



30 August 2021

Dear ACA Member,

Over the past few months, the ACA Electronic and Producers Committee has spent significant time meeting, discussing and debating best practice for our industry and we have some new developments to share with you.

These new developments take into account the needs of our changing landscape, the pressures our clients are facing as well as research on what is considered international best practice.

We have also spent many hours in discussion with representatives from NAMA, PMA and SAPAMA and have based our proposals and agreements of their proposals on these factors. Discussions like this are always a matter of win-some, lose-some in the negotiation process, but overall, we feel that the outcome is a positive one, and in certain instances we have made significant gains for agencies and clients alike.

Additionally, we have been on the receiving end of several complaints from NAMA, PMA and SAPAMA citing unfair behaviour and bad practice from a number of member agencies.

To this end, we would like to reiterate some previously agreed protocols for us to realign as a body and manage best practice across our industry in South Africa.

During this time, we have considered the current discussions with the Department of Labour around a possible Sectoral Determination to regulate work hours and related fees, amongst other things, in the hope that this proactive stance will appease any issues tabled by various industry regulatory bodies.

We trust that we will have your full support in the matters raised below.

1. Casting Briefs:

Your casting brief should contain all detail relevant to your job specifications and your contract terms therein. This way there is no ambiguity or misunderstanding when it comes to contracting the cast selected for your jobs. This should include specific information on flighting dates, territories, duration, and mediums.

We have included a basic casting brief template as a guideline for your review (*Annexure 1*).

2. Day rates:

The guideline attached (*Annexure 2*) indicates suggested daily performance fees (day rates) to be considered when casting a commercial piece of work. Whilst these are guidelines only, we would strongly suggest that you endeavour to adhere to these guidelines, especially the minimum amounts suggested as these are indicative of the usage percentages agreed upon. Deviation from these guidelines cannot guarantee agreement from performers agents on the related usages.

Negotiations on fees remain an integral part of managing both client budgets and fair payment to cast members, so please remain open to this process.



3. Usage percentages:

Please use the table attached (*Annexure 3*) when calculating usages rates for various mediums and territories. Whilst these remain guidelines only, maintaining a common approach and sticking to these guidelines wherever possible, has industry wide benefits.

Additionally, some months back, NAMA, PMA & SAPAMA proposed an increase in the usage percentage tables for various African territories, which we were not in agreement with.

In the past, these calculations were based on population size, which we believe is no longer effective as a methodology and this prompted our research into other global standards.

NAMA, PMA & SAPAMA have agreed to a new approach in principal and as a result there is a nominal percentage increase for certain African territories only based on the calculation of the territory's GDP and related media spend.

Based on media research and GDP figures -

COUNTRY	CURRENT PERCENTAGE	ACA PROPOSAL
South Africa	200%	200%
Nigeria	180%	180%
Morocco	120%	130%
Kenya	60%	70%
Ghana	60%	60%
DRC	60%	60%
Congo	60%	60%
Sub – Sahara	300%	310%
Pan – Africa	400%	400%
Central – Africa	200%	200%
North Africa	240%	250%

These rates become effective from **1 September 2021**.

4. Cast contracts:

All cast contracts are to be signed and shared with the Agents prior to any shoot dates. The cast is within their rights to refuse participation in a job if this is not adhered to.

Additionally, without a signed contract, any Personal Accident Insurance cover is rendered null and void when on set, which can potentially have very negative consequences.

The ACA has reviewed an updated version of the On-Camera and Stills contract, drafted by NAMA, PMA & SAPAMA, which we are happy with in principle. This seems to be much easier to use and has more details than the previous versions.

However, we are still in debate on the new Annexure document as well as the updated Ts&Cs and therefore pushing the implementation date out. We have made a commitment to resolving any issues as timeously as possible with the view that new On-Camera & Still contract and related documents be ready by **17 September 2021** We will keep you informed of this progress and the implementation date.

Once resolved, we will also endeavour to set up a workshop to take you through these new documents.

Additionally, please note that the IPA and PAIC contract do not pertain to the local South African industry.



5. Partial Exclusivity

To align with global best practices, we have agreed with NAMA, PMA & SAPAMA proposal of dropping the automatic inclusion of partial exclusivity in the new contract.

In our evaluation of this proposal, we took cognizance of the possible risks involved for a brand not being granted automatic partial exclusivity and deemed this risk to be very low due to the mandatory requirement of full work history disclosure for 12 months prior to the performer being cast for a role.

We intend to further this discussion with NAMA, PMA & SAPAMA to establish some protocols around the repercussions should full work history not be disclosed and will keep you updated of this development.

Should brands wish to purchase partial exclusivity, this inclusion will attract a recommended fee of 50% on the total usages calculated in the contract.

However, to best manage this additional expense, we have agreed with NAMA, PMA & SAPAMA to implement a scaled increase as follows:

- 1 September 2021 – 31 August 2022 = 25% for partial exclusivity
- 1 September 2022 - 31 August 2023 = 40% for partial exclusivity
- 1 September 2023 = 50%

From 1 September 2023, partial exclusivity will be calculated at 50% of the total usages on the contract. Renewals will attract the percentage relative to the time period above, so if a contract is renewed in October 2022 the partial exclusivity will be calculated at 40% of the total usages.

There has been some speculation about holding fees falling away due to the removal of partial exclusivity, however holding fees are not linked to usages specifically, but rather to the duration of the contract and the renewal terms. Holding fees are put in place to cover the performers should the first flying date on a contract be moved out, thereby effectively extending the duration of the contract, and delaying their ability to earn an income from renewals.

6. Dual advertising

In the past if your advertisement carried two or more brands in it, an additional usage fee would be payable. Going forward this will no longer be the case and only one fee will be payable by the contracting brand. If however partial exclusivity is included in the contract, this will only apply to the contracting brand. Any additional brand included in the advertisement, requesting partial (or full) exclusivity, will be negotiated at an additional fee.

7. Contract Usage Terms

Should you wish to renew a contract period, please do this within the agreed 30 days before contract expiry and ensure that a process is put in place to manage the removal of commercial works when the contract has expired. This alleviates any penalties and fees due for breach of contract.

Please also note that once the contract terms & associated usage rights have expired, all copies of the commercial(s) need to be removed from broadcast channels, including TV channels, client website homepages, and other digital campaign platforms. Commercial(s) can remain on the agency, production house and client websites provided they are clearly marked as showreel or archive pages. We have negotiated that material can be left on social media channels, in perpetuity, provided that there is no paid media to attract consumers to those pages, and that those pages are not reposted. We have agreed that material can only be left on YouTube with the proviso that the links are marked private and password protected.

In the spirit of assisting the industry to better manage contract population and details, the ACA has had discussions with a company called Calculate Usage who have offered all ACA members a reduced rate for the following services:



Calculate usage perform the following functions:

1. Automated calculation of artists day rate and usages using industry guidelines
2. Automated Usage percentages using ACA/NAMA/PMA/SAPAMA agreed usage percentages
3. Automated renewals on date of contract expiration

Future functions will include (but are not included in the current purchase offer)

- Voice talent calculator with usage rights tools. ETA mid to end-September 2021
- Automated contracts with talent agency integration for digital signatures etc
- Automatic department of labour submissions.

This system is particularly useful for quoting performers day rates, usages, and managing renewals and usages terms as well as creating more efficient and accurate contracts.

The ACA would like to encourage members to consider using this system as a means to standardize and better manage this aspect of our industry.

Please feel free to view this service here - <https://calculateusage.com>

Please be aware however that the ACA cannot guarantee anything related to this system and as such we recommend you do your own due diligence before deciding to use the system.

8. Usage of Campaign assets

The ACA has negotiated an extension on digital media usages as follows:

For an additional 25%, the campaign can include unlimited edits/elements for use on digital media as well as up to 8 frame grabs from the TVC master for use on all digital mediums.

** Please note that a frame grab is a selected frame from the shot footage of your TV master and not a still (photographic) image taken on set.*

For TV usage, the standard cut-down rule still applies which means that any additional edits (outside of direct cut downs) for TV will attract an additional fee.

9. Ts&Cs

As mentioned, we are still reviewing the updated Ts&Cs and annexure and will update you with feedback as soon as we are in agreement with this.

In the meantime, NAMA, PMA and SAPAMA have made a request of all ACA members to consider the standard Terms & Conditions related to the On-Camera Contract before special terms and conditions are added to these contracts as many of these special terms are already addressed under the related Terms & Conditions.

Additionally, here are some specific reminders of certain terms.

Whilst these terms can be changed by agreement with the performer's agent, if advertising agencies start adjusting these terms there is a strong possibility that the likes of NAMA, PMA, SAPAMA & SAGA will continue to lobby the Department of Labour to legislate these terms, which will not benefit the industry as a whole.



As such, the ACA would like to strongly encourage you to adhere to the following:

Payment terms with Performers' / Performers Agents:

Payment will be made 30 days from date of Statement.

Spillage:

Spillage only relates to countries that border South Africa and not to any other countries.

Working Hours:

All work done through the ACA has a 10-hour day on Television commercials and 9 hours on Stills advertising for a full day after which overtime applies at 15% of the performance fee per hour or part thereof.

Work History:

Updated as follows: The performer will be obliged to fully disclose all work history for a 12-month period prior (date of which to be stipulated on the casting brief) for the flighting territory specified on the casting brief. In addition, disclosure of work done for other territories, can be requested.

Featured Performers:

You have 45 – days from date of shoot to notify the Performer / Performers' Agent whether the Performer is featured or not.

Wardrobe:

Performers providing their own wardrobes must be reimbursed. We will endeavour to send a guideline for this cost once research has been done.

Holding Fees:

Holding fees will always be payable unless there are extraordinary circumstances i.e., the client cannot operate or sell products due to Covid lockdown levels etc. This must be discussed with the performers agent and not dictated too. When there is a delayed broadcast, holding fees are payable.

10. Payment terms with production partners

We urge all member agencies to make themselves and their producers aware of client payment dates/runs and for those dates to be included on the project plan & supplied to the production partners at briefing stage. We also urge our members to discuss payment terms with their production partners prior to engaging them for their services should payment terms not be met.

The ACA has an existing contract with the CPA and by engaging with a CPA member production company, you are agreeing to the following:

- a) The first 50% of the agreed price is payable not later than seven calendar days before the shoot date.
- b) Non-payment within the stipulated time period constitutes a material breach.
- c) The Production Company may postpone the schedule until funds are received. The agency shall be liable for postponement losses.
- d) The remaining 50% is payable on completion of the production* by no later than the end of the month in which the INVOICE is dated if the same is received prior to the 16th of that month, or no later than the 15th of the following month if dated later than the 15th of the month.
- e) If the commercial is scheduled to be broadcast prior to the date on which the 2nd 25% is due, then the 2nd 25% automatically becomes payable before the commercial is flighted.
- f) Payments to The Production Company may not be deferred or delayed as a result of the agency not receiving payment from their principal. (*Kindly note that the ACA has been in contact with the CPA regarding this term. The CPA have agreed to replacing this with the following: *Any deviation of payment terms must be communicated to the Production Company at the time of briefing*).



- g) The Production Company retains ownership of the commercial product until such time as full payment is received.
*(*completion date is based on the date of the final on-line day, this is determined by the post production schedule as presented in the final client pre-production meeting. If the agency chooses to handle the on-line post-production directly, then completion date is at final client off-line approval).*
- h) Any extra costs agreed to shall be paid on the same basis as set out in 4.2.
- i) The Production Company will require a variation to the terms of payment of the second 50% in respect of cinema commercials or in respect of commercials where lengthy post production is required according to the script / treatment. The same applies if delays are caused after completion of principal photography by the agency and / or their principal.
- "Weather day / Film Abandonment costs" which arise as a result of the interruption of a scheduled shoot are payable in addition to the quoted price as follows:
 - The first 50% of the film abandonment cost estimate is payable within 10 days of the date of the Production Company's submission of the estimated loss report to the agency or not later than 21 days of the abandonment date.
 - The remaining balance is payable at the end of the invoice date month if the invoice date falls before the 15th of the month or by the 15th of the following month if the invoice date is later than the 15th of the month.
 - If the production schedule is extended at the request of the agency or their principal or by means outside of the control of The Production Company, causing delay in payment of the 2nd 50%, the agency shall pay The Production Company 50% of the final payment amount as per the contracted dates on the original payment terms schedule and the final payment.
 - Payments for cancellation / postponement shall be paid on the same basis.

The ACA Electronic and Producers Committee will continue running online training modules covering a number of production related topics in the coming months, with specific attention being given to the above related issues. Dates for these sessions will be sent out separately.

Thanking you kindly,

ACA ELECTRONIC AND PRODUCERS COMMITTEE