

**PROGRAMS MADE FOR NEW MEDIA  
PRODUCED UNDER THE TERMS OF THE  
AFTRA NETWORK TELEVISION CODE**

**The following provisions have been excerpted from the 2007-2010 AFTRA Network Television Code, concerning original “made for new media” non-dramatic programs of the type that have traditionally been produced under this or any previous AFTRA Code on or by means of the Internet, mobile devices or any other “new media” known as of March 8, 2008.**

With respect to programs intended for initial use on 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. Jurisdiction**

Jurisdiction over people covered and geographic scope shall be governed by the AFTRA Network TV Code. Jurisdiction over program types shall include those traditionally covered by the AFTRA Network TV Code, excluding news, public affairs, documentary and sports. “New Media Promotional Announcements,” as that term is defined herein, shall be covered under the terms of Paragraph D. below.

A “New Media Promotional Announcement” is a promotional announcement of the type traditionally produced under the Network Code intended for initial use in New Media which is (1) for a program or programs made for broadcast television; or (2) to promote a Derivative or Original New Media Production which is covered under this Sideletter. All other promotional announcements intended for initial use in New Media may be covered under the terms of Paragraph D. at the Producer’s option.

**B. Derivative New Media Productions**

A “Derivative New Media Production” (“DNMP”) is a production for New Media based on an existing television program that was produced for “traditional” media - e.g., a free television, basic cable, or pay television program (the “Original Production”).

**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 AFTRA Network TV Code incorporated herein by reference below. It is understood that Producer and Performer may have negotiated about such terms and conditions in contracts of employment entered into prior to March 8, 2008; if so, the terms and conditions of such contract shall control. AFTRA agrees that it will not interfere in any such negotiations between the Performer and the Producer.

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

Only the following specific provisions of the AFTRA Network TV 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 Re-Use 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.

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.

AFTRA and the Producers agree to meet within sixty (60) days following the ratification of this agreement to discuss specific criteria to be used in determining whether a particular performer would meet the definition of a "covered performer." Criteria to be discussed include the length and type of experience in the entertainment industry and any other criteria that would be relevant in making this determination. AFTRA and the Producers further agree to establish workable procedures for the administration of the agreed-upon criteria.

Until such criteria are determined, the Producers may determine in good faith who is a "covered performer." Upon AFTRA's request, the Producer agrees to discuss any such determination.

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 Serial Dramatic and Non-Dramatic Programs Made for New Media and “New Media Promotional Announcements”**

**1. Compensation**

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

Terms and conditions for original non-serial dramatic New Media Productions are not covered hereunder, and will instead be negotiated as part of Exhibit A.

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

Only the following specific provisions of the AFTRA Network TV 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 Re-Use 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.

**E. 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 the 2008 AFTRA Network TV 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.

**PROGRAMS REUSED IN NEW MEDIA  
PRODUCED UNDER THE TERMS OF THE  
AFTRA NETWORK TELEVISION BROADCASTING**

**The following provisions have been excerpted from the 2007-2010 AFTRA Network Television Code, concerning the exhibition of covered non-dramatic entertainment television programs of the type that have traditionally been produced under the AFTRA Code on or by means of the Internet, mobile devices or any other “new media” known as of March 8, 2008 and the reuse of Made for New Media productions produced under the AFTRA Network Code.**

**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-picture basis, and when the payment is in exchange for the right to view the television 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 March 8, 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 below, on the first 100,000 units and, thereafter, at 10.5% of 20% of “Distributor’s gross,” as defined in Paragraph 5 below.

Such payments shall be for the benefit of all performers on the program, except for background actors. Such payments shall be distributed pro rata to the performers on the basis of a two-to-one ratio for principal performers against other performers; the scale payment due each

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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 motion picture 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 motion picture 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 picture.

performer shall not exceed one and five-tenths percent (1.5%) per performer; and the scale payment due each off-camera announcer shall not exceed five-tenths of one percent (.5%) per announcer.

## **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 March 8, 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, then the Producer shall make a residual payment in the following amount 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:
    - (i) In the case of dramatic programs, three percent (3%) (three and one-half percent (3.5%) effective March 8, 2010) of the first replay fee applicable to the television program; and
    - (ii) In the case of non-dramatic programs, three percent (3%) (three and one-half percent (3.5%) effective March 8, 2010) of the program fee applicable to the television program.

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, then the Producer shall make a residual payment in the following amount as consideration for a twenty-six (26) consecutive week period

beginning on the first day that the television program is available for streaming during such twenty-six (26) consecutive week period:

- (i) In the case of dramatic programs, three percent (3%) (three and one-half percent (3.5%) effective March 8, 2010) of the first replay fee applicable to the television program; and
  - (ii) In the case of non-dramatic programs, three percent (3%) (three and one-half percent (3.5%) effective March 8, 2010) of the program fee applicable to the television program.
- (3) Neither of the aforementioned twenty-six (26) week periods shall cover a period that is more than one (1) year after the expiration of the streaming window. 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) week streaming period would be 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, if the Producer desires to stream the television program, then it shall pay residuals at the rate of six percent (6%) of "Distributor's gross," as that term is defined in Paragraph 5 below.
- B. If the Producer should desire to stream any television program, the production of which commenced prior to March 8, 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 below.

- C. Revenues derived from foreign streaming shall be included in “Distributor’s Foreign Gross,” as provided in Paragraph 73.F. of the AFTRA Network TV Code.

**3. Use of Excerpts in New Media**

- A. In addition to the use of excerpts permitted in Paragraph 2 above, Company may use an excerpt or excerpts 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 television program, provided that such excerpt(s) does not exceed five (5) minutes in length. Company may use an excerpt or excerpts from a television program ninety (90) minutes or more in length or from a program made for the home video market in new media for the purpose of promoting the program, provided that such excerpt(s) does not exceed ten (10) minutes in length.

- B. The following uses of an excerpt or excerpts in new media shall be considered “promotional” and shall require no payment, whether or not the Company receives revenue in connection therewith:

- (1) For promotion of the exhibition of a television program on free television, basic cable or pay television, the use of an excerpt shall not require compensation if the excerpt promotes the exhibition 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 Company is not required to provide the same level of “tune-in” information as is commonly provided in traditional network television promotional announcements.

- (2) For promotion of the traditional home video release or any “special edition” home video release of a television program, the use of an excerpt shall not require compensation if the excerpt promotes the home video release and references the availability of the program in home video.

- (3) For promotion of a new media exhibition of a television program, the use of an excerpt shall not require compensation if the excerpt

promotes the new media exhibition and includes instructions for renting, purchasing, or streaming an electronic copy of the program from the website or other new media platform on which the excerpt appears or a direct link to another website or new media platform where an electronic copy of the program can be rented, purchased, or streamed, and occurs in conjunction with the availability of an electronic copy of the program for rental, purchase, or ad-supported streaming via the Internet or other new media platform.

- (4) For “viral” promotion on new media of any use or exhibition of a television program, no payment is required if the excerpt is circulated non-commercially to multiple websites or made available for individuals to circulate. The fact that the viral excerpt is exhibited on a revenue-generating site owned by or affiliated with the Company shall not render this exception inapplicable, provided that the excerpt is released without payment to other sites.
- C. The use of excerpts shall not be considered “promotional” within the meaning of subparagraph B. above if the excerpts are used on a new media site which archives the contents of several prior seasons of the series and is designed to enable the viewer to search the archives using a sophisticated search engine, as distinguished from a new media site which offers excerpts from several prior seasons of a series that are intended as a recap of the events that transpired during those prior seasons or that are intended to promote the exhibition or sale of full episodes of the series from which the excerpts are taken.
- D. If the use of an excerpt or excerpts in new media is not within one of the promotional provisions in subparagraph B. above, or if the excerpt(s) used exceed the length limitations set forth in subparagraph A. above:
- (1) If the excerpt is from a television program and is used on a free to the consumer platform outside the streaming window, but within one year following expiration of the streaming window, and the use is not otherwise permitted or paid for under subparagraph 2.A. above, the Producer shall pay for such use as follows:
    - (i) For an excerpt up to two (2) minutes in length, the lesser of \$25 or the applicable “new media program fee;”
    - (ii) For an excerpt in excess of two (2) minutes in length but not more than four (4) minutes in length, the lesser of \$75 or the applicable “new media program fee;”

- (iii) For an excerpt in excess of four (4) minutes in length, the applicable “new media program fee.”

The “new media program fee” for use of excerpts on free to the consumer platforms is the applicable residual for the use of the entire program in new media as provided in Paragraph 2.A. of this Sideletter.

- (2) For any other use of an excerpt from a television program on a free to the consumer platform, including the use of excerpts from a television program produced prior to March 8, 2008, the Producer shall pay six percent (6%) of “Distributor’s gross,” as defined in Paragraph 5 below, for such use.
- (3) If an excerpt from a television program is used on a “consumer pay” platform, whether promotional or not, the producer shall pay 3.6% of “Distributor’s gross,” as defined in Paragraph 5 of this Sideletter, for such use. This formula shall apply to a “hybrid” use where the consumer pays for the excerpt and advertising revenues are also derived by the Producer from such use. Such revenues shall be incorporated in “Distributor’s gross.”

E. Notwithstanding the foregoing:

- (1) If excerpts from the current season of a series and excerpts from past seasons of the series are used together on an ad-supported free to the consumer basis, then the percentage of “Distributor’s gross” payment set forth in Paragraph 2.B. of this Sideletter shall apply to all such excerpts.
- (2) No payment shall be required for the free to the consumer “non-commercial” promotional use of excerpts more than five (5) minutes for programs less than ninety (90) minutes in length or more than ten (10) minutes for programs ninety (90) minutes or more in length containing one (1) or more scenes. A “non-commercial” use is a use from which the Company and its related and affiliated entities, including, but not limited to, distributors and exhibitors, receive no revenues, including, but not limited to, advertising revenues.
- (3) No payment shall be required for free to consumer use of excerpts during the streaming window. If the Company pays the “new media program fee” pursuant to Paragraph 2.A. of this Sideletter, the payment for the use of the entire program in new media shall

also constitute payment for the free to the consumer use of any portion thereof in new media during the corresponding time period.

- (4) It is understood that the use of an excerpt from a television program or a made-for-home video program shall not require any payment hereunder if the use would not require a payment under the television excerpt provisions of the AFTRA TV Code.
- F. All obligations of the Producer with respect to the use of an excerpt or excerpts under this Paragraph 3 shall be fully satisfied so long as the excerpt(s) meets the promotional requirements set forth herein or the Producer pays the applicable amount set forth herein.

**G. New Media Excerpt Use 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 excerpts 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 AFTRA agrees not to file any grievances or arbitration claims arising out of or relating to a dispute over the use of excerpts 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) 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) 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) week period, but within one (1) year of the expiration of the thirteen (13) week period, then the Producer shall make a residual payment in the following amount 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) week period:
  - (i) In the case of dramatic programs, three percent (3%) (three and one-half percent (3.5%) effective March 8, 2010) of the first replay fee applicable to a television program of the same length as the derivative program; and
  - (ii) In the case of non-dramatic programs, three percent (3%) (three and one-half percent (3.5%) effective March 8, 2010) of the program 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) above, but within one (1) year after expiration of the thirteen (13) week period, then the Producer shall make a residual payment equal to the applicable amount payable under Paragraph 4.A(2) 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. In the event that use of the television program 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 television program on advertiser-supported platforms during the thirteen (13) consecutive week period and then does not use the program 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 would be payable for use during the remaining thirteen (13) 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) 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 “Distributor’s gross,” as that term is defined in Paragraph 5 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 below, attributable to the period beyond the twenty-six (26) week period of use.

(5) **Use in Traditional Media**

The Producer shall pay residuals for the use of a Derivative New Media Production in “traditional media” (e.g., free television, basic cable, pay television, home video) as a use under existing AFTRA Network TV Code formulas.

a. Free Television Exhibition

- (i) Except with respect to exhibition of dramatic Derivative New Media Productions that exceed fifteen (15) minutes in length in network prime

time, residual payments for free television exhibition of 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 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 non-dramatic Derivative New Media Production is exhibited for the first time in network prime time. The applicable residual is the program fee used for a non-dramatic program five (5) minutes and under in length exhibited in syndication (\$221 as of March 8, 2008). That figure will be multiplied by 75%, the percentage applicable to a second run on a network, for a total residual payment of \$166.

- (ii) The formula for reruns in network prime time of dramatic 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 of calculating residual payments for use on free television. The residual payment shall be the applicable residual under the AFTRA Network TV 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.

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 Exhibit D., Section 4.B. of the AFTRA Network TV Code. For home video exploitation, the Producer shall pay residuals pursuant to Exhibit D of the AFTRA Network TV Code. For exhibition on basic cable, Producer shall pay pursuant to Exhibit D of the AFTRA Network TV Code.

**B. Original New Media Productions**

The following shall apply to Original New Media Productions other than non-serial dramatic productions:

(1) What Initial Compensation Covers

Initial compensation for an Original New Media Production shall constitute payment for a twenty-six (26) 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) 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 below, attributable to the period beyond the twenty-six (26) 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 AFTRA TV Code formulas.



**a. Free Television Exhibition**

- (i) Except with respect to exhibition of serial-type dramatic Original New Media Productions that exceed fifteen (15) minutes in length in network prime time, 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 shall be the product of the program fee for a free television program of the same category and length as the original New Media Production multiplied by the percentage applicable to the replay in question.

- (ii) The formula for reruns in network prime time of serial-type dramatic Original New Media Productions that exceed fifteen (15) minutes in length is as follows: The new media exhibition of the Original New Media Production shall constitute the first run for purposes of calculating residual payments for use on free television. The residual payment shall be the amount payable for a rerun in network prime time of a free television program of the same length as the Original New Media Production.

- b. For exhibition on pay television, the Producer shall pay residuals equal to 3.6% of "Distributor's gross" pursuant to Exhibit D of the AFTRA Network TV Code. For home video exploitation, the Producer shall pay residuals pursuant to Exhibit D of the AFTRA Network TV Code. For exhibition on basic cable, Producer shall pay pursuant to Exhibit D of the AFTRA Network TV Code.

**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”), as defined in Exhibit D of the AFTRA Network TV Code.<sup>1</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 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 June 30, 2008, within ten (10) business days after such request, the Producer shall provide for inspection by AFTRA’s designated employee or auditor, at Producer’s premises where such data is kept, full access<sup>2</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>3</sup> In any subsequent quarterly inspection, the 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 pictures in new media shall be due sixty (60) days after the end of the quarter in which the “Distributor’s

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<sup>1</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.

<sup>2</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>3</sup> In the initial quarter, the Producer shall also provide AFTRA with access to all said agreements that were entered into between January 1, 2006 and March 30, 2008.

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, sub-distributor’s, 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 this use on the Internet because Internet 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 this use constitutes or is 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) on the Internet. 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 AFTRA TV Code, including but not limited to Paragraph 95, shall apply; in the event of a conflict, the terms and condition 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 the 2008 AFTRA Network TV 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 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 programs and 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 the AFTRA Network TV Code.