

**PROGRAMS MADE FOR NEW MEDIA  
PRODUCED UNDER THE TERMS OF  
EXHIBIT A AND THE CW SUPPLEMENT**

**The following provisions have been excerpted from the 2008-2011 Exhibit A of the AFTRA Network Code, concerning original scripted dramatic “made for new media” productions that are made for the Internet, mobile devices or any other “new media” platform known as of July 1, 2008 (hereinafter collectively referred to as “New Media”).**

With respect to dramatic programs intended for initial use in New Media, the parties agree as follows:

The parties recognize that the economics of New Media production are presently uncertain and greater flexibility in terms and conditions of employment is therefore beneficial. If one or more business models develops such that New Media production becomes an economically viable medium, then the parties recognize that future agreements should reflect that fact.

**A. Coverage and Scope**

The provisions of this Sideletter shall be applicable to performers and background actors employed on dramatic programs made for “New Media,” as that term is defined above, of the type traditionally covered by the Network Code (other than daytime serials), by Exhibit A of the Network Code, by the WB/UPN Supplement or by Exhibit E of the Network Code. The term “performers” shall include actors (including narrators, loopers and voice-over performers), professional singers, stunt performers, airplane and helicopter pilots, stunt coordinators, professional dancers (as distinguished from dancers who would properly be treated as background actors), puppeteers and body doubles.

It is understood that, except as provided in the following sentence, Producer shall be obligated to cover only the first ten (10) background actors employed each day in the Background Actor Zones applicable to programs covered under Exhibit A of the Network Code on any New Media Production covered hereunder. Producer shall not be required to cover background actors under the terms of this Sideletter who are employed on those Original New Media Productions which meet the budget test for an “Experimental New Media Production,” as that term is defined in Section C. below, but which employ a “covered performer,” as defined in Section C. below, or who are employed on any Experimental New Media Production which the Producer elects to cover under the terms of this Sideletter.

The provisions of this Sideletter shall apply within the same geographical scope as is applicable to programs covered by Exhibit A of the Network Code.

**B. Derivative New Media Productions**

A “Derivative New Media Production” (“DNMP”) is a production for New Media based on an existing dramatic television program covered under Exhibit A of the AFTRA National Code of Fair Practice for Network Television (hereinafter “the Network Code”), under the WB/UPN Supplement or under Section 2.A.(1) of Exhibit E of the Network

Code that was produced for “traditional” media – *e.g.*, a free television or pay television program (the “Original Production”) – and is the same type of program as the program on which it is based.

**1. Compensation**

All terms and conditions of employment, including initial compensation and deferred compensation, if any, will be subject to negotiation between the Producer and the individual performer, except for those provisions of the Network Code incorporated herein by reference below. AFTRA agrees that it will not interfere in any such negotiations between the performer and the Producer. For those contracts with performers entered into after the date of ratification of Exhibit A and the WB/UPN Supplement, all such terms shall be set forth in a stand-alone agreement or separately stated in the performer’s contract for the Original Production.

It is understood that Producer and performer may have negotiated about such terms and conditions in contracts of employment entered into prior to July 1, 2008. If so, the terms and conditions of such contract shall control, except that to the extent any such contract provides lesser terms and conditions than those set forth herein, the performer’s contract shall be deemed amended to include the minimum terms set forth herein.

**2. Applicable Provisions of the AFTRA Network Code**

Only the following specific provisions of the Network Code are incorporated herein. To the extent the provisions herein are inconsistent with the Code, the provisions of this Sideletter control.

Paragraph 61. Payment

Paragraph 62. Deductions for Social Security and Withholding Taxes

Paragraph 63. Disability Insurance

Paragraph 66. Individual Contracts

Paragraph 83. Definitions

Paragraph 84. Union Shop

Paragraph 86. Admission to Premises

Paragraph 93. No-Strike Clause

Paragraph 94. Production Prosecuted

Paragraph 95. Grievance and Arbitration

Paragraph 97, Subsections A. and E. only, No Discrimination/Affirmative Action

Paragraph 99. Separability

Paragraph 102. AFTRA Health and Retirement

**3. Reuse**

Reuse shall be governed by the New Media Reuse Sideletter.

**4. Credit**

Principal performers shall be accorded credit if any other person receives credit on the New Media Production. Credits may appear in the corner of the screen. "Click-through" credits may be used. This provision shall not be subject to grievance and arbitration.

**5. Additional Terms**

When a performer works for the same Producer on both an "Original Production," as that term is defined above in this Section B., and on one or more Derivative New Media Productions based on the Original Production on the same day, then the performer's meal periods shall be calculated based on the earliest start time of the productions and the performer's rest period shall be deemed to begin at the latest dismissal time on the productions.

Should a background actor work for the same Producer on both an "Original Production," as that term is defined in Section B. below, and on one or more Derivative New Media Productions based on the Original Production on the same day;

- (a) the background actor's status shall not change from being covered on the Original Production to not covered on the Derivative New Media Production(s);
- (b) the background actor's meal periods shall be calculated based on the earliest start time of the productions; and
- (c) the "Sixteen Hour Rule" provision in Exhibit A shall be applicable.

**C. "Experimental New Media Productions" (Original Productions Only)**

Coverage shall be at the Producer's option with respect to "Experimental New Media Productions." An "Experimental New Media Production" ("ENMP") is defined as any Original New Media Production (1) for which the actual cost of production is either: (a) \$15,000 or less per minute of program material as exhibited, or (b) \$300,000 or less per

single production as exhibited, or (c) \$500,000 or less per series of programs produced for a single order; and (2) does not utilize a “covered performer.”

A “covered performer” is an individual who has been employed pursuant to the terms of a collective bargaining agreement covering his or her employment as a performer and who meets any of the following criteria:

- § has at least two (2) television (including free television, pay television, basic cable or direct-to-video) or theatrical credits;
- § has had thirteen (13) weeks of employment as a performer in radio (including satellite radio) in a major market;
- § has at least two (2) credits in a professional stage play (*e.g.*, Broadway, Off Broadway (as that term is understood in the live theater industry), under the LORT, COST or CORST contracts or as part of an Equity national tour);
- § has been employed as a performer on an audio book or as a royalty artist on a sound recording which has been commercially released by a major label or a *bona fide* independent label; or
- § has been employed as a principal performer, announcer, singer or dancer in a national television or radio commercial, interactive game or non-broadcast/industrial production.

The Producer shall be entitled to rely on the representation of the performer as to whether he or she meets the definition of a “covered performer.”

The actual cost of the ENMP shall consist of all direct costs actually incurred in connection with the Production. The only costs excluded in determining the actual cost of production shall be development costs, overhead charges, financing costs (*i.e.*, loan origination fees, gaps fees, legal fees, and interest), contingency of up to ten percent (10%), essential elements insurance costs, the cost of the completion bond, marketing expenses, contingent payments to talent or other parties which are based on the proceeds derived from the exploitation of the Production and received after recoupment of the negative cost, and delivery items required by sales agents, distributors or sub-distributors (*i.e.*, delivery materials beyond the answer print, NTSC Video Master if the Production is delivered on videotape, or the digital equivalent if the Production is delivered in a digital format).

The terms of Paragraph D. shall apply to any “Experimental New Media Production” which the Producer elects to cover.

## **D. Original Programs Made for New Media**

### **1. Compensation**

All terms and conditions of employment, including initial compensation and deferred compensation, if any, for original programs made for New Media will be subject to negotiation between the Producer and the individual performer, except for those provisions of the Network Code incorporated herein by reference below. AFTRA agrees that it will not interfere in any such negotiations between the performer and the Producer.

**2. Applicable Provisions of the AFTRA Network Code**

Only the following specific provisions of the Network Code are incorporated herein. To the extent the provisions herein are inconsistent with the Code, the provisions of this Sideletter control.

Paragraph 61. Payment

Paragraph 62. Deductions for Social Security and Withholding Taxes

Paragraph 63. Disability Insurance

Paragraph 66. Individual Contracts

Paragraph 83. Definitions

Paragraph 84. Union Shop

Paragraph 86. Admission to Premises

Paragraph 93. No-Strike Clause

Paragraph 94. Production Prosecuted

Paragraph 95. Grievance and Arbitration

Paragraph 97, Subsections A. and E. only, No Discrimination/Affirmative Action

Paragraph 99. Separability

Paragraph 102. AFTRA Health and Retirement

**3. Reuse**

Reuse shall be governed by the New Media Reuse Sideletter.

**4. Credit**

Principal performers shall be accorded credit if any other person receives credit on the New Media Production. Credits may appear in the corner of the screen.

“Click-through” credits may be used. This provision shall not be subject to grievance and arbitration.

**E. Jurisdiction**

It is understood and agreed that AFTRA shares jurisdiction with regard to dramatic programs made for new media of the type covered under Sections C. and D. above.

- F.** If a New Media Production is never released in New Media and is instead exhibited in traditional media, the performers and background actors employed in the New Media Production shall be paid the difference, if any, between what was paid for the New Media Production and the rates in the Network Code, or in Exhibit A or the WB/UPN Supplement, as applicable, to the traditional media release.

**PROGRAMS REUSED IN NEW MEDIA  
PRODUCED UNDER THE TERMS OF  
EXHIBIT A AND THE CW SUPPLEMENT**

The following provisions have been excerpted from the 2008-2011 Exhibit A to the AFTRA Network Code, concerning the exhibition of scripted dramatic television programs covered by Exhibit A of the AFTRA Network Television Code, including dramatic programs made for CW, on or by means of the Internet, mobile devices and any other new media platform known as of July 1, 2008, concerning the reuse of photography or sound track from such programs in New Media, and concerning the use and reuse of Made for New Media Productions.

1. **If the Consumer Pays.**

A. **License for Limited Period or Fixed Number of Exhibitions.**

When the subscriber pays for the program either on a subscription or per-program basis, and when the payment is in exchange for the right to view the program for a fixed and limited period of time or a fixed number of exhibitions, the Producer shall pay to the performer(s) an aggregate sum equal to three and six-tenths percent (3.6%) of the license fee paid by the licensee for the right to exhibit such television program in New Media.<sup>1</sup>

B. **Paid Permanent Downloads (aka “Download-to-Own” or “Electronic Sell Through” (“EST”)).**

The following shall apply to programs first exhibited on or after July 1, 2008:

When the consumer pays for an EST copy of a television program, the Producer shall pay residuals at the rate of 5.4% of 20% of “Distributor’s gross,” as defined in Paragraph 5.A. below, on the first 100,000 units and, thereafter, at the rate of 10.5% of 20% of “Distributor’s gross,” as defined in Paragraph 5.A. below.

Such payments shall be for the benefit of all performers on the program. For television programs covered by Exhibit A and for television programs covered by Section 2.A.(1) of Exhibit E, such payments shall be distributed on the basis of the formula set forth in Section 18.2 of the SAG Television Agreement. Payments for all other programs covered by this Sideletter shall be distributed as provided in the Network Code.

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<sup>1</sup> As bargaining history, this language is based upon the following model: studio licenses to Moviefly the right to transmit the program on the Internet to the viewer who pays Moviefly on a subscription or per-picture basis. Such payment would enable the viewer to view the program for a fixed and limited period of time or limited number of exhibitions. For example, if Columbia Pictures, through Columbia-TriStar Home Entertainment, licenses to Moviefly the right to exhibit a Columbia Pictures film, the residuals shall be based upon 100% of the license fee paid by Moviefly to Columbia-TriStar Home Entertainment for such program.

## 2. Advertiser-Supported Streaming

The following shall apply to the streaming of television programs on a free to the consumer basis on advertiser-supported services transmitted via New Media.

A. With respect to television programs, the production of which commences on or after July 1, 2008:

- (1) The Producer shall be entitled to a “streaming window” for a twenty-four (24) consecutive day period for the first season of a television series or for any one-time television program and a seventeen (17) consecutive day period for the second and all subsequent seasons of a television series. During the streaming window, the Producer may make a television program available for streaming without payment for such use. The streaming window may be divided between the period immediately prior to and immediately following the initial exhibition of the program on television in any ratio determined by the Producer.
- (2) If the Producer desires to stream the television program outside the streaming window, but within one (1) year of the expiration of the streaming window,<sup>2</sup> then the Producer shall make a residual payment equal to the applicable amount set forth below as consideration for a twenty-six (26) consecutive week period beginning on the first day that the television program is available for streaming following the expiration of the streaming window:
  - (a) For programs covered by Exhibit A, for one-hour programs covered by the WB/UPN Supplement, and for dramatic programs covered by Section 2.A.(1) of Exhibit E, three percent (3%) (three and one-half percent (3.5%) effective July 1, 2010<sup>3</sup>) of the “total applicable minimum,” as defined in Section 18(b)(4)b) of the SAG Television Agreement; and
  - (b) For programs covered by the WB/UPN Supplement, other than one-hour programs, three percent (3%) (three and one-half percent (3.5%) effective July 1, 2010) of the first replay fee.

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<sup>2</sup> Should the AMPTP negotiate with either the DGA or SAG to allow the period covered by the fixed residual payment set forth in Paragraph 2.A.(2) to go beyond one year following expiration of the streaming window, then AFTRA shall have the right to elect to have the fixed residual payment cover that expanded period as well in lieu of limiting that period to one (1) year after expiration of the streaming window.

<sup>3</sup> For programs covered by Exhibit E, this date shall be March 8, 2010.



If the Producer desires to stream the television program for all or any part of the twenty-six (26) consecutive week period immediately following the twenty-six (26) consecutive week period described in the preceding paragraph, but within one (1) year of the expiration of the streaming window,<sup>4</sup> then the Producer shall make a residual payment equal to the applicable amount set forth in the preceding paragraph.

- (3) Neither of the aforementioned twenty-six (26) consecutive week periods shall cover a period than is more than one (1) year after the expiration of the streaming window.<sup>5</sup> In the event that streaming of the television program is commenced on a date that does not allow for the full twenty-six (26) consecutive week period of use within one (1) year of the expiration of the streaming window, then the payment for that period shall be prorated in weekly units to cover the shorter use period.

For example, suppose that the Producer streams a television program during the window and then does not stream the program again until thirty-nine (39) weeks after the expiration of the window period. Since only thirteen (13) weeks remain within the one (1) year period, a payment of one-half of the payment that would otherwise be due for the twenty-six (26) consecutive week streaming period is payable for streaming during the thirteen (13) week period.

- (4) During the streaming window, or during either of the twenty-six (26) consecutive week periods described in Paragraph 2.A.(2) above, the Producer may allow excerpts of those television programs that are being streamed to be used on free to the consumer, advertiser-supported services transmitted via New Media without any additional payment therefor.
- (5) Upon expiration of the one (1) year period following expiration of the streaming window,<sup>6</sup> if the Producer desires to stream the television program, then it shall pay

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<sup>4</sup> See footnote 2 above.

<sup>5</sup> See footnote 2 above.

<sup>6</sup> See footnote 2 above.

residuals at the rate of six percent (6%) of “Distributor’s gross,” as that term is defined in Paragraph 5.A. below.

- B. If the Producer should desire to stream any television program, the production of which commenced prior to July 1, 2008, as to which free television residuals are still payable, then the Producer shall pay residuals at the rate of six percent (6%) of “Distributor’s gross,” as that term is defined in Paragraph 5.A. below.
- C. Revenues derived from foreign streaming shall be included in “Distributor’s Foreign Gross,” as provided in Section 18(c) of the SAG Television Agreement for programs covered by Exhibit A, for one-hour programs covered by the WB/UPN Supplement and for dramatic programs covered by Section 2.A.(1) of Exhibit E, or as provided in Paragraph 73.F. of the Network Code for programs covered by the WB/UPN Supplement other than one-hour programs.

**3. Reuse of Photography or Sound Track in New Media**

The following shall govern the use in new media of photography or sound track of a performer from any television program, regardless of when such program was produced:

- A. Producer may use photography or sound track from a television program (other than a television program ninety (90) minutes or more in length) in new media for the purpose of promoting the program or series from which the photography or sound track was taken, provided that such photography or sound track does not exceed five (5) minutes in length. Producer may use photography or sound track in new media from a television program ninety (90) minutes or more in length or from a dramatic program made for the home video market in new media for the purpose of promoting the program or series from which the photography or sound track was taken, provided that such photography or sound track does not exceed ten (10) minutes in length.
- B. The following reuses of photography or sound track in new media shall be considered to promote the program and shall not require payment nor bargaining and reaching agreement with the performer, whether or not the Company receives revenue in connection therewith:
  - (1) The photography or sound track promotes the exhibition on free television, basic cable or pay television of the television program or series from which the photography or

sound track was taken and includes “‘tune-in’ information.” “‘Tune-in’ information” for promotional purposes is sufficient when it informs the consumer where he or she can view the program or series from which the excerpt is taken. The tune-in information may appear on screen or in a “click-through” format – *i.e.*, accessible through links. It is agreed that the network channel or station “bug” alone does not suffice. It is also understood that the Producer is not required to provide the same level of “‘tune-in’ information” as is commonly provided in traditional network television promotional announcements.

- (2) The photography or sound track promotes the traditional home video release or any “special edition” home video release of a television program or series and references the availability of the program or series in home video.
- (3) The photography or sound track promotes the exhibition of a program in theatrical markets and includes reference to the theatrical release. Reference to the theatrical release shall be unnecessary if the photography or sound track is used as part of a “teaser” advertising campaign.
- (4) The photography or sound track promotes the new media exhibition of a television program or series and includes instructions for renting, purchasing, or streaming an electronic copy of the program or series from the website or other new media platform on which the photography or sound track appears or is heard, or a direct link to another website or new media platform where an electronic copy of the program or series can be rented, purchased, or streamed, and occurs in conjunction with the availability of an electronic copy of the program or series for rental, purchase, or ad-supported streaming via the Internet or other new media platform.
- (5) The photography or sound track is used for “viral” promotion in new media of a television program or series and is circulated non-commercially to multiple websites or made available for individuals to circulate. The fact that the photography or sound track used in the “viral” promotion is exhibited on a revenue-generating site owned by or affiliated with the Producer shall not render this exception inapplicable, provided that the photography or sound track is released without payment to other sites.

(6) The photography or sound track is made available for consumer-generated viral promotion to new media sites where end users have the ability to share such photography or sound track with other end users (such as Facebook, YouTube, MySpace or Crackle).

C. If the use of photography or sound track in new media is not within any of the provisions in subparagraph B. above, or the use is within the provisions of subparagraph B. above, but exceeds the length limitations set forth in subparagraph A. above and does not occur during the streaming window or during either of the twenty-six (26) consecutive week periods described in Paragraph 2.A.(2) (or such shortened period as is described in Paragraph 2.A.(3) above for which the Producer makes payment as provided therein), then the following shall apply:

(1) Current Product

Photography or sound track from a television program, the principal photography of which commenced on or after July 1, 2008 (“current product”) shall be governed by the following:

(a) Except as provided in subparagraph (c) below, Producer shall obtain the consent of the performer prior to using photography or sound track in new media. Except as provided in subparagraph (b) below, such consent may be obtained at the time of employment.

Such consent shall not in any manner waive the performer’s rights (including rights of the performer’s estate) to pursue claims against third parties arising from the use of excerpts that are outside the scope of the authorization given by the Producer.<sup>7</sup>

(b) Consent for the following uses must be obtained separately from the performer’s employment contract:

(i) for the reuse of nude photography;

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<sup>7</sup> It is understood by the parties that such rights of the performer may include, for example, an action for violation of right of publicity, right of privacy, defamation, false light, etc.

- (ii) for the reuse of a “blooper” excerpt which was not included in the program as originally exhibited; except that consent for use of deleted or alternative scenes that cannot be characterized as a “blooper” may be obtained at the time of employment; and
  - (iii) for the reuse of photography or sound track in a commercial (*i.e.*, an advertisement for goods or services), except that consent for use of excerpts for promotional purposes (*e.g.*, commercial or promotional tie-ins and cross-promotions) in new media or for the purpose of advertising or promoting the service on which the excerpts are available or the service on which the program or series from which the excerpt was taken appears, may be obtained at the time of employment. It is understood that the reuse of photography or sound track on a website with a single commercial sponsor does not constitute use in a commercial.
- (c) Notwithstanding the foregoing, the Producer shall not be required to obtain consent of a performer for the use of an excerpt(s) in new media under the following circumstances:
  - (i) When there would be no such obligation if the Producer used the excerpt in traditional media; however, the Producer shall be obligated to comply with the provisions of Section C.(1)(a) above and Section C.(1)(d) below as to any use of stunt footage, other than a use which would not require consent and/or payment if it were of non-stunt footage; or
  - (ii) If the Producer had previously bargained for such excerpt uses in a manner permitted under the television excerpt provisions of the Network Code, Exhibit A to the Network Code, or the WB/UPN Supplement, as applicable.

(d) Producer shall make payment for the use of photography or sound track from current product in new media in accordance with the provisions set forth below.

(i) For Reuse on Free to the Consumer, Advertiser-Supported Platforms

(A) No payment shall be required for the use of photography or sound track on free to the consumer, advertiser-supported platforms during the streaming window. Further, if the Producer pays the “new media program fee” for the use of the entire program in new media, such payment shall also constitute payment for the free to the consumer, advertiser-supported use of any portion thereof in new media during the corresponding time period.

(B) If the photography or sound track is from a television program and is used outside the streaming window, but within one year following expiration of the streaming window, and the use is not otherwise covered by the payment referred to in Paragraph 2.A.(2) and (3) above of this Sideletter, the Producer shall pay for such use as follows:

(1) For photography or sound track up to two (2) minutes in length, the lesser of \$30 or the applicable “new media program fee;”

(2) For photography or sound track in excess of two (2) minutes in length, but not more than four (4) minutes in length, the lesser of \$80 or

the applicable “new media program fee;”

- (3) For photography or sound track in excess of four (4) minutes in length, the applicable “new media program fee.”

The “new media program fee” for reuse of photography or sound track from programs covered by Exhibit A or from one-hour programs covered by the WB/UPN Supplement or from dramatic programs covered by Section 2.A.(1) of Exhibit E on free to the consumer, advertiser-supported platforms is three percent (3%) (three and one-half percent (3.5%) effective July 1, 2010<sup>8</sup>) of “total applicable minimum salary,” as defined in Section 18(b)(4)b) of the SAG Television Agreement. The “new media program fee” for reuse of photography or sound track from programs covered by the WB/UPN Supplement, other than one-hour programs, on free to the consumer, advertiser-supported platforms is the applicable residual for the use of the entire program as provided in Paragraph 2.A.(2)(b) of this Sideletter.

- (C) For any other use of photography or sound track from a television program on a free to the consumer, advertiser-supported platform, the Producer shall pay six percent (6%) of “Distributor’s gross.”
- (D) If photography or sound track from the current season of a series is used together with photography or sound

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<sup>8</sup> For programs covered by Exhibit E, this date shall be March 8, 2010.

track from past seasons of the series on an ad-supported, free to the consumer basis, and payment would otherwise be due for such uses, then the Producer shall pay six percent (6%) of “Distributor’s gross” for use of all such excerpts.

(ii) For Reuse on “Consumer Pay” Platforms

If photography or sound track from a television program is used on a “consumer pay” platform, whether to “promote” the program or series or not, the Producer shall pay 3.6% of “Distributor’s gross” for such use. This formula shall apply to a “hybrid” use where the consumer pays for the photography or sound track and advertising revenues are also derived by the Producer from such use. Such revenues shall be incorporated in “Distributor’s gross.”

- (e) (i) If Producer neither seeks nor obtains the consent of the performer for use of photography or sound track as required in this Section C.(1), the performer shall be entitled to damages for such unauthorized use, equivalent to three (3) times the amount originally paid the performer for the number of days of work covered by the material used. If the Producer is unable to find the performer, it shall notify the Union, and if the Union is unable to find the performer within a reasonable time, the Producer may use the photography or sound track without penalty.
- (ii) If Producer seeks, but fails to obtain, the consent of the performer as required in this Section C.(1), Producer shall be prohibited from making such reuse of the material, and in case of violation, the performer shall be entitled, at his option, to either accept damages as provided in subsection (e)(i) above, or to arbitrate this claim hereunder,



or to take legal proceedings in a court of competent jurisdiction.

(2) Library Product

Photography or sound track from a television program, the principal photography of which commenced prior to July 1, 2008 (“library product”), shall be governed by the following:

- (a) In those instances in which Exhibit A of the AFTRA Network Television Code, the WB/UPN Supplement or the AFTRA Network Code, as applicable, requires that the Producer bargain with the performer and reach agreement before using photography or sound track, the Producer shall either:
  - (i) bargain and reach agreement as required under the aforementioned Agreements: or
  - (ii) obtain consent in accordance with the procedure developed under subparagraph (b) below and make the payments required under subparagraph (c) below.
- (b) The Producers and AFTRA commit to develop jointly a streamlined and expedited process for obtaining general consent of performers to the non-promotional use of photography or sound track in new media. The parties agree that they shall complete this process within ninety (90) days after ratification.

The parties agree that the following restrictions shall apply in connection with any consent obtained through the procedure described in the preceding paragraph:

- (i) Such consent shall be subject to any different restrictions on the use of excerpts contained in the performer’s individual employment contract with Producer;
- (ii) Such consent shall not in any manner waive the performer’s rights (including rights of

the performer's estate) to pursue claims against third parties arising from the use of excerpts that are outside the scope of the authorization given by the Producer;<sup>9</sup>

- (iii) Such consent and any license of material for which consent has been given pursuant to Section C.(2)(b) above shall expire June 30, 2011, provided that any license of the material by Producer entered into on or after January 1, 2011 shall expire not later than June 30, 2012. Further, with respect to use of an excerpt from July 1, 2011 through June 30, 2012, Producer shall be obligated to pay the performer the reuse compensation which may be negotiated by AFTRA in the collective bargaining agreement with Producer which commences July 1, 2011.
- (iv) Unless the specific written consent of the performer is obtained separately from the procedure developed under this subparagraph (b), the Producer may not authorize:
  - (A) reuse of excerpts containing nude photography;
  - (B) reuse of an excerpt in conjunction with other material that would constitute an endorsement by performer or a commercial tie-in for such other material, except that performer's consent shall not be required: (1) for use of excerpts for promotional purposes (*e.g.*, commercial or promotional tie-ins and cross-promotions) in new media where the performer's individual employment contract specifically permits such use in traditional media; or (2) for the purpose of advertising or promoting the service

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<sup>9</sup> It is understood by the parties that such rights of the performer may include, for example, an action for violation of right of publicity, right of privacy, defamation, false light, etc.

on which the excerpts are available or the service on which the program or series from which the excerpt was taken appears;

- (C) reuse of an excerpt in a manner which would defame the performer;
  - (D) reuse of a “bloopers” excerpt which was not included in the program as originally exhibited; provided that it is not necessary to obtain consent in accordance with the procedure set forth in Section C.(2)(b)(iv) above for the use of deleted or alternative scenes that cannot be characterized as a “bloopers;” or
  - (E) reuse of an excerpt which, together with other material, constitutes an episodic length derivative program which is exploited by Producer to generate revenue.
- (v) The Producer shall not be relieved of its obligations under the television excerpt provisions of the Network Code, Exhibit A to the Network Code or the WB/UPN Supplement, as applicable, in connection with the use of excerpts in other than new media, even when the excerpt was first used in new media.
- (vi) Notwithstanding the foregoing, the Producer shall not be required to bargain and reach agreement with a performer for the use of an excerpt(s) in new media under the following circumstances:
- (A) When there would be no such obligation if the Producer used the excerpt in traditional media, except that the Producer shall be obligated to comply with the provisions of Section C.(2)(a) above as to any use

of stunt footage, other than a use which would not require bargaining and reaching agreement if it were of non-stunt footage; or

(B) If the Producer had previously bargained for such excerpt uses in a manner permitted under the television excerpt provisions of the Network Code, Exhibit A to the Network Code, or the WB/UPN Supplement, as applicable.

(c) Payment shall be due for the use of photography or sound track in new media in accordance with the provisions set forth below.

(i) For Reuse on Free to the Consumer, Advertiser-Supported Platforms

(A) For any other use of photography or sound track from a television program on a free to the consumer, advertiser-supported platform, the Producer shall pay six percent (6%) of "Distributor's gross."

(B) If photography or sound track from the current season of a series is used together with photography or sound track from past seasons of the series on an ad-supported, free to the consumer basis, and payment would otherwise be due for such uses, then the Producer shall pay six percent (6%) of "Distributor's gross" for use of all such excerpts.

(ii) For Reuse on "Consumer Pay" Platforms

If photography or sound track from a television program is used on a "consumer pay" platform, whether to "promote" the program or series or not, the Producer shall pay 3.6% of "Distributor's gross" for such use. This formula shall apply to a "hybrid"

use where the consumer pays for the photography or sound track and advertising revenues are also derived by the Producer from such use. Such revenues shall be incorporated in "Distributor's gross."

- (d)
  - (i) If Producer has neither bargained nor reached agreement with the performer for reuse of photography or sound track as required under the Codified Basic Agreement or the Television Agreement, as applicable, nor sought the consent of the performer for use of photography or sound track as required in Section C.(2)(a)(ii) above, the performer shall be entitled to damages for such unauthorized use equivalent to three (3) times the amount originally paid the performer for the number of days of work covered by the material used. If the Producer is unable to find the performer, it shall notify the Union, and if the Union is unable to find the performer within a reasonable time, the Producer may use the photography or sound track without penalty.
  - (ii) If Producer has not bargained and reached agreement with the performer for reuse of photography or sound track as required under the Codified Basic Agreement or the Television Agreement, as applicable, but has sought and failed to obtain the consent of the performer as required in this Section C.(2)(a)(ii), Producer shall be prohibited from making such reuse of the material, and in case of violation, the performer shall be entitled, at his option, to either accept damages as provided in subsection (d)(i) above, or to arbitrate his claim hereunder, or to take legal proceedings in a court of competent jurisdiction.

D. Notwithstanding the foregoing:

- (1) No payment shall be required for the free to the consumer "non-commercial" promotional use of photography or

sound track more than five (5) minutes in length from television programs less than ninety (90) minutes in length or more than ten (10) minutes in length from television programs ninety (90) minutes or more in length or from dramatic programs made for the home video market containing one (1) or more scenes. A “non-commercial” use is a use from which the Producer and its related and affiliated entities, including, but not limited to, distributors and exhibitors, receive no revenues, including, but not limited to, advertising revenues.

- (2) It is understood that the reuse of photography or sound track from any program covered by Exhibit A or from any dramatic program covered by Section 2.A.(1) of Exhibit E shall not require any payment hereunder if the use would not require a payment under the “Reuse of Photography or Sound Track” provisions of the SAG Codified Basic Agreement or the SAG Television Agreement. Likewise, it is understood that the reuse of photography or sound track from any program covered by the WB/UPN Supplement shall not require any payment hereunder if the use would not require a payment under the television excerpt provisions of the Network Code.
  - (3) If photography or sound track is used to promote the sale or rental of a program or series in home video, other than in connection with the traditional home video release or any “special edition” home video release as described in B.(2) above, then the Producer’s only obligation shall be to pay six percent (6%) of “Distributor’s gross” for such use if the Producer receives revenue in connection therewith.
  - (4) If the Producer receives revenue in connection with the use of photography or sound track under subparagraph B.(6) above, Producer shall pay six percent (6%) of “Distributor’s gross” for such use.
- E.
- (1) The obligations specified herein shall apply only if the performer is recognizable and, as to stunts, only if the stunt is identifiable.
  - (2) Payments for reuse of stunts shall only apply to stunt performers whom the Union can identify and establish as having performed the stunt in question. The Producer may rely upon the Union’s designation of any stunt performer as the person who performed such stunt and payment by the

Producer to such stunt performer shall be final and conclusive and shall relieve the Producer of any further obligations for the reuse of such stunt as herein provided.

- (3) Nothing herein shall limit the Producer's right to use photography or sound track in exploiting the program.

F. New Media Committee: Moratorium on Grievances and Arbitration Claims

Given the novelty and complexity of the issues regarding the promotional versus non-promotional and commercial versus non-commercial use of photography or sound track in New Media, the parties agree to establish a Committee to review, discuss and categorize instances of such use in New Media to assist them in refining their mutual understanding of such uses and the Union agrees not to file any grievances or arbitration claims arising out of or relating to a dispute over the use of photography or sound track in New Media that occurs during the first six months of the 2008 Agreement, provided that all payments as to which there is no *bona fide* dispute are timely made.

**4. Reuse of Made for New Media Productions**

A. Derivative New Media Productions

- (1) Initial compensation for a Derivative New Media Production shall constitute payment for thirteen (13) consecutive weeks of use on all free to the consumer advertiser-supported platforms transmitted via New Media (hereinafter "advertiser-supported platforms"), commencing with the first day that the Derivative New Media Production is available for exhibition on any advertiser-supported platform, and for a separate twenty-six (26) consecutive week period of use on any consumer pay new media platform (hereinafter "consumer pay platform"), commencing with the first day that the Derivative New Media Production is available for exhibition on any consumer pay platform.

- (2) Use on Advertiser-Supported Platforms Within One Year Following Expiration of the Thirteen Week Period

- a. If the Producer desires to use the Derivative New Media Production on advertiser-supported platforms beyond the thirteen (13) consecutive week period,

but within one (1) year of the expiration of the thirteen (13) consecutive week period,<sup>10</sup> then the Producer shall make a residual payment to each performer of the applicable amount set forth below as consideration for a twenty-six (26) consecutive week period of use, commencing with the first day that the Derivative New Media Production is available for use on any advertiser-supported platform following the expiration of the thirteen (13) consecutive week period:

- (i) For Derivative New Media Productions that are based on programs covered by Exhibit A, or on one-hour programs covered by the WB/UPN Supplement, or on dramatic programs covered by Section 2.A.(1) of Exhibit E, \$20.00 for Derivative New Media Productions that are ten (10) minutes or less in length (\$25.00 for Derivative New Media Productions that exceed ten (10) minutes in length); and
  - (ii) For Derivative New Media Productions that are based on programs covered by the WB/UPN Supplement, other than one-hour programs, three percent (3%) (three and one-half percent (3.5%) effective July 1, 2010) of the first replay fee applicable to a television program of the same length as the derivative program.
- b. If the Producer desires to use the Derivative New Media Production on advertiser-supported platforms for all or any part of the twenty-six (26) consecutive week period immediately following the twenty-six (26) consecutive week period described in Paragraph 4.A.(2)a. above, but within one (1) year after expiration of the thirteen (13) week period,<sup>11</sup>

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<sup>10</sup> Should the AMPTP negotiate with either the DGA or SAG to allow the period covered by the fixed residual payment set forth in Paragraph 4.A.(2) to go beyond one year following expiration of the streaming window, then AFTRA shall have the right to elect to have the fixed residual payment cover that expanded period as well in lieu of limiting that period to one (1) year after expiration of the thirteen (13) consecutive week window.

<sup>11</sup> See footnote 9 above.



then the Producer shall make a residual payment equal to the applicable amount payable under Paragraph 4.A.(2)a. above, as consideration for a twenty-six (26) consecutive week period of use, commencing with the first day that the Derivative New Media Production is available for use during such twenty-six (26) consecutive week period.

- c. Neither of the aforementioned twenty-six (26) consecutive week periods shall cover a period that is more than one (1) year after the expiration of the thirteen (13) consecutive week period.<sup>12</sup> In the event that use of the Derivative New Media Production on advertiser-supported platforms is commenced on a date that does not allow for the full twenty-six (26) consecutive week period of use within one (1) year of the expiration of the thirteen (13) consecutive week period, then the payment for that period shall be prorated in weekly units to cover the shorter use period.

For example, suppose that the Producer uses a Derivative New Media Production on advertiser-supported platforms during the thirteen (13) consecutive week period and then does not use the Derivative New Media Production on advertiser-supported platforms again until thirty-nine (39) weeks after the expiration of the thirteen (13) consecutive week period. Since only thirteen (13) weeks remain within the one (1) year period, a payment of one-half of the payment that would otherwise be due for the twenty-six (26) consecutive week use period is payable for use during the remaining thirteen (13) consecutive week period.

(3) Use on Advertiser-Supported Platforms More Than One Year Following Expiration of the Thirteen Week Period

Upon expiration of the one (1) year period following expiration of the thirteen (13) consecutive week period, if the Producer desires to use the Derivative New Media Production on advertiser-supported platforms, then it shall pay residuals at the rate of six percent (6%) of

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<sup>12</sup> See footnote 9 above.

“Distributor’s gross,” as that term is defined in Paragraph 5.A. below.

(4) Use on Consumer Pay Platforms

For use of a Derivative New Media Production on new media platforms for which the consumer pays (*e.g.*, download-to-own, download-to-rent, paid streaming), the Producer shall pay a residual equal to 3.6% of the “Distributor’s gross,” as that term is defined in Paragraph 5.A. below, attributable to the period beyond the twenty-six (26) consecutive week period of use.

(5) Use in Traditional Media

a. Derivative Programs Based on Programs Covered by Exhibit A, on One-Hour Programs Covered by the WB/UPN Supplement or on Dramatic Programs Covered by Section 2.A.(1) of Exhibit E

The Producer shall pay residuals for the use in “traditional media” (*e.g.*, free television, basic cable, pay television, home video) of a Derivative New Media Production that is based on a program covered under Exhibit A, or on a one-hour program covered by the WB/UPN Supplement, or on a dramatic program covered by Section 2.A.(1) of Exhibit E as a use under existing SAG Television Agreement formulas.

(i) Free Television Exhibition

Residual payments for free television exhibition of such Derivative New Media Productions shall be computed as follows:

The new media exhibition of the Derivative New Media Production shall constitute the first run for purposes of calculating residual payments in free television. The residual payment for each performer shall be based upon the network prime time rerun ceiling applicable to the source program on which the Derivative New Media Production is based. However, if the Derivative New Media Production is shorter than the source

program, then the applicable network prime time rerun ceiling shall be prorated in five (5) minute increments to determine the appropriate base for such shorter Derivative New Media Production. The base figure will then be multiplied by the percentage applicable to the rerun in question to arrive at the residual amount.

- (A) As an example, suppose that a five (5) minute Derivative New Media Production which is based upon a one-hour series is exhibited for the first time in network prime time. The applicable residual is the network prime time rerun ceiling for a one-hour show, or \$3,372.00 as of July 1, 2008, prorated to a five minute rate, (*i.e.*, one-twelfth of \$3,372.00), and then multiplied by 100%, the percentage applicable to a second run in network prime time, for a total residual payment of \$281.00.
- (B) As another example, if the same five (5) minute Derivative New Media Production were exhibited in syndication after its run in network prime time, the residual payment due for the run in syndication would be the network prime time rerun ceiling for a one-hour show (\$3,372.00 as of July 1, 2008), prorated to a five minute rate (*i.e.*, one-twelfth of \$3,372.00), and then multiplied by the percentage applicable to a third run in syndication (thirty percent (30%)), for a total residual payment of \$84.30.

(ii) Exhibition on Pay Television, on Home Video and on Basic Cable

For exhibition on pay television, the Producer shall pay residuals equal to 3.6%

of “Distributor’s gross” pursuant to Section 20.1 of the SAG Television Agreement. For home video exploitation, the Producer shall pay residuals pursuant to Section 20.1 of the SAG Television Agreement. For exhibition on basic cable, Producer shall pay pursuant to Section 18.1 of the SAG Television Agreement.

b. Derivative Programs Based on Programs Covered by the WB/UPN Supplement, Other Than One-Hour Programs

The Producer shall pay residuals for the use on “traditional media” (*e.g.*, free television, basic cable, pay television, home video) of a Derivative New Media Production that is based on a program covered by the WB/UPN Supplement, other than a one-hour program, as a use under existing Network Code formulas.

(i) Free Television Exhibition

- (A) Except with respect to exhibition in network prime time of Derivative New Media Productions based on programs covered by the WB/UPN Supplement, other than one-hour programs, that exceed fifteen (15) minutes in length, residual payments for free television exhibition of such Derivative New Media Productions shall be computed as follows:

The new media exhibition of the Derivative New Media Production shall constitute the first run for purposes of calculating residual payments in free television. The residual payment for each performer shall be the product of the program fee for a free television program of the same category and length as the Derivative New Media Production multiplied by the percentage applicable to the replay in question.

As an example, suppose that a five (5) minute Derivative New Media Production which is based upon a one-half hour dramatic series covered by the WB/UPN Supplement is exhibited for the first time in network prime time. The applicable residual is the program fee used for a dramatic program five (5) minutes and under in length exhibited in syndication (\$237 as of July 1, 2008). That figure will be multiplied by 75%, the percentage applicable to the second run on a network, for a total residual payment of \$177.75.

- (B) The formula for reruns in network prime time of such Derivative New Media Productions that exceed fifteen (15) minutes in length is as follows: The new media exhibition of the Derivative New Media Production shall constitute the first run for purposes for calculating residual payments for use of free television. The residual payment shall be the applicable residual under the Network Code for a rerun in network prime time of a free television program of the same type and length as the Derivative New Media Production.

(ii) Exhibition on Pay Television, on Home Video and on Basic Cable

For exhibition on pay television, the Producer shall pay residuals equal to 3.6% of "Distributor's gross" pursuant to Exhibit D, Section 4.B. of the Network Code. For home video exploitation, the Producer shall pay residuals pursuant to Exhibit D of the Network Code. For exhibition on basic

cable, Producer shall pay pursuant to Exhibit D of the Network Code.

B. Original New Media Productions

The following shall apply to Original New Media Productions:

(1) What Initial Compensation Covers

Initial compensation for an Original New Media Production shall constitute payment for a twenty-six (26) consecutive week period of use on any consumer pay new media platform (hereinafter “consumer pay platform”), commencing with the first day that the Original New Media Production is available on any consumer pay platform, and all uses on free to the consumer advertiser-supported platforms transmitted via New Media (hereinafter “advertiser-supported platforms”).

(2) Use on Consumer Pay Platforms

- a. No payment shall be due for any use on consumer pay platforms for an Original New Media Production budgeted below \$25,000 per minute of actual program material as exhibited.
- b. For all uses of an Original New Media Production budgeted at or above \$25,000 per minute of actual program material as exhibited on consumer pay platforms (*e.g.*, download-to-own, download-to-rent, paid streaming) beyond the twenty-six (26) consecutive week period, the Producer shall pay a residual equal to 3.6% of the “Distributor’s gross,” as that term is defined in Paragraph 5.A. below, attributable to the period beyond the twenty-six (26) consecutive week use period.
- c. Paragraph (1) above shall apply to an Original New Media Production initially released on a consumer pay platform which is subsequently released on an advertiser-supported platform or vice versa.

(3) Use in Traditional Media

The Producer shall pay residuals for the use of an Original New Media Production in “traditional media” (*e.g.*, free

television, basic cable, pay television, home video) as a use under existing Exhibit A formulas.

a. Free Television Exhibition

Residual payments for free television exhibition of Original New Media Productions shall be computed as follows:

The new media exhibition of the Original New Media Production shall constitute the first run for purposes of calculating residual payments in free television. The residual payment for each performer shall be based upon the network prime time rerun ceiling applicable to a one-half hour program unless the Original New Media Production is longer than thirty (30) minutes, in which case the network prime time rerun ceiling closest to the length of the Original New Media Production shall be used, subject to a right to adjust the ceiling in the same manner as is provided under the “‘Supersized’ Episodes” sideletter. If the Original New Media Production is shorter than one-half hour, then the one-half hour network prime time rerun ceiling shall be prorated in five (5) minute increments to determine the appropriate base for such shorter Original New Media Production. The base figure will then be multiplied by the percentage applicable to the rerun in question to arrive at the residual amount.

(i) As an example, suppose that a five (5) minute Original New Media Production is exhibited for the first time in network prime time. The applicable residual is the network prime time rerun ceiling for a one-half hour show, or \$2,369.00 as of July 1, 2008, prorated to a five minute rate, (*i.e.*, one-sixth of \$2,369.00), and then multiplied by 100%, the percentage applicable to a second run in network prime time, for a total residual payment of \$394.83.

(ii) As another example, if the same five (5) minute Original New Media Production were

exhibited in syndication after its run in network prime time, the residual payment due for the run in syndication would be the network prime time rerun ceiling for a one-half hour show (\$2,369.00 as of July 1, 2008), prorated to a five minute rate (*i.e.*, one-sixth of \$2,369.00), and then multiplied by the percentage applicable to a third run in syndication (thirty percent (30%)), for a total residual payment of \$118.45.

b. Exhibition on Pay Television, on Home Video and on Basic Cable

For exhibition on pay television, the Producer shall pay residuals equal to 3.6% of “Distributor’s gross” pursuant to Section 20.1 of the SAG Television Agreement. For home video exploitation, the Producer shall pay residuals pursuant to Section 20.1 of the SAG Television Agreement. For exhibition on basic cable, Producer shall pay pursuant to Section 18.1 of the SAG Television Agreement.

5. “Distributor’s Gross”

A. Definition

The term “Distributor’s gross,” for purposes of all re-uses in new media of television programs made for traditional media and of Original and Derivative New Media Productions (each hereinafter referred to as “such Program”), shall be as defined in Exhibit D of the Network Code.<sup>13</sup>

When the “Distributor’s gross” derived from new media exploitation is received from a related or affiliated entity that acts as the exhibitor/retailer of such Program, then the “Distributor’s gross” received by the Producer from the licensing of such rights shall be measured by the exhibitor/ retailer’s payments to unrelated

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<sup>13</sup> For sake of clarity, “Distributor’s gross” specifically includes advertising revenues when the license, distribution, or other agreement provides for sharing in such revenues.



and unaffiliated entities in arms' length transactions for comparable programs, or, if none, then the amounts received by the Producer from unrelated and unaffiliated exhibitors/ retailers in arms' length transactions for comparable programs, or, if none, a comparable exhibitor/retailer's payments to comparable unrelated and unaffiliated entities in arms' length transactions for comparable programs.

B. Agreements and Data

On a quarterly basis commencing September 30, 2008, within ten (10) business days after such request, the Producer shall provide for inspection by AFTRA's designated employee(s) or auditor(s), at Producer's premises where such data is kept, full access<sup>14</sup> to all unredacted license, distribution, and other agreements pertaining to new media exploitation of covered programs that were entered into during the immediately preceding quarter.<sup>15</sup> In any subsequent quarterly inspection, AFTRA's designated employee or auditor may re-inspect any agreements previously inspected and inspect any agreements not previously inspected.

Upon request, in a manner to be mutually agreed upon in good faith, the Producer shall expeditiously provide, or make available, to AFTRA data in its possession or control, or the possession or control of its related distribution entities, regarding the new media exploitation of covered programs, such as number of downloads or streams by source and ad rates.

C. Recordkeeping and Reporting

Payment for exploitation of covered programs in new media shall be due sixty (60) days after the end of the quarter in which the "Distributor's gross" from such exploitation is received. The Producer shall accompany such payments with reports regarding the "Distributor's gross" derived from such exploitation, which shall be specified by medium and source whenever reasonably possible and will be separated from revenues derived from exploitation of such Programs in traditional media. Along with such payments, the Producer shall provide AFTRA with unredacted copies of all corollary distributor's, subdistributor's,

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<sup>14</sup> Full access includes access to all agreements, notwithstanding any confidentiality clause contained therein, and access to all sideletters, exhibits, addenda, and other ancillary documents.

<sup>15</sup> In the initial quarter, the Producer shall also provide the Federation with access to all said agreements that were entered into between January 1, 2006 and June 30, 2008.

and exhibitor's statements relating to the reported "Distributor's gross."

Where the Producer allocates revenues between new media rights and other rights in any such Program, among new media rights in multiple such Programs, or otherwise, it shall specify such allocation.

D. Confidentiality

The information provided to AFTRA by the Producer will be treated as confidential and appropriate arrangements will be made to safeguard the confidentiality of that information.

E. Reservation of Rights

With respect to television programs, the Producer has agreed to a separate payment for these uses in new media because new media exhibition is at this time outside the primary market. The Producer reserves the right in future negotiations to contend that the pattern of release has changed so that these uses constitute or are a part of the primary market of distribution of television programs and that, therefore, no additional payment should be made with respect to the exhibition of television programs (including those covered by this Agreement) in new media. AFTRA reserves the right in future negotiations to contend to the contrary, and further to assert that regardless of whether other exhibitions are or have become part of the primary market, residual provisions for television programs so exhibited should be improved.

F. Other Terms and Conditions

Except as expressly provided herein, all other terms and conditions of the Network Code, including, but not limited to, Paragraph 95, shall apply; in the event of a conflict, the terms and conditions of this Sideletter shall control.

6. Sunset Clause

The parties recognize that this Sideletter is being negotiated at a time when the business models and patterns of usage of programs and other productions in new media are in the process of exploration, experimentation and innovation. Therefore, all provisions of this Sideletter expire on the termination date of Exhibit A to the AFTRA Network Code, except that those provisions of this Sideletter which govern dramatic programs covered by Section 2.A.(1) of Exhibit E shall

expire on the termination date of the Network Code, and will be of no force and effect thereafter. No later than sixty (60) days before that expiration date, the parties will meet to negotiate new terms and conditions for reuse of Made for New Media Productions and of television programs in new media to be in effect thereafter.

The parties further acknowledge that conditions in this area are changing rapidly and that the negotiation for the successor agreement will be based on the conditions that exist and reasonably can be forecast at that time. For example, the parties acknowledge that with respect to the formula in Paragraph 1 for the electronic sell-through of television programs, the growth of electronic sell-through could adversely impact traditional home video sales. In future negotiations, the parties agree that the criteria to be considered in good faith in determining whether the electronic sell-through residual should be increased or decreased include patterns of cannibalization of the home video market and changes in the wholesale price.

7. All payments hereunder made as a percentage of "Distributor's gross" are aggregate payments for all performers who have traditionally been entitled to residuals under Exhibit A or the WB/UPN Supplement or the Network Code, as applicable.