

ANNEXURE 'E'

FREELANCE ARTIST AGREEMENT

_____ (hereinafter referred to as the PRODUCER) hereby engages the PERFORMER (as described in SCHEDULE I hereof) to appear or participate in the television production described in SCHEDULE II hereof (hereinafter referred to as the PRODUCTION) in the capacity or role named in SCHEDULE III on the dates, and at the times and places mentioned on the attached shooting schedule. The PERFORMER hereby accepts the engagement and consents to his appearance or participation in terms hereof (hereinafter referred to as the PERFORMANCE) being included in the PRODUCTION. This agreement is specifically subject to all the terms and conditions contained in SCHEDULE V hereto as well as any additional special terms and conditions as set out herebelow.

The PERFORMER acknowledges that he has been sufficiently informed of the role to be performed under this Agreement and warrants that he is willing and able to perform the part for which he is hereby engaged, and the PRODUCER accepts the PERFORMER's artistic competence to perform the role.

SIGNED AT _____

SIGNED AT _____

PRODUCER

by or on behalf of the **PERFORMER**

Date: _____

Date: _____

SCHEDULE 1: PARTICULARS OF PERFORMER/AGENT

A. PERFORMER: _____

B. AGENT: _____

ADDRESS: _____

TELEPHONE NO: _____ CONTRACT NO: _____

CELLULAR NO: _____

FAX NO/E-MAIL _____ CONTRIBUTOR'S NO: _____

SCHEDULE 11: PRODUCTION PARTICULARS

PROVISIONAL TITLE OF PRODUCTION: _____

COST CENTRE: _____

BUSINESS UNIT TO BE INVOICED: _____

SCHEDULE III: ENGAGEMENT

* Delete whichever is not applicable

ROLE: _____	PRINCIPAL PERFORMER: <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
PERIOD OF ENGAGEMENT: _____			
CALL BASIS: _____			
EXCLUSIVE CALL: _____			
FIRST CALL: _____			
SECOND CALL: _____			
DATES PERFORMER IS UNAVAILABLE: _____			

SCHEDULE IV: REMUNERATION

* AMOUNT PER CALL/PER WEEK/PER MONTH/GLOBAL: _____

AMOUNT PER REHEARSAL CALL: _____

MINIMUM NUMBER OF CALLS: _____ TOTAL: _____

The remuneration referred to herein does not include value added tax

SCHEDULE V: POST PRODUCTION

SPECIAL TERMS AND CONDITIONS

1. No PERFORMER shall be required to provide services under this Agreement, unless a signed Agreement is in place.

1. **INTERPRETATION**

In this agreement unless the contrary intention is evident from the context, the masculine shall include the feminine, the singular shall include the plural and vice versa in both instances.

2. **DEFINITIONS**

The below listed expressions shall be deemed to have the meanings as ascribed to them hereunder:

- | | | |
|------|-----------------------|---|
| 2.1 | Call Schedule: | The schedule attached hereto setting out the details of times, places and dates relative to the calls required to be performed by the PERFORMER. |
| 2.2 | First Call basis: | PERFORMER may be elsewhere engaged but PRODUCER has priority on his services except during periods of unavailability as set out in Annexure "A" hereto. |
| 2.3 | Monthly Call basis: | PERFORMER shall perform for the PRODUCER a maximum of 23 calls in any period of a month. Although the PERFORMER may be elsewhere employed the PRODUCER shall have first call on his services for the performance of the said 23 calls in any one month. |
| 2.4 | Gross Profit: | All income received by the PRODUCER from the commercial exploitation of the PRODUCTION after deduction of distribution commission and distribution expenses up to a maximum of 35% of gross income. |
| 2.5 | Second Call basis: | PERFORMER is employed elsewhere, and the PRODUCER does not have priority on his services. |
| 2.6 | Standby Call: | A day on which a PERFORMER is on call, but is required to remain at his place of residence or any other agreed upon venue. |
| 2.7 | Shooting Period: | The period from the FIRST shooting day until the FINAL shots of the shooting scripts have been completed. |
| 2.8 | Single Programme: | A programme being complete in itself and not forming part of a serial or series. |
| 2.9 | PAWE: | The Performing Arts Workers Equity. |
| 2.10 | Minimum Calls: | A guaranteed number of calls in respect of which the remuneration for those guaranteed number of calls shall be paid to the PERFORMER, irrespective of whether the PRODUCTION is cancelled or curtailed. |
| 2.11 | Principal Performer: | A PERFORMER who has been denoted as such in schedule III above. |
| 2.12 | Global remuneration: | A guaranteed total fee payable to the PERFORMER for a maximum number of calls stipulated in schedule IV and shall include post production calls. |
| 2.13 | Post production call: | A call, after the shooting period has been completed, during which PERFORMER is required to provide services in connection with editing, postsynchronisation, dubbing or retakes. |

- 2.14 Reasonable accommodation: This term shall be deemed to include and have due regard to the location, clean towels and linen, hot water, bathing, heating and cooling facilities, one bed for each PERFORMER and no more than two beds in each room, details of which shall be given to the PERFORMER by the PRODUCER at its earliest possible opportunity. Where reasonably practicable, the PRODUCER shall provide single room accommodation.

3. **ENGAGEMENT PERIOD**

The engagement in terms hereof shall commence on the date indicated in Schedule III hereof and shall subject to the conditions contained in this Agreement, continue in full force and effect until the termination date reflected in Schedule III unless the parties have agreed in writing prior to the termination date that such date is to be extended or reduced and an alternative termination date is agreed upon between the parties.

4. **REMUNERATION**

- 4.1 In consideration of the PERFORMER's engagement hereunder the PRODUCER undertakes to remunerate the PERFORMER in accordance with Schedule IV of this agreement, which remuneration shall be payable as follows:

4.1.1 **Call Basis**

If the PERFORMER is engaged on a call basis, the remuneration due to the PERFORMER shall be payable on or before the end of the month during which the calls were delivered, provided an invoice has been received by the PRODUCER, either by fax, post or hand delivery, by not later than the fifteenth of the month, provided further where a VAT invoice is required, that the original invoice has been submitted to the PRODUCER on or before the end of that month;

4.1.2 **Monthly Basis**

If the PERFORMER is engaged on a monthly basis, the remuneration for each month shall be payable on or before the end of that month, provided an invoice has been received by the PRODUCER, either by fax, post or hand delivery, by not later than the fifteenth of the month, provided further where a VAT invoice is required, that the original invoice has been submitted to the PRODUCER on or before the end of that month.

4.1.3 **Global Basis**

If the PERFORMER is paid a global remuneration fee and the number of calls worked is in excess of the maximum number of calls stipulated in schedule IV, then the PERFORMER shall be paid for the number of calls so worked in excess, at the call rate stipulated in schedule IV.

- 4.2 In the event that the PERFORMER failed to attend any call which he/she is required to attend and fails to submit good cause for his/her absence, the PERFORMER shall not be entitled to remuneration for that call.

4.3 **Standby**

If the PERFORMER is on standby but not physically present on set or location he shall be remunerated in respect of such a standby day at the rate of 50% (fifty percent) of the applicable call fee. Any standby days worked by a PERFORMER during any month in terms of Clause 2.3 hereof, shall form part of the 23 calls to be worked in that month if the PERFORMER is engaged on a monthly call basis.

4.4 Payment of Value Added Tax

The remuneration referred to in Schedule IV hereof does not include value added tax. The PRODUCER shall pay value added tax to the PERFORMER on condition that a VAT invoice shall have been furnished to the PRODUCER in respect of each payment requested by the PERFORMER. The VAT invoice shall comply with the provisions of the value-added Tax Act, No. 89 of 1991.

5. REPEAT BROADCAST FEES

5.1 It is recorded that after the first transmission of the PRODUCTION has been broadcast by the SABC, repeat broadcast fees for the broadcast of the PRODUCTION on both national and regional channels will be payable to certain categories of performers which categories will be determined according to the part(s) that the PERFORMER will play in the PRODUCTION and as a consequence thereof will fall into the definition of a principal performer in terms of clause 2.11. It shall be indicated in schedule III as to whether repeat broadcast fees are to be payable and whether the PERFORMER is regarded as a principal performer.

5.2 In the event that repeat broadcast fees are applicable, the SABC shall pay the PERFORMER for each repeat broadcast by the SABC of the PRODUCTION, whether national or regional, on or before the end of the month which follows the month in which such repeat broadcast took place, an additional remuneration of either:

5.2.1 25% of the total remuneration payable in terms of this agreement if the repeat broadcast took place during prime time;

5.2.2 15% of the total remuneration payable in terms of this agreement if the repeat broadcast took place during non-prime time.

5.3 Notwithstanding the provision in clause 5.2, if the SABC is required to repeat a broadcast of the PRODUCTION solely for the reason that the original broadcast was unable to take place or be completed due to a technical reason, such repeat broadcast shall not be regarded as a repeat broadcast for purposes of this clause.

5.4 Notwithstanding the provisions of clause 5.2, the SABC shall be entitled without incurring any liability to the PERFORMER, to repeat broadcast the PRODUCTION on national channels within one week of the first transmission of a single programme or within one week of each episode, if the PRODUCTION is a series, or on regional channels within one month of the first transmission of the single programme or within one month of each episode, if the PRODUCTION is a series.

5.5 For purposes of this clause, prime time shall mean 18h00-21h00 for Sundays to Thursdays, and 18h00-21h30 on Fridays and Saturdays. Non prime time shall mean all hours outside of those stipulated for prime time.

6. PRODUCER's RIGHTS

6.1 By virtue of the remuneration paid in terms of clause 4 hereof the PRODUCER shall be entitled to grant the SABC the rights to:

6.1.1 broadcast the PRODUCTION subject to the provisions of clause 5 hereof;

6.1.2 edit the PRODUCTION;

6.1.3 reproduce and preserve fixations of the PRODUCTION;

6.1.4 use the PRODUCTION to advertise the PRODUCTION subject to the provisions of clause 33;

6.1.5 enter the PRODUCTION at any time for any prize contest, film festival or competition, and the PERFORMER hereby undertakes to sign all relevant entry documents provided that any remuneration accruing to the PERFORMER as a result of such entry shall be paid to him on or before the end of the month during which it was received by the PRODUCER;

6.1.6 use the PRODUCTION for internal purposes and not for public viewing;

6.1.7 broadcast extracts of the PRODUCTION in programmes of a commemorative or reminiscent nature up to a maximum duration of ten minutes per extract;

6.1.8 commercially exploit the PRODUCTION subject to the provisions of clause 7 hereof.

6.2 Post-production

Should the PRODUCER require the PERFORMER to post-production purposes within the period of the PERFORMER's engagement hereunder, no additional remuneration shall be paid provided that no additional calls are worked. Should calls in excess of 23 calls in any month during the PERFORMER's engagement be worked these will be remunerated at the call rate stipulated in Schedule IV hereof.

However, should such post-production take place outside the PERFORMER's engagement hereunder and necessitate further calls, then the PERFORMER agrees to be engaged on a Second Call basis, subject to the PERFORMER's professional availability, for which he shall be remunerated under clause 4.1.1 above at the call rate as stipulated in schedule IV.

6.3 Retakes and Extra Scenes

Should the PRODUCER require the PERFORMER for retakes or extra scenes after the engagement period, the PERFORMER shall be obliged to return on a Second Call basis for which he shall be remunerated under clause 4.1.1 above at the call rate paid as stipulated in schedule IV.

6.4 Dubbing of PERFORMER's Voice

The PRODUCER shall have the right to dub or replace the voice of the PERFORMER with any other voice in any language or dialect except the original language or dialect. The PRODUCER may not dub the original language or dialect, unless for artistic and/or technical reasons and subject to the consent of the PERFORMER being obtained, which consent shall not unreasonably be withheld. In the event that the PERFORMER is professionally or otherwise unavailable to dub the PERFORMER's original voice, the PRODUCER shall not be required to obtain the PERFORMER's consent.

7. COMMERCIAL EXPLOITATION

7.1 The SABC shall be entitled to commercially exploit the PRODUCTION in any way whatsoever provided that the SABC has notified PAWE thereof at its earliest possible convenience, and subject only to its legal rights to do so. No right of the PERFORMER shall inhibit the rights of the SABC to so commercially exploit the PRODUCTION, subject only to the terms of this agreement and specifically what is contained in clause 7.2 hereunder.

7.2 Should the SABC commercially exploit the PRODUCTION using the likeness/image/photograph/performance of a PRINCIPAL PERFORMER, then in such event:

7.2.1 the SABC and such PERFORMER shall agree on a lump sum amount to be paid to the PERFORMER, or

7.2.2 failing which, the SABC shall pay such PERFORMER a pro rata share of 2% (two percent) of the GROSS PROFITS received by the SABC by virtue of such exploitation, which pro rata share shall be determined by dividing the said 2%(two percent) of GROSS PROFITS between the PRINCIPAL PERFORMERS of the PRODUCTION in proportion to their total remuneration paid in terms of this agreement.

In the event of either 7.2.1 or 7.2.2 above, the PERFORMER shall have no further rights in terms of any commercial exploitation.

7.3 The term "commercial exploitation" shall include any merchandising related to the PRODUCTION, provided that the PERFORMER's likeness/image/photograph/performance is used in relation to such merchandising.

7.4 The SABC shall pay the PERFORMER his share of the GROSS PROFITS on a bi-annual basis.

- 7.5 In the event of any dispute as to the GROSS PROFITS accruing to the PRODUCER for any given period of time, the SABC shall ensure that the PERFORMER, through an accredited firm of auditors shall be entitled to have access to all related books of account, financial statements and documents of account of the SABC to be examined independently by such auditors at the PERFORMER's own expense upon advanced notice in writing.

8. **SCRIPTS**

The PRODUCER shall at its earliest possible opportunity supply the PERFORMER with the scripts of the PRODUCTION. The PERFORMER undertakes to read all scripts of the PRODUCTION in order to acquaint himself with the nature of his role to be performed.

The PERFORMER shall make a proper study of all scripts or scores before the first rehearsal and shall perform his part in a proper, diligent, competent and professional manner, to the best of his ability and in accordance with any reasonable directions given to him by the producer/director of the PRODUCTION.

9. **REHEARSALS, CALLS AND SPECIAL TESTS**

The PERFORMER undertakes to make himself available for and to attend punctually all calls, rehearsals and special tests on such dates and at such places and times as specified in the attached Call Schedule and to be ready fifteen minutes before each appointed time.

10. **MAKE-UP**

The PERFORMER agrees, if so requested, to be made up in accordance with the requirements of the film director by a make-up artist appointed by the PRODUCER. The PRODUCER shall supply such make-up as well as the means to remove same, and shall also exercise its sole discretion as to the type and quality of all make-up and cleansers so used, unless otherwise agreed to in the special conditions attached hereto.

11. **COSTUMES**

The PERFORMER undertakes and agrees:

- 11.1 to wear all costumes, clothes and other items or accessories provided by the PRODUCER for performing his part in the PRODUCTION;
- 11.2 to take reasonable care of any costumes, wigs and accessories supplied by the PRODUCER and to keep the same in good order and condition; fair wear and tear excepted, to protect such items in a clean and neat condition having regard to prevailing circumstances and to return all of these items to the wardrobe department at the end of each call for safe-keeping and necessary maintenance;
- 11.3 to pay to the PRODUCER the replacement value of any costumes, item or clothing or accessory not returned to the PRODUCER; or to pay an amount equal to the monetary value of any damages to any such costume, items of clothing or accessory returned to the PRODUCER except where such loss or damage arises from the PERFORMER's fulfilment of his obligations hereunder;
- 11.4 to provide all items of hosiery, footwear and underclothing but the PRODUCER shall not require the PERFORMER to provide any costumes which are not ordinarily used by the PERFORMER in his private capacity;
- 11.5 to make any costume, item of clothing or accessory owned by himself and required for his PERFORMANCE available for hire to the PRODUCER at mutually agreed rates, provided that the PRODUCER shall, under circumstances where the PERFORMER has exercised due care in the use of any such costume, item of clothing or accessory:
 - 11.5.1 pay to the PERFORMER the replacement value of any costume, item of clothing or accessory supplied by the PERFORMER that becomes lost or destroyed; or

11.5.2 pay to the PERFORMER an amount equal to the monetary value of any damage to any costume, item of clothing or accessory supplied by the PERFORMER; where such loss, destruction or damage results solely from the performance by the PERFORMER of his obligations in terms of this agreement and not from any reckless or negligent conduct on the part of the PERFORMER.

11.6 not to use any costume, item of clothing or other article supplied by either the PRODUCER or the PERFORMER for the PRODUCTION in his private capacity without the prior written consent of the PRODUCER provided where the PERFORMER uses his own clothes as costumes, the PERFORMER shall be entitled to use it in his private capacity after expiry of the engagement period.

The PRODUCER undertakes and agrees to maintain all costumes worn by the PERFORMER suitably for the duration of the SHOOTING PERIOD.

12. **CHARACTER RIGHTS AND PSEUDONYMS**

The PERFORMER is not entitled to any right in, or to make any claims to, any character or pseudonym which the PRODUCER may provide for him for the purpose of this agreement and the PERFORMER shall not use this character or pseudonym for any other purpose without the prior written permission of the PRODUCER.

13. **CONTRACTUAL COMMITMENTS**

The PERFORMER warrants that he is not at the time of signing this agreement under any obligation other than as indicated on Annexure A which may contractually or otherwise restrain him from carrying out his obligations in terms of this agreement, the period and details of which are as contained in the Call Schedule annexed hereto. The PERFORMER agrees not to make any such commitment or enter into any such agreement during the subsistence of this agreement.

During the period of this agreement unless the PRODUCER in the person of the relevant producer shall have given its consent in writing, which consent shall not be unreasonably withheld, any PERFORMER engaged on a first call basis agrees not to:

- 13.1 take part in any other performance of whatever nature;
- 13.2 take part in the production of any other film, television or radio programme, or disc or tape recording;
- 13.3 be a party to any agreement or arrangement which conflicts with or may conflict with his obligations in terms hereof.

14. **SCREEN TESTS AND AUDITIONS**

If the PERFORMER is required by the PRODUCER to take part in any other actor's screen test or audition during the tenure of this agreement, the PERFORMER shall be paid on the same call basis as that on which he is remunerated for his engagement in terms hereof.

15. **NON-PERFORMING ATTENDANCES**

For each day on which the PERFORMER attends any session solely for the purposes of make-up, hairdressing, wardrobe, camera tests and the like, the PERFORMER shall be paid ONE HALF of the Call Fee as set out in Schedule IV hereof.

16. **REGULATIONS**

The PRODUCER undertakes to provide the PERFORMER with a copy of any relevant regulations and requirements with regard to the studio or location before the commencement of the shooting period. The PERFORMER shall comply with all regulations and requirements of the studios and locations, and with all reasonable instructions that the PRODUCER may give for the PRODUCTION and conduct of the recording or filming operations.

17. **PERSONAL HABITS AND HEALTH**

17.1 The PERFORMER shall not make use of any alcoholic beverages or intoxicating drugs, save those prescribed by a practising medical practitioner, proof of which shall be submitted on request, immediately before or during any rehearsals or shooting calls and shall at no time relevant hereto act in any manner which might foreseeably place the PERFORMER or the PRODUCER in an embarrassing or ridiculous situation.

17.2 The PERFORMER shall not during the period of engagement stipulated in Schedule III of this agreement participate in any dangerous or potentially dangerous activity or sport which may result in injury to the PERFORMER thereby preventing him from fulfilling his obligations hereunder.

18. **TRANSPORT**

18.1 The PRODUCER shall provide transport to artists on the PRODUCTION from one centralized pick up point agreed upon between the artists and the PRODUCER to the studio/location and back to the pick up point.

18.2 In the event that the PERFORMER is on call at a time when no reasonable public transport is available to/from his normal place of residence, the PRODUCER shall provide transport to/from his normal residence, provided however, that the onus of proving to the reasonable satisfaction of the PRODUCER that no reasonable public transport is available, shall be on the PERFORMER.

19. **ADDRESS**

The PERFORMER shall keep the PRODUCER informed at all times of his and his agent's residential address and a telephone number at which he or his agent may be contacted, provided such addresses shall be kept confidential by the PRODUCER.

20. **AVAILABILITY**

The PERFORMER undertakes that during the period of engagement he shall at no time, for his own private purposes, travel beyond a radius of 60 (sixty) kilometres from the studio or location without the prior consent of the PRODUCER. If such travel shall remove the PERFORMER from the 60 (sixty) kilometres radius for a period of longer than 24 (twenty four) hours then he shall also supply the PRODUCER with an address and a telephone number where he may be reached during his absence.

21. **ACCOMMODATION**

If the PRODUCER requires the PERFORMER to remain more than 60 (sixty) kilometres from his permanent residence for the purposes of this agreement, then this requirement shall be indicated on Annexure A attached hereto and the PRODUCER shall provide reasonable accommodation, including full board, being breakfast lunch and supper, for the PERFORMER during the period of absence from the PERFORMER's permanent residence.

22. **INDECENT PERFORMANCE**

22.1 The PERFORMER shall not be required to appear nude, partially nude or perform acts of a sexual nature in the course of the PRODUCTION, unless the PERFORMER has in advance been advised of full detail of such nude scenes or acts of a sexual nature and has given his written consent, in which event, where at all possible, such consent shall be recorded in the call schedule, and the parties shall record the nature of the scene, as well as the page number of the script in which the scene appears.

22.2 The PERFORMER shall not be required to appear nude or partially nude at any audition, except with his prior consent.

22.3 No still photographs will be taken during the rehearsal or shooting of the scenes where the PERFORMER is required to appear nude, partially nude, or performing simulated sex acts, without the prior written consent of the PERFORMER and provided each photograph shall be endorsed by the PERFORMER.

- 22.4 A stand in or double cannot be used in a scene where the stand-in or double is required to appear nude, partially nude or in a simulated sex act, unless the express written consent of the original PERFORMER is obtained.
- 22.5 No person not strictly necessary for the filming of the performance involving nudity, partial nudity or simulated sex acts shall be permitted to be present while the shooting of the scene takes place.
- 22.6 After the completion of the transmission copy of the PRODUCTION, the PRODUCER shall destroy all off-cuts containing the images of the PERFORMER in a state of nudity, partial nudity or in which the PERFORMER performed a simulated sex acts insofar as the PRODUCER is satisfied that such material will not be used in future, except in accordance with clauses 6 and 7 of this Agreement.

23. RISK, DANGEROUS PERFORMANCE

- 23.1 The PERFORMER shall be advised in writing by the PRODUCER prior to the signing of this agreement of any hazardous or dangerous performance which may be required to be performed. Such notice shall set out the general nature and extent of such dangerous or hazardous acts which shall be recorded in the schedule of this agreement.

For purposes of this agreement, the term "a dangerous or hazardous performance" shall be any act which creates a risk of injury to the life or limb of the PERFORMER.

- 23.2 Should the PRODUCER be unable to provide notice of the dangerous or hazardous performance at the time of signing this agreement, or the PERFORMER is required, during the engagement period, to perform a hazardous or dangerous act which was not reflected in the script at the commencement of principal photography, the PERFORMER has the right to refuse to carry out such performance which shall not be construed as breach by the PERFORMER of his/her obligations under this agreement.

In the event that the PERFORMER agrees to perform such dangerous or hazardous performance, under the provisions of this subclause, such consent by the PERFORMER must be recorded in writing.

- 23.3 Should the PERFORMER insist at his own free will to carry out such a dangerous or hazardous performance, and such insistence is recorded in the schedule of this agreement, the performance will be executed at the PERFORMER's own risk and the PERFORMER absolves the PRODUCER, its agents or representatives, as well as any independent contractor instructed by the PRODUCER from and against all claims and demands, arising out of injury to the PERFORMER resulting from or caused by or attributable to the execution of the dangerous performance by the PERFORMER.
- 23.4 The PRODUCER reserves the right to refuse the PERFORMER permission to engage in any inherently dangerous activities. In such instance, the PRODUCER's decision shall be final and binding.
- 23.5 The provisions of this clause shall be without prejudice to any claim that the PERFORMER may have under the Workman's Compensation Act.

24. CALLS AND OVERTIME

- 24.1 A call shall commence on arrival at the studio/location/producer's offices, whichever is the earliest and shall normally consist of a maximum of 10 (ten) consecutive hours which shall include make-up time, travelling time during a call for production purposes, all meals and tea breaks, and terminate when the PERFORMER is released or returned to the studio/location/producer's offices, whichever is the latest. The maximum number of hours worked consecutively shall not exceed 16 (sixteen) hours.
- 24.2 Save where otherwise agreed, the PERFORMER shall not be required to work for more than 5 (five) hours without a meal break of 45 (forty five) minutes. Should a meal break be delayed by

reason of the requirements of the PRODUCTION, such a delay shall not exceed a period of 45 (forty five) minutes unless the PERFORMER agrees to a delay of a longer period. The PERFORMER shall be afforded two tea breaks during a call at convenient times at the discretion of the PRODUCER of 10 (ten) minutes each.

- 24.3 In the event that the PERFORMER is on STANDBY, the PERFORMER shall be paid one half of the call fee as set out in Schedule IV.
- 24.4 In the event that the PERFORMER is required to travel between his place of residence and the location on a day without shooting, the PERFORMER shall be paid one half of the call fee as set out in Schedule IV.
- 24.5 Save as otherwise agreed in writing, when the PERFORMER is required to render services for more than 10 (ten) consecutive hours, then the excess over 10 (ten) hours shall be overtime. The remuneration in respect of such overtime shall be calculated on the basis of half the call rate for up to 2 (two) hours of overtime and a further half call rate from 2 (two) hours to 6 (six) hours of overtime.
- 24.6 The PRODUCER must provide the PERFORMER at the PRODUCER's cost with breakfast if the call time starts before 7:30, lunch and in the event that the call continues after 18:00, the PERFORMER shall be provided with supper.
- 24.7 There shall be a break of not less than 10 (ten) hours between the end of one call and the commencement of the next call, unless the PERFORMER shall have specifically otherwise agreed.
- 24.8 The PERFORMER shall be entitled to a break of not less than 24 (twenty four) hours after every 6 (six) consecutive working days. If for emergency reasons this is not possible then, by prior agreement with the PERFORMER, a seventh day may be worked at double the agreed call rate.
- 24.9 Cancellation of a Call
Subject to Clause 24.10 and 31 below, regardless of whether the PERFORMER is engaged on a monthly basis or a call basis and in the event of the cancellation by notice given to the PERFORMER by the PRODUCER:
 - 24.9.1 more than 2 (two) weeks prior to the date of the call, the PERFORMER shall not be entitled to any payment in respect of such cancelled call;
 - 24.9.2 more than 24 (twenty four) hours but less than 2 (two) weeks prior to the date of the call, the PERFORMER shall be paid one-half of the remuneration for the call;
 - 24.9.3 less than 24 (twenty four) hours prior to the date of the call, the PERFORMER shall be paid in full for the call.
- 24.10 Weather Call

Should the PERFORMER be notified of the possibility of a cancellation of a call because of adverse weather conditions, the PERFORMER shall nevertheless hold him/herself available for the call.

Should the services of the PERFORMER not be required due to such adverse weather conditions, such call shall be treated as a stand-by call and the PERFORMER shall be entitled to the remuneration provided in clause 4.3 above; provided that should the PERFORMER be notified of the cancellation of a call because of adverse weather conditions less than 2 hours prior to the commencement of the call, the PERFORMER shall be entitled to full remuneration for the call, as if such notification had not been given.

25. **SHOOTING SCHEDULE AND CALL SHEET**

- 25.1 The PRODUCER undertakes, wherever possible upon the signing of this agreement, to give the PERFORMER specific notice of the part to be played, wardrobe requirements, a list of the studios and locations as well as a general shooting schedule of the dates and times indicating where and when he will be on call.
- 25.2 The PRODUCER undertakes to advise the PERFORMER of his relevant call time by not later than 18:00 on the days preceding the days on which he is on call.
- 25.3 The PRODUCER, while making every endeavour to provide the PERFORMER with correct and accurate information, accepts no liability for any reasonable errors that may appear on call sheets.

26. **DISCLAIMER OF LIABILITY**

- 26.1 The PRODUCER shall not be liable to the PERFORMER for any loss or damage to property during or in connection with this engagement unless caused by the negligence of the PRODUCER and recoverable on that ground.
- 26.2 The PRODUCER confirms that it is registered under the Compensation for Occupational Injuries and Diseases Act and that the PERFORMER shall be afforded relief in compliance with the Act.

27. **COPYRIGHTS AND LICENCES**

- 27.1 The PERFORMER hereby warrants that any manuscript or unpublished work provided by himself:
 - 27.1.1 is his own original work which he is fully at liberty to use for all purposes required by this agreement, without a licence or permission of any other person; or
 - 27.1.2 is an original work which he is fully entitled to use for all purposes required by this agreement, and that he is the holder of all necessary licences or permissions for such use.
- 27.2 The PERFORMER hereby further warrants that any musical work provided and performed by himself shall not be a parody of the original of such musical work or contain any substituted lyrics or any unauthorised translation of the lyrics of the original work.
- 27.3 Where applicable the PERFORMER shall hand the PRODUCER, together with the proposed programme of his performance, a licence obtained from the copyright holder of any such manuscript or unpublished work as well as an authorisation to mimic or represent any person, or for the parody of any musical work, or for the translation or substitution of any lyrics associated with any musical work.
- 27.4 The PERFORMER shall be responsible for all payments regarding rights to any manuscript or unpublished literary work provided by him.
- 27.5 The PRODUCER shall be responsible for copyright payments regarding:-
 - 27.5.1 musical works required by the PRODUCER to be performed by the PERFORMER;
 - 27.5.2 manuscripts or unpublished works provided by the PRODUCER;
 - 27.5.3 approved manuscripts or unpublished literary works controlled by DALRO or a similar body unless the PERFORMER is the author thereof, and
 - 27.5.4 approved published works.

- 27.6 Manuscript material, scripts or scores or any part of any manuscript, script or score provided for the PERFORMER by the PRODUCER shall not be used for any performances the PERFORMER may render on behalf of any third party without the express written permission of the PRODUCER in each case.

28. **INDEMNITY**

- 28.1 The PERFORMER hereby indemnifies the PRODUCER against any claim which may be brought against the PRODUCER as a result of any breach of the warranties or undertakings given by the PERFORMER hereunder together with any reasonable legal expenses.
- 28.2 The PRODUCER hereby indemnifies the PERFORMER against any action by any third party arising out of a script supplied to the PERFORMER by the PRODUCER and performed as directed by the PRODUCER except as provided in clause 23.3 above, provided that the PERFORMER shall notify the PRODUCER of any threatened action and of the commencement of any proceedings, and shall co-operate in the defence of any such action, and further provided that the PERFORMER shall make no admission of liability without the prior written authority of the PRODUCER.
- 28.3 The PERFORMER warrants that this PERFORMANCE of any work provided or chosen by himself shall not contain anything defamatory or anything calculated to bring the PRODUCER into disrepute and that it shall not contain any advertisement or anything of an advertising nature.

29. **BREACH**

- 29.1 Should either party commit any material breach of any of the conditions of this agreement, then the party not in breach (innocent party) shall give the party in breach (guilty party) written notice of such breach allowing the guilty party 7 calendar days within which to remedy such breach, failing which the innocent party may forthwith terminate this agreement or take such other action in law which may be available as the innocent party may consider most appropriate.
- 29.2 Notwithstanding the provisions of sub-clause 29.1 above, should the PERFORMER fail to present himself for a specific call or be present but be incapable to effectively render services or be incapacitated whether through abuse of alcohol, drugs or for any other reason, then the PERFORMER shall not be paid for that call except if the PERFORMER is able to furnish the PRODUCER with a valid and justifiable reason for PERFORMER's absence or such conduct within 24 hours.

Such call shall, notwithstanding the fact that the PERFORMER was absent or unable to perform, be deemed an inclusive call for purposes of calculating the minimum calls stipulated in Schedule IV hereof.

Should the PERFORMER be absent without a valid and acceptable reason or unable to perform as envisaged above for a subsequent call, then the PRODUCER may summarily terminate this agreement and/or take such other action in law as the PRODUCER may consider appropriate.

Should there be a dispute between the PRODUCER and the PERFORMER as to the PERFORMER's physical or mental capacity to perform, then the PERFORMER shall submit himself for examination by a medical practitioner approved by the PRODUCER whose decision shall be final and binding.

- 29.3 Should the PRODUCER make any charge of intemperance or use of any dependence-producing substance against the PERFORMER, such a charge shall be made at the time of the offence, provided that the PERFORMER shall be entitled to produce a certificate by a medical practitioner, obtained at his own expense within two (2) hours of such allegation having been made in order to disprove the charge.

30. **ARBITRATION**

- 30.1 The parties agree that, should any dispute arise between them resulting from this agreement, they shall meet in an attempt to settle the matter amicably. Should they fail to resolve the dispute through amicable negotiations, then either party shall have the right to declare a formal dispute by stating the reasons of such dispute in writing and delivering such written dispute to the other party. The party so formally declaring a dispute, shall, for purposes of this clause, be called the Applicant and the other party the Respondent.
- 30.2 Any formal dispute arising between the parties hereto, shall be settled through arbitration in terms of the provisions of this clause, provided that nothing in this clause shall prevent either party from applying to the Supreme Court of South Africa for urgent relief but then only on grounds of urgency and not in an attempt to avoid arbitration.
- 30.3 The parties shall, once a formal dispute has been declared in terms of the provisions of sub-clause 30.1 above agree on the arbitrator. If the parties fail to reach agreement as to the arbitrator within 5 calendar days from the date on which the formal dispute has been declared, then either party shall be entitled, on behalf of both of them, to ask ADRASA to appoint a registered arbitrator.
- 30.4 Within a period of 5 calendar days after the arbitrator has been appointed the Applicant shall deliver to the arbitrator and to the Respondent a statement of claim, containing at least the following detail:
- 30.4.1 the nature of the dispute;
 - 30.4.2 the amount or subject matter involved;
 - 30.4.3 the allegations upon which the claim is based;
 - 30.4.4 the remedy sought.

If the Applicant fails to submit his statement within the said 5 calendar days, the formal declaration of the dispute in terms of sub-clause 30.1 above, shall be deemed to be the statement and the Applicant shall forfeit the right to a replying statement envisaged in sub-clause 30.6 below.

- 30.5 Within 5 calendar days after the receipt of the statement referred to in sub-clause 30.4 above, the Respondent shall deliver an answering statement to the arbitrator and to the Applicant, containing at least the following detail:
- 30.5.1 the nature of its defence;
 - 30.5.2 the nature of its counterclaim, if any;
 - 30.5.3 the allegations upon which the defence and/or counterclaim is based;
 - 30.5.4 the amount or subject matter involved in such defence and counterclaim;
 - 30.5.5 the remedy or relief sought by the Respondent.

If the Respondent fails to submit his answering statement within the said 5 calendar days, then the Respondent shall be deemed to have no counterclaim and that the Respondent merely denies all allegations made in the Applicant's statement.

- 30.6 Should the Applicant wish to reply to the answering statement of the Respondent, such replication shall be delivered in writing to the arbitrator and the Respondent within 3 calendar days from the delivering date of the answering statement.

- 30.7 The date, (which shall be within 20 calendar days after an arbitrator has been appointed), time and place at which the hearing will be conducted, shall be determined by the arbitrator in consultation with the parties and made known to the parties at least 5 calendar days in advance thereof.
- 30.8 There shall be no record kept of the proceedings other than minutes in summarised form, unless if one of the parties insists, in which event the party so insisting may have a record for its own purposes and account.
- 30.9 The arbitrator shall determine the procedure to be followed at the hearing, bearing in mind however the intention of the parties to settle the dispute expeditiously. The arbitrator shall be entitled to question any party or witness.
- 30.10 The arbitrator shall be the sole judge of the admissibility, relevance and weight to be given to any evidence tendered and may decide to receive all or some evidence in the form of affidavits only, but must consider and determine any objection thereto. The arbitrator should consider only those documents which are presented in the statement, the answering statement and the replication provided that he may, in his absolute discretion, allow documents to be submitted at the hearing, but then only in exceptional circumstances.
- 30.11 Should any legal issue be raised at the hearing, then the parties shall abide by the ruling of the arbitrator on such issue, if the arbitrator is a senior counsel. If the arbitrator is not a senior counsel, the arbitrator shall refer the issue to a senior counsel, agreed to between the parties, or failing agreement, selected by the arbitrator, for his opinion, which opinion shall be binding upon the arbitrator and the parties.
- 30.12 Any papers, statements or documents necessary or proper for the initiation and continuation on the arbitration, shall be delivered by hand or by registered mail to the domicilium citandi et executandi of the parties and the given address of the arbitrator.
- 30.13 The arbitrator must promptly render an award, and must do so not later than 5 calendar days calculated from the termination of the hearing.
- 30.14 The parties may only be represented at such arbitration by full time employees or by a practising attorney, being the attorney whose services are normally employed by that party.
- 30.15 The Applicant shall be liable for the costs of the arbitrator provided that should the award of the arbitrator favour the Applicant, then the Respondent shall be liable for such costs. In case of doubt, the arbitrator shall, at the request of one or both of the parties, decide the issue and his decision shall be final and binding on the parties. All other costs associated with the arbitration proceedings, shall be shared equally between the parties, except that each party shall carry its own legal and personal costs.

31. **CANCELLATION**

- 31.1 Notwithstanding any provision to the contrary herein contained, the PRODUCER reserves the right at any time during the production to cancel this agreement or curtail the PERFORMER's performance subject to payment by the PRODUCER to the PERFORMER of either a fee for completed performances as at date of cancellation or a cancellation fee equal to the remuneration due for the minimum number of calls or for the global amount whichever is the greater.
- 31.2 If the Shooting Period or Period of Engagement is cancelled prior to the commencement of the Period of Engagement for whatever reason then the PRODUCER shall pay to the PERFORMER an amount calculated as follows:
 - 31.2.1 if such cancellation should be brought to the attention of the PERFORMER within 30 (thirty) days prior to the commencement of the Period of Engagement, an amount equal to 75% (seventy five percent) of the remuneration due in terms hereof;
 - 31.2.2 if such cancellation should be brought to the attention of the PERFORMER between 30 (thirty) and 45 (forty five) days prior to the commencement of the Period of

Engagement, an amount equal to 50% (fifty percent) of the total remuneration due in terms hereof; or

- 31.2.3 if such cancellation should be brought to the attention of the PERFORMER more than 45 (forty five) days prior to the commencement of the Period of Engagement, an amount equal to 10% (ten percent) of the total remuneration due in terms hereof.

32. **POSTPONEMENT**

Should the PRODUCER postpone the period of engagement as recorded in schedule III, and should such postponement result in a conflict between the obligations assumed by the PERFORMER in terms of this agreement and obligations assumed by the PERFORMER prior to entering into this agreement, the PRODUCER shall:

- 32.1 endeavour to reschedule the calls to permit the PERFORMER to comply with such other obligations; or
- 32.2 should the PERFORMER be unable to postpone or withdraw from the conflicting other obligations, compensate the PERFORMER with the fee equal to the remuneration due for the minimum number of calls or for the global amount, provided that the PERFORMER shall have submitted proof of the conflicting other obligations.

33. **PUBLICITY AND PROMOTION**

- 33.1 The PERFORMER shall, if so required, furnish the PRODUCER with biographical information and a photograph suitable for publication. The PRODUCER shall be entitled to reproduce and authorise the reproduction of such material.
- 33.2 The PRODUCER shall have the right to use the PERFORMER's name and likeness to publicise and promote the PRODUCTION. The PERFORMER is obliged to co-operate in the promotion of the PRODUCTION and be available during his call schedule for the taking of photographs or conducting of interviews by the PRODUCER for purposes of promoting the PRODUCTION at such times and places mutually agreed upon between the parties.
- 33.3 If the conducting of interviews of taking or photographs are to be done after expiry of the PERFORMER's engagement period, the PERFORMER shall make himself available for such interviews or photographs subject to the PERFORMER's professional availability and subject to a reasonable call fee not higher than the initial call fee, to be negotiated between the PERFORMER and the PRODUCER.
- 33.4 A PERFORMER's name or image shall not be used by the PRODUCER in commercial tie-ups between the PRODUCTION and commercial goods or services, other than the PRODUCER's own services to directly promote the PRODUCER, unless specially agreed to between the parties in terms of a separate agreement.
- 33.5 The PRODUCER's rights under this clause do not extend to merchandising rights. Such rights shall require the written consent of the PERFORMER.
- 33.6 All PERFORMERS other than extras shall be billed at the end credits unless a front title is given of each episode of the PRODUCTION unless the parties have agreed otherwise as set out in the special conditions. The PRODUCER shall have the right to determine, unless otherwise agreed in the special conditions, the position, the size, nature and type set of the PERFORMER's name on the screen credits and all paid advertising.

34. **MEDICAL EXAMINATION**

If so required by the PRODUCER for Film Producer's Insurance purposes the PERFORMER shall, at the cost of the PRODUCER, submit himself for a medical examination by a qualified medical practitioner of his own choice. The contents of such report shall be dealt with in the strictest confidence.

35. **FORCE MAJEURE**

35.1 If the PRODUCTION is prevented or interrupted or stopped by reason of any cause beyond the control of the PRODUCER, including national mourning, civil unrest, fire, war, natural disaster, disruption or interruption of essential services and utilities due to force majeure, any order of any licensing or other public authority having jurisdiction, then the PRODUCER may:-

35.1.1 suspend the operation of the PERFORMER's engagement during the period of prevention or stoppage of production without remuneration in which case on resumption of work on the production the PERFORMER's engagement shall be resumed and;

35.1.2 whether or not the PERFORMER's engagement shall have been suspended pursuant to sub-clause 35) above, cancel the PRODUCTION and terminate the PERFORMER's engagement as from the prevention or stoppage of PRODUCTION by notice in writing within five working days of the prevention or stoppage upon payment of all fees for services rendered prior to the date of prevention or stoppage;

35.2 If any suspension under the provisions of this Clause shall continue for three consecutive weeks the PRODUCER shall not be entitled to retain first call upon the PERFORMER thereafter, unless the PRODUCER shall prior to the expiration of such three weeks have notified the PERFORMER that the PRODUCER wishes to retain first call on the PERFORMER at the end of the suspension.

35.2.1 If the PRODUCER so retains first call on the PERFORMER and the suspension shall continue for more than three consecutive weeks, the PRODUCER shall pay to the PERFORMER during each week of continued suspension the amount the PERFORMER would receive on first call.

35.2.2 If the PERFORMER is retained on first call at the end of the suspension the guaranteed period shall be extended by the period of suspension unless the PERFORMER is thereby prevented from performing an engagement entered into before the suspension but in that event the PRODUCER shall retain second call on the PERFORMER's services.

35.2.3 If during the period of the suspension the PERFORMER wishes to enter into any other engagement, the PERFORMER shall consult with the PRODUCER so as to ensure the availability of the PERFORMER to complete the part.

35.2.4 If the PRODUCER retains the PERFORMER on second call and the suspension continues for more than three weeks, the PRODUCER shall subject to the PERFORMER availability pay to the PERFORMER an amount agreed to as a retainer payment for each seven day period or part thereof following the three week suspension. This payment shall continue until the PERFORMER's engagement shall be resumed and the PERFORMER shall be entitled to accept other work during this period which shall not affect the payment agreed with the PRODUCER.

36. **GENERAL**

36.1 The paragraph headings and sub-headings herein are used for reference purposes only and shall not have any persuasive force in interpreting this agreement.

36.2 For all purposes hereunder the PRODUCER chooses as its domicilium citandi et executandi
Radio Park

Henley Road
Uitsaaisentrum
JOHANNESBURG

while the PERFORMER chooses his address as it appears in Schedule I on the first page hereof.

- 36.3 The provisions of this agreement shall for all purposes be interpreted in accordance with the Laws of South Africa.
- 36.4 It is hereby recorded that the PERFORMER is contracted exclusively on a freelance basis for the purpose of fulfilling the specific function set out above. On termination of this agreement the PERFORMER shall have no right to claim employment by the PRODUCER in any capacity on the strength of the legal bond created between the parties in terms of this contract. The PERFORMER specifically agrees that he has no claim whatsoever against the PRODUCER in respect of any pension, leave, medical or other service benefits normally afforded by the PRODUCER to its permanent staff members.
- 36.5 This agreement constitutes the whole agreement between the parties hereto and no addition to, or alteration of any of the terms hereof shall be of any force or effect unless reduced to writing and signed by both parties hereto.
- 36.6 Notwithstanding anything to the contrary contained in this agreement, it is specifically recorded and agreed that no payments whatsoever in terms hereof shall be paid by the PRODUCER to the PERFORMER until such time as a duly executed and signed copy of this agreement shall have been received by the PRODUCER's Legal Services.
- 36.7 Neither the PRODUCER nor the PERFORMER has made any representation nor given any warranties to the other in connection with the subject matter of this agreement, which are not contained in this agreement.
- 36.8 The parties record that this agreement represents the minimum contractual conditions and shall not restrict the right of the PERFORMER to negotiate for more favourable terms and conditions which terms must be recorded in writing and reflected in the special conditions contained in the schedule.
- 36.9 The PRODUCER shall require the observance of this agreement by any sub-contractors with whom it may be in contractual relationship.
- 36.10 The PRODUCER shall at all times provide safe and healthy working conditions at the studio or on location. The PRODUCER shall provide a fully equipped first aid kit in every studio and on location and shall furnish such a kit in accordance with a list of requirements which the PRODUCER shall obtain from the S.A. Red Cross Association. The PRODUCER shall ensure that a person who has competent knowledge of first aid is available on location or at the studio to use such first aid kit and administer first aid.