- 8.1 Assignment of Fees: Payment shall be made directly to the writer unless written authorization has been received by TVOntario from the writer authorizing payment to a third party.
- 8.2 Competence of Writer: TVOntario assumes the risk of the professional, artistic **and** academic competence of the writer.
- 8.3 TVOntario agrees that a writer has the right to attend sessions at which production personnel are present in the production of a program based upon a script the writer has written, provided that the writer obtains permission from the producer. It is understood that such permission shall not be unreasonably withheld.
- 8.4 TVOntario shall be entitled to broadcast, distribute and/or publish for advertising and promotional purposes, extracts from a writer's script provided that the writer's name is associated with the material so used, except when the duration of any extract does not exceed one (1) minute. Such extracts shall not exceed two hundred and fifty (250) words for publication purposes or a duration of two (2) minutes for broadcast purposes. If the writer has signed a third party contract for publication prior to the signing of a contract with TVOntario, this provision will in addition be subject to the terms of such third party contract.

- 8.5 a) When making any payment to a writer, TVOntario shall specify the program and the right(s) exercised for which payment is being made.
- b) Payment of contract fees must be made by prepaid first class mail within twenty-one (21) calendar days of receipt by payroll of the approved writer's invoice for services rendered as determined by this Agreement, except in the case where external circumstances temporarily intervene.
- 8.6 Commissioned Production: In the event of TVOntario commissioning an Independent producer to produce a program, TVOntario shall require such producer to adhere to the terms, rates and conditions of this Memorandum. TVOntario shall notify SARTEC, prior to the commencement of the production, and provide the following information:
- (I) Name of Independent Producer
  - (ii) Address
  - (iii) Production Title(s)
  - (iv) Contact Name at Production Company
  - (v) Telephone Number
- 8.7 Co-Production: In the event of TVOntario entering into a co-production to produce a program or series, TVOntario shall notify SARTEC once there is a fully executed contract covering the co-production and provide the following information:
- (i) Name of the Co-Producer(s)
  - (ii) Address(es) of the Co-Producer(s)
  - (iii) Production Title
  - (iv) Contact Name at Production Company
  - (v) Telephone Number

## **CONDITIONS GOVERNING ENGAGEMENT**

- 9.1 Whenever TVOntario wishes to engage a writer, a fee shall be negotiated and a contract signed before the writer begins work.
- 9.2 TVOntario may engage a writer to write a script, either
- a) as a whole,
  - or
  - b) by installments as provided below.

When TVOntario engages a writer for a complete script by installments, the contract fee shall be apportioned and paid as follows:

	Percentage of the Contract Fee
	-----
(a) on signing of the contract	10%
(b) on delivery of the outline	30%
(c) on delivery of the draft script	35%
(d) on delivery of the final script	25%

**9.3** When TVOntario engages a writer to prepare a treatment, only the contract fee shall be paid in full on delivery of the treatment.

**9.4** When TVOntario engages a writer to write a script by installments based on an existing treatment, the contract fee shall be apportioned **and** paid as follows:

	Percentage of the Contract Fee
	-----
(a) on delivery of the draft script	60%
(b) on delivery of the final script	40%

**9.5** TVOntario may terminate an engagement at the end of any installment, in which case all rights of the writer in the work shall remain the property of the writer unless further development of such work proceeds under the terms of this Memorandum.

**9.6** Should TVOntario not wish the writer to proceed to the next installment after the receipt of an outline or draft script, it shall notify the writer in writing of termination of the engagement within twenty-one (21) calendar days from the date of receipt of the outline or draft script and no payment for any further installment under the contract shall be due or payable. When a decision to proceed or to terminate cannot be reached within twenty-one (21) calendar days, TVOntario shall request permission from the SARTEC to extend this time limit, which permission shall not be unreasonably withheld. Should

TVOntario not notify the writer in writing within twenty-one (21) calendar days and has not requested extension of the time period from the SARTEC, it shall be deemed to have accepted the outline or draft script and the writer shall at once proceed to the next installment.

- 9.7** The writer shall, if requested by TVOntario, provide a polish of the final script, provided TVOntario notifies the writer that it wants the polish within fourteen (14) days of the delivery of the final script. The polish shall not involve any substantial change in the story or structure or the introduction of any major characters or elements that have not been included in the script to this point. If TVOntario has not requested a polish within fourteen (14) days of receipt of the final script, it shall be deemed to have accepted the final script.
- 9.8** When TVOntario acquires written material already in existence, it shall contract and pay a fee as if the material had been written for TVOntario under the terms of this Memorandum.
- 9.9** It is agreed that subsequent to the delivery of the final script and polish, if requested, TVOntario may request further revisions for which a fee to be negotiated between TVOntario and the writer shall be paid.'
- 9.10** Where a writer originates, in an outline, treatment, format, draft script, final script, or pilot script, an idea for a program or series or serial, or for a character who subsequently appears on a program or on a series or serial on a continuing basis, and this origination can be established, further use by TVOntario of the idea or character shall be subject to a royalty payment to the writer of not less than fifteen per cent (15%) of the original contract fee, the contract fee being understood to be the fee for a complete script. In the case of a series in progress, TVOntario shall have the right upon payment of at least the minimum royalty provided in this clause to continue during that series to use any idea for the series or any continuing character originated by the writer.
- 9.11** If TVOntario wishes to engage another writer to prepare a script based on an outline, draft, or final script, the original writer of the outline, draft, or final script shall receive a royalty payment which shall be the subject of negotiations between TVOntario **and** the original writer (it being understood that the original writer shall not unreasonably withhold consent to such contract), but shall not be less than twenty per cent (20%) of the writer's original contract fee, the contract fee being understood to be the fee for a complete script.
- 9.12** TVOntario agrees that no such engagement of another writer may take place until a contract for royalty payments has been executed between TVOntario and the original writer. These royalty payments shall be in

addition to all sums previously paid the writer for such outline, draft or final script.

- 9.13** When a writer is engaged to prepare a script based on an existing outline, treatment, draft, or final script, the writer shall be paid a fee at least ninety per cent (90%) of the original rate.

## **MINIMUM RATES**

- 10.1** Writers' Fees. Payment of the fee shall entitle TVOntario to four (4) years' unlimited use on the TFO network in Canada.

- 10.2** Original material 4 Year Use  
(including narration)

- (a) Writer contracted for complete script

Each five minutes of script, or portion \$528.65

- (b) Writer contracted for script from existing treatment \$473.75

- 10.3** Material adapted 4 Year Use  
(including narration)

- (a) Writer contracted for complete script

Each five minutes of script, or portion \$458.10

- (b) Writer contracted for script from existing treatment \$437.75

- 10.4 Prepared interview material and continuity - writing only. 4 Year Use
- (a) Minimum (to include two minutes of interview or continuity) \$208.30
- Each additional minute \$ 79.50
- (b) Talks and Commentaries - writing and delivery.
- Each five (5) minutes of script or portion \$616.00
- 10.5 Where two or more writers who are not a team are commissioned to write a given program, the following rates shall apply:
- (a) two writers: each writer shall receive at least sixty per cent (60%) of the minimum fee applicable to one writer;
- (b) three writers: each writer shall receive at least fifty per cent (50%) of the minimum fee applicable to one writer;
- (c) four writers or more: each writer shall receive at least forty per cent (40%) of the minimum fee applicable to one writer.
- 10.6 Sketches, Vignettes, Blackouts, Poems, Skits and other segments of material designed for insertion into programs, or entertainment or information fillers. 4 Year Use
- (a) Material for insertion in a program of any length:
- 1 minute or less \$132.15
- 3 minutes or less \$315.85
- Each additional minute \$105.30

**10.7 Spot Announcements, Promotions****4 Year Use**

Written material or programs which may be defined as spot announcements or promotions not exceeding five (5) minutes in length shall be paid for as follows:

1 minute or less	\$132.15
Each additional minute	\$105.30

**TRANSLATION**

**11.1** A straight translation shall be paid for as for adapted material. (It is understood that the Memorandum does not apply to a literal translation for non-broadcast use). A combined translation-adaptation or translation-dramatization shall be paid at the rate for the original material.

**ASSIGNED RESEARCH**

**12.1** Where TVOntario commissions a writer to do assigned research, the fee payable shall be negotiated between the writer and TVOntario and a contract shall be signed before work begins. Unless the contract provides otherwise, payment of this contract fee for such assigned research delivered to TVOntario shall vest in TVOntario all rights therein of the writer in such assigned research in perpetuity. The minimum rate payable to writers by TVOntario for such assigned research shall be:

Half day	\$ 113.12
Full day	\$234.10

**12.2** The rates specified in this Memorandum do not include the preparation of auxiliary material related to a program, and where a writer's engagement includes an obligation to provide any such materials, an additional fee shall be negotiated therefore at the time the writer is engaged.

**12.3 Pilot Script**

The rate for writing a pilot script shall be one hundred per cent (100%) of the applicable minimum fee.



**12.4 Meetings**

Should the writer be required by TVOntario to attend more than three (3) meetings to review material in connection with the script, the writer shall receive compensation at the rate of one hundred thirty-one dollars (\$131.00) per half day or two hundred sixty-two dollars (\$262.00) per full day for time spent at any meeting beyond the original three (3) meetings.

**12.4 Travel Expenses**

Should the writer be required by TVOntario to travel, the travel expenses will be reimbursed in accordance with the TVOntario's travel policy.

**12.6 Series Format**

When TVOntario engages a writer to prepare a format for a series, the minimum fee payable shall be:

- |     |   |   |
|-----|---|---|
| (a) | For a series of programs of fifteen minutes or less | \$ 870.00   |
| (b) | For a series of programs of thirty minutes or less  | \$1,738.25  |
| (c) | For a series of programs of over thirty minutes     | Payable in multiple increments of fifteen minutes |

**12.7 Program Treatment**

When TVOntario engages a writer to prepare a treatment for a program, the minimum fee payable shall be:

- |     |   |   |
|-----|---|---|
| (a) | For a program of fifteen minutes or less. | \$ 580.00   |
| (b) | For a program of thirty minutes or less   | \$1,160.00  |
| (c) | For a program of over thirty minutes      | Payable in multiple increments of fifteen minutes |

**USE OF PROGRAM, DISTRIBUTION RIGHTS AND RESIDUAL PAYMENTS**

**13.1 Use of Program**

(a) TVOntario shall, upon payment of the fees specified in this Article, have rights to use of programs produced by it, on the TFO network in Canada, for a period of four (4) years from the date of first broadcast, or six (6) months from the date final payment was due, whichever is sooner.

While the program is being broadcast on the TFO network in Canada, the rights for the non-broadcast market as hereinafter defined, shall be considered acquired for Canada. The non-broadcast market shall be understood to include the opportunity for any teacher to access directly a TFO program and to use it for educational purposes.

(b) TVOntario shall have the right during the term it holds the rights in (a) above or any extension thereof, to acquire exclusive rights to distribute a program in which the writer is involved upon payment as specified in clauses below of this Agreement.

(c) renewal fees and royalties shall not be payable on payments for assigned research or meetings.

**13.2 Renewal of Use**

**(a) TFO Broadcast Use**

TVOntario may renew the use of a program on the TFO network in Canada, upon payment to the writer of the following step-up fees based upon the original contracted fee.

Additional four (4) year period from expiry of initial use  
 .....65% of original contract fee

OR

1st renewal year .....20% of original contract fee  
 2nd renewal year .....20% of original contract fee  
 3rd renewal year .....20% of original contract fee  
 4th renewal year .....15% of original contract fee

(b) Non-Broadcast Use.

Where a program is no longer being broadcast on the TFO network in Canada but teachers wish to continue to use the program, TVOntario may obtain the rights for unlimited non-broadcast use for a period of four (4) years in Canada, upon payment of fifteen per cent (15%) of the original contract fee to each writer involved in the program.

(c) All subsequent renewals shall require a repeat of payments provided in (a) or (b) above.

13.3 Distribution.a) Foreign Markets and English Canada

TVOntario may distribute a program outside of Canada for broadcast or non-broadcast use, or in any of the English markets in Canada except non-broadcast, upon payment to the writers involved in the program of a royalty calculated as follows:

i) Five per cent (5%) of the gross revenue to TVOntario, per writer involved in the program or episode, with a maximum royalty of ten per cent (10%) of gross revenue to TVOntario where more than two (2) writers participated in the program.

ii) Method of Payment

Where more than two (2) writers are involved in a program, the ten per cent (10%) maximum shall be divided equally among the writers involved.

iii) Sales Reports

TVOntario shall provide to SARTEC an annual report of all sales. The sales report must contain the following information:

- the title of the program;
- gross revenue to TVOntario;
- the total amount to be paid to writers;
- the name of the writers affected;
- the name of the distributor, the country and the market involved;
- the length of the purchaser's use.

iv) Schedule for Payment

At the same time as the sales report, as described in the preceding paragraph, is sent to SARTEC, TVOntario shall pay to

the writers the royalties covering the period identified in the preceding paragraph for each writer. The writer's cheque will be accompanied by an explanatory document containing at least the following information:

- the title of the program;
- gross revenue to TVOntario;
- the pro-rata share due to the writer;
- the total amount paid to the writer;
- the name of the distributor, the country and the market involved;
- the length of the purchaser's use.

b) Non-Broadcast Use in Canada. Rights for non-broadcast use by or loan to an institution or a government ministry may be acquired upon payment of the following step-up:

- 6% of the writer's original contract fee, per province including Ontario for four (4) years' unlimited use in this market;

OR

- 30% of the writer's original contract fee, for Canada, for four (4) years' unlimited use in this market.

For the purposes of this clause, "non-broadcast use" shall be understood to mean the use, reproduction and distribution of TFO programs within an institution or government body.

c) Cassette Use. Should the Authority wish to distribute a program based on the script as a cassette or similar compact device for public sale, it shall pay to each writer a royalty fee of five per cent (5%) of its net sales revenue' from the sales of the cassettes, up to a maximum of ten per cent (10%). Where more than two writers are involved in a program, the ten per cent (10%) of the net sales revenue shall be divided equally among them.

As a non-returnable down payment against such royalty, each writer up to a maximum of two (2), shall receive a payment based on the original contract fee, as follows:

For up to 750 cassettes.....	5%
For 751 to 1,500 cassettes.....	a total fee of 10%
For 1,501 to 3,000 cassettes.....	a total fee of 20%
For 3,001 to 6,000 cassettes.....	a total fee of 30%
For over 6,000 cassettes.....	a total fee of 45%

Where more than two (2) writers are involved in a program the non-returnable down payment shall be calculated using the two (2) highest

original contract fees. This amount shall be divided equally among the writers.

TVOntario agrees to furnish the SARTEC with an annual list in April of each year, showing programs distributed as cassettes under the terms of this Clause with the number of cassettes sold and the net sales revenue to TVOntario from each cassette program included in the information provided.

## **RIGHTS SURROUNDING THE DISTRIBUTION OF PROGRAMS IN THE CANADIAN MAJORITYFRANCOPHONE MARKET (QUEBEC)**

### Definitions

For the purposes of this Memorandum of Understanding, terms are defined as follows:

- 14.1 Conventional Television:** Television networks intended for an audience not required to pay to receive a program or the channel by which it is transmitted, regardless of the distribution mode (e.g. SRC, TVA, CBC, CTV).
- 14.2 Educational Television:** Television networks intended for an audience not required to pay to receive a program or the channel, regardless of the distribution mode, and for which the broadcaster's mandate is an educational mandate confirmed by the broadcasting license obtained from the CRTC (e.g. Télé-Québec).
- 14.3 Pay Television:** Television networks for which the service provider receives a specific contribution to supplement any basic general service rate (e.g. Super Écran).
- 14.4 Pay-per-view:** Television networks for which each basic service subscriber may order the recording he wishes to view in consideration of payment of an amount (e.g. Canal Indigo).

For the purposes of this agreement, pay-per-view will be treated the same as pay television.

- 14.5 Specialty Channels:** Specialized channels for which the service provider receives a payment per subscriber (e.g. TV5, MusiquePlus, Canal Famille, Canal D, Canal Vie, RDS, RDI or any other channel or similar service that might subsequently be developed).

- 14.6** Play: One (1) broadcast on conventional or educational television with the exception of 14.11 and 14.12. Broadcast may be simultaneous or not, from one region to another in Canada. In any case, where the broadcast, whether by antenna or any other cable or satellite system with which the broadcaster does business, reaches the same public a second time, that shall constitute a second play. The overlapping of signals in the same region (e.g. Hull-Ottawa) shall not constitute a second play.
- 14.7** Children's program: A program intended for a public aged less than sixteen (16) years.
- 14.8** Rights in any of the markets described in this Memorandum of Understanding may be acquired upon payment to eligible writers of the following percentages of the fee.
- 14.9** Rights for conventional and educational television are payable at the following percentages of the original contract fee, subject to separate rates for children's programs. The percentage shall be calculated based on the writer's original contract fee:
- |         |              |
|---------|--------------|
| 2 plays | 60%          |
| 3 plays | 75%          |
| 4 plays | 90%          |
| 5 plays | 100%         |
| or      | 45% per play |
- 14.10** Rights for Children's programs shall be acquired upon payment of the following percentages of the original contract fee:
- |                 |     |
|-----------------|-----|
| 30% per play or |     |
| 2 plays         | 40% |
| 3 plays         | 50% |
| 4 plays         | 60% |
| 5 plays         | 70% |
- 14.11** Rights for 4 years' unlimited broadcast of scholastic didactic programs on the Télé-Québec network shall be acquired upon payment of six per cent (6%) of the original contract fee,
- 14.12** A scholastic didactic program is understood to be a program produced to meet curriculum objectives. Such a program is not initially produced for entertainment purposes. The rights accorded by this clause permit broadcast during "school block

programming” of Télé-Québec but do not permit broadcast during children prime-time hours (between 7h00 and 8h00 and between 16h00 and 18h00) nor during the week-ends.

- 14.13** Rights for four (4) years’ unlimited broadcast on pay television may be acquired upon payment of seven per cent (7%) of the original contract fee,.
- 14.14** Rights for specialty channels, including cable channels, may be acquired upon payment of:
- ten per cent (10%) of the original contract fee per year of use
- OR
- forty per cent (40%) of the original contract fee for five (5) years’ unlimited use.
- 14.15** Rights for cable channels only, for four (4) years’ unlimited broadcast, may be acquired upon payment of four per cent (4%) of the original contract fee

#### **MODIFICATION FOR USE IN ANOTHER LANGUAGE**

- 15.1** When TVOntario wishes to create another language version of a program involving translation, dubbing or sub-titling (other than into a language of Canadian native peoples, which may be done without step-up), the following step-ups shall be paid to the original writer based on the original contract fee:
- |     |                                  |     |
|-----|----------------------------------|-----|
| (a) | Translation for a new production | 25% |
| (b) | Dubbing an existing program      | 15% |
| (c) | Sub-titling an existing program  | 10% |

#### **FESTIVAL AND COMPETITIONS**

- 16.1** TVOntario may enter its programs in festivals and competitions and authorize all uses ancillary and incidental thereto, without additional payment. However, if as a result, it is proposed that any program be otherwise broadcast or used, residual fees shall be contracted for and paid for in accordance with the conditions of this Memorandum.

## OTHER RIGHTS

**17.1** TVOntario may negotiate with the writer to acquire a license to exploit further rights in the writer's work provided that:

- (a) all such Memorandums for further rights shall be by written contract at terms and conditions not less than those outlined below:
- (b) if TVOntario sells, assigns, licenses, distributes or otherwise disposes of any preserved performance, it shall remain liable for the payment of all fees for residual rights;
- (c) should TVOntario wish to exploit a use not covered in this Memorandum, it shall first consult with SARTEC and negotiate mutually acceptable minimum terms and conditions to apply to such use before entering into negotiation or offering a contract for such use to any individual writer.

## USE OF EXCERPTS

**18.1** (a) Should TVOntario wish to take an excerpt from an existing program which includes the work of a writer for use in a composite program that summarizes or analyzes the same specific subject matter, TVOntario shall have the right to use such excerpt in the composite program unless the writer's original contract precludes this, and shall deliver a notice to the writer before doing so. The fee payable shall be an amount based on the duration of the excerpt in minutes multiplied by the rate paid to the writer for the original work, calculated on a per minute basis.

(b) Should TVOntario wish to take an excerpt which includes the work of a writer from an existing program for any use not covered by this Memorandum, it shall, before doing so, negotiate a contract with the writer. The minimum fee to be paid for such excerpt shall, unless otherwise paid for in the writer's original contract, be \$120.96 or an amount equal to the length in minutes of the excerpt multiplied by the rate paid to the writer for the original program, calculated on a per minute basis, whichever is the greater.

(c) Reviews of program excerpts in a series are not excerpts for the purposes of this clause and are covered by the original contract fee.



## INSURANCE AND RETIREMENT PLAN

- 19.1** Insurance and Retirement for members: TVOntario shall contribute, for insurance and retirement purposes, an amount equal to seven percent (7%) of the gross fees paid to each writer who is a member of SARTEC.
- 19.2** Insurance and Retirement for non-members: TVOntario shall contribute, for insurance and retirement purposes, an amount equal to seven percent (7%) of the gross fees paid to each writer who is a non-member of SARTEC.
- 19.3** Deductions from Writers Fees: TVOntario shall deduct, for retirement purposes, an amount equal to two and one half per cent (2.5%) of the gross fees paid to all members of SARTEC.
- 19.4** All contributions, deductions and payments as required under this Article shall be payable by cheque to SARTEC. Such amounts shall be payable monthly on or before the fifteenth (15th) of the month following the earning of such fee.
- 19.5** For the purpose of this Memorandum, “gross fee” means fee for services and time provided to TVOntario but exclusive of money paid to the writer by TVOntario for expenses, such as per diem allowances or travel receipts as agreed upon.

## WARRANTIES AND INDEMNITIES

- 20.1** In every individual contract between a writer and TVOntario, the following clauses shall be, or shall be deemed to be, included, and such clauses shall be so included to the exclusion of any other warranty or indemnity dealing with matters of copyright, originality of material and the violations of the rights of third parties.
- (a) TVOntario shall indemnify the writer against any and all damages, costs, and other legitimate expenses incurred by the writer as a result of any judgment, jurisdiction or any settlement authorized pursuant to sub-clause (c) hereof where such judgment or settlement arises from:
- (i) a breach by TVOntario of the warranty contained in sub-clause (e) hereof;

(ii) infringement of copyright or other violation of the rights of third parties, with respect to any production using the writer's script or material, except where the claim or action resulting in the judgment or settlement arises directly from the script or material furnished by the writer, where the offending material was neither supplied to the writer by TVOntario nor included by or upon the direction of TVOntario;

(iii) any claim made, or action brought, against the writer with respect to the incorporation in any production of material supplied by or through TVOntario;

(iv) any change made by TVOntario, with or without the content of the writer, in material supplied by the writer;

(v) any artistic or other interpretation in the use of the writer's material, other than that specifically provided by the writer.

(b) The writer shall indemnify TVOntario against any and all damages, costs and other legitimate expenses, incurred as a result of any judgment of a Court of competent jurisdiction against TVOntario, or any settlement authorized pursuant to sub-clause (c) hereof, where such judgment or settlement arises from the breach by the writer of the warranty contained in sub-clause (e) hereto, or from an infringement of copyright or other violation of the rights of a third party contained in a script or other material furnished by the writer, save where the offending material was supplied to the writer by TVOntario, or included by or upon the direction of TVOntario.

(c) The party against whom any such claim is made or action commenced shall immediately upon receipt of notice of such claim or action notify the other party of the same, and shall provide full particulars, in writing, from time to time, as soon as they become available.

Such party shall diligently defend any such action, and the other party shall co-operate in assisting with the defence of any such action.

No such claim or action shall be compromised by, or settled by, either party without the consent, in writing, of the other party.

(d) The pendency of any claim or action referred to in this article shall not entitle TVOntario to withhold any monies due to the writer pursuant to the terms hereof and the terms of the writer's agreement with TVOntario.

(e) The writer warrants that he/she will not knowingly incorporate in any script or other material he/she furnishes to TVOntario any material, the production of which infringes upon the copyright of another, or violates any other rights of a third party.

TVOntario warrants that it will not knowingly provide to the writer any material, nor include any material in any production employing the writer's script, which infringes the copyright of another or violates any other rights of a third party.

- 20.2** No individual contract between the writer and TVOntario may waive the benefit and/or liability of the foregoing provisions of Clause 20.1, nor may it contain any term which is inconsistent therewith.

## **DURATION, TERMINATION AND RENEWAL**

- 21.1** This Memorandum shall commence on ratification by the parties and shall remain in force until the 31st day of March 2005 and from year to year thereafter unless that, prior to the expiration date of this Memorandum, either party desires to negotiate a new Memorandum and gives notice in writing to the other party not less than ninety (90) and not more than one hundred and twenty (120) days prior to the expiry date of this Memorandum. Notwithstanding the above, it shall be a condition that the duly constituted representatives of the adherents to the Memorandum shall meet on or before ninety (90) days prior to the expiration date to exchange proposals.
- 21.2** Notwithstanding the above, the minimum rates provided herein shall become effective as of April 1, 2002 for all contracts signed on or after that date.


21.3 It is agreed that during the period of negotiations for the renewal of this Memorandum, the provisions of the Memorandum shall remain in full force and effect until such time as either party gives not less than ten (10) days written notice to the other party of its intention to terminate the Memorandum.


IN WITNESS WHEREOF THE PARTIES HERETO HAVE CAUSED THIS  
MEMORANDUM TO BE EXECUTED

THIS 21<sup>st</sup> DAY OF October 2002

For TVOntario:

For SARTEC:

  
\_\_\_\_\_  
Clara J. Arnold  
Director, Human Resources  
TVOntario

  
\_\_\_\_\_  
Yves Légaré  
SARTEC

**APPENDIX A**  
**LETTER OF UNDERSTANDING**  
**INTERNET DISTRIBUTION RIGHTS**

14-Jun-02

Further to our Memorandum of Understanding (“MOU”), this letter will confirm our agreement on an experimental basis with regard to Internet Distribution Rights.

It is understood that the following clauses will apply to the internet use of material written by a writer contracted under this MOU and for material described in article a) of this letter.

**This** letter forms part of our **MOU**, but will expire on March 30, 2005, unless renewed. Prior to such expiry, the parties agree to review these clauses to find a basis for their continuation.

All material cleared during the life of this letter and in accordance with its terms will be deemed properly cleared for the duration of any such clearance period notwithstanding any earlier expiry of this letter.

- a) Material written specifically for exclusive use on the Internet will be paid based on the **minimum** rates and conditions (4 years/unlimited plays).
- b) Material originally written for broadcast only, may be re-used on the Internet, upon payment to the writer(s), of an amount equal to ten per cent (10%) of the original contract fee.
- c) An excerpt of five (5) minutes or less from material originally written for broadcast only, may be re-used on the Internet, upon payment to the writer(s) involved, of an amount equal to five per cent (5%) of the original contract fee.
- d) Notwithstanding the above conditions for Internet use, an excerpt of no more than **two (2)** minutes from material previously written under this MOU, may be used on the Internet for purposes of promotion, without additional payment to the writer(s) involved.

- e) TVOntario reserves the right to simultaneously broadcast its television signals over the Internet without additional payment to writer(s) already contracted under **this** MOU.

Clara J. Arnold  
Clara J. Arnold  
Director, **Human** Resources  
TVOntario

Yves Légaré  
Yves Légaré  
SARTEC

Dated Oct. 21. 2002