

**MEMORANDUM OF UNDERSTANDING BETWEEN  
ALLIANCE OF MOTION PICTURE AND TELEVISION PRODUCERS  
AND AMERICAN FEDERATION OF MUSICIANS**

On November 6, 2009, at the culmination of the current round of collective bargaining, the parties covered by this Memorandum of Understanding ("MOU") have reached an agreement (subject to the Federation's ratification of procedure) for successor agreements to the Basic Theatrical Motion Picture Agreement of 2005 and the Basic Television Agreement of 2005.

1. By the terms of this MOU, the two (2) existing collective bargaining agreements referred to above and the Film Musicians Secondary Markets Fund Agreement shall be modified as set forth at pages 1-28 below.
2. In all other respects, the two (2) existing collective bargaining agreements referred to above and the Film Musicians Secondary Markets Fund Agreement shall remain in full force and effect during the period from the date of ratification through February 23, 2013.
3. The parties shall promptly take the necessary steps to incorporate the agreed-upon changes into the two (2) existing collective bargaining agreements referred to above and to print a new set of agreements reflecting those changes.

1. **Term**

The term of the AFM Basic Theatrical and Television Motion Picture Agreements shall commence on the date of ratification by the membership of the Federation and continue through February 23, 2013. The parties agree to make good faith efforts to commence negotiations for successor agreements in or around October of 2012, with the intent of concluding negotiations within two (2) weeks after commencement.

2. **Wages**

Increase all wage rates by one and one-half percent (1.5%) effective on the first Sunday following ratification of the Agreements, by an additional two percent (2%) effective on the Sunday closest to a date one year after ratification and by an additional two percent (2%) effective on the Sunday closest to a date two years after ratification. These increases shall be compounded.

3. **Health Plan**

- (a) Modify Paragraph 4, *Health Plan*, by increasing the dollar figure used as the divisor for computing Health Plan contributions for copyists, arrangers and orchestrators by twenty-five percent (25%).
- (b) Paragraph 4, "*Health Plan*," of the Theatrical and Television Agreements provides that the rate of contribution to the Motion Picture Industry Health Plan shall automatically be changed to conform to any new pattern and rate of contribution established under such Health Plan. The Directors of the Health Plan have already adopted an amendment to the Health Plan Trust Agreement which changes the pattern and rate of contributions at designated times during calendar years 2010 and 2011. Under the terms of that amendment, in the event that the consultants for the Health Fund project that the level of reserves in the Active Health Fund will fall below six (6) months, or that the level of reserves in the Retired Employees Plan will fall below eight (8) months, the IATSE is obligated to reallocate up to one percent (1%) from wages and/or the Individual Account Plan until the reserves are restored to the six (6) or eight (8) month level, as applicable. Should the IATSE be so required to reallocate, then the Federation shall likewise be obligated to reallocate the same percentage from the scale wages of musicians employed in Los Angeles County for the same period of time as such reallocation applies to the IATSE.
- (c) The Producers agree to recommend to the Directors of the Motion Picture Industry Health Plan that musicians covered by the AFM Basic Theatrical Motion Picture and Basic Television Motion Picture Agreements and employed in Los Angeles County be allowed to withdraw from participation in the Motion Picture Industry Health Plan, provided that those musicians are allowed to participate in the Professional Musicians Local 47 and Employers' Health and Welfare Fund ("Local 47 Fund"), and provided that termination of the Producers' contribution

obligations to the Motion Picture Industry Health Plan coincides with the commencement of their contribution obligations to the Local 47 Fund. The contribution rate in effect on the date the musicians transfer out of the Motion Picture Industry Health Plan will be the rate paid to the Local 47 Fund, except that if any reallocation of wages, as provided in the last sentence of item 3(b) above, is in effect on that date, then any amounts so reallocated from wages to contributions shall be restored to wages and the contribution rate shall be reduced accordingly on that date. The rate will remain unchanged until the termination of the Agreement.

- (d) The Producers agree to assist the Federation and the Local 47 Fund in obtaining data from the Motion Picture Industry Health Plan in connection with the transition to the Local 47 Fund.
- (e) The Producers agree to convert vacation pay otherwise payable to musicians employed in Los Angeles County, California to an additional health contribution to the Local 47 Fund, provided the following conditions are met:
  - (I) The Federation shall give the Producers sufficient advance notice of the effective date of the conversion to enable the Producers to set up appropriate systems and procedures.
  - (ii) The conversion of vacation pay to health fund contributions must go into effect on the same date as the date upon which the Producers must commence making contributions into the Local 47 Fund.
  - (iii) The conversion must remain in effect until the end of the term of the Agreement.

4. **Exhibition of Motion Pictures Transmitted via New Media**

*Add a sideletter re "Exhibition of Motion Pictures Transmitted via New Media" to the Theatrical and Television Agreements to read as follows:*

**Re: Exhibition of Motion Pictures Transmitted Via New Media**

This Sideletter confirms the understanding of the American Federation of Musicians of the United States and Canada ("the Federation") and the Alliance of Motion Picture and Television Producers, on behalf of the Producers it represented in negotiations for successor agreements to the 2005 AFM Basic Television Film Agreement (hereinafter "the Television Agreement") and to the 2005 Basic Theatrical Motion Picture Agreement (hereinafter "the Theatrical Agreement") (collectively "the parties"), concerning the application of the 2009 Television Agreement and the 2009 Theatrical Agreement to the

exhibition on the Internet, mobile devices (such as cell phones or PDAs) and any other new media platform known as of February 26, 2009 (hereinafter collectively referred to as "New Media") of theatrical and television motion pictures, the principal photography of which commenced on or after July 1, 1971. The payments called for by this Sideletter shall apply only with respect to "Producer's gross" received on or after the first day of the first quarter following ratification of the 2009 Basic Theatrical Motion Picture and Basic Television Film Agreements.

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 motion picture for a fixed and limited period of time or a fixed number of exhibitions, the Producer shall pay one percent (1%) of "Producer's gross," as defined in Paragraph 3 below,<sup>1</sup> subject to the Producer's right to prorate on a comparable basis as provided in Article 14(b)(i)(5) of the Television Agreement and Article 16(b)(i)(5) of the Theatrical Agreement when music sound track for the picture is scored using musicians employed under the Television or Theatrical Agreement and using musicians not covered under those Agreements. Said amount shall be paid to the Administrator of the Film Musicians Secondary Markets Fund for distribution to participating musicians based upon each musician's pro-rata share for the motion picture.

b. Paid Permanent Downloads ("Download-to-Own" or "Electronic Sell Through") ("EST")

The following shall apply only to motion pictures released after ratification:

If the consumer pays for an EST copy of a theatrical motion picture, the Producer shall pay 1% of 20% of "Producer's gross," as that term is defined in Paragraph 3 below, for the first 50,000 units and 1.8% thereafter.

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<sup>1</sup>As bargaining history, this language is based upon the following model: studio licenses to Movielink (formerly know as Moviefly) the right to transmit the motion picture on the Internet to the viewer who pays Movielink 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 Movielink the right to exhibit a Columbia Pictures film, the residuals shall be based upon 100% of the license fee paid by Movielink to Columbia-TriStar Home Entertainment for such picture.

If the consumer pays for an EST copy of a television motion picture, the Company shall pay 1% of 20% of "Producer's gross," as that term is defined in Paragraph 3 below, for the first 100,000 units and 1.9% thereafter.

Said amount shall be paid to the Administrator of the Film Musicians Secondary Markets Fund for distribution to participating musicians based upon each musician's pro-rata share for the motion picture.

2. If the Consumer Does Not Pay

Should the Producer stream a theatrical motion picture on a free-to-the-consumer basis on advertiser-supported services transmitted via the Internet or mobile device, it shall pay 1% of "Producer's gross," as defined in Paragraph 3 below. Said amount shall be paid to the Administrator of the Film Musicians Secondary Markets Fund for distribution to participating musicians based upon each musician's pro-rata share for the motion picture.

3. "Producer's Gross"

a. Definition

The term "Producer's gross," for purposes of all uses in new media of theatrical motion pictures made for traditional media, shall be as defined in Article 16(b)(i)(1)(A)(i), (B), (C) and (D) of the Theatrical Agreement, as applicable.<sup>2</sup> The term "Producer's gross," for purposes of all uses in new media of television motion pictures made for traditional media, shall be as defined in Article 14(b)(i)(1)(A)(i), (B), (C) and (D) of the Television Agreement, as applicable.<sup>2</sup>

When the "Producer's gross" derived from new media exploitation is received from a related or affiliated entity that acts as the exhibitor/retailer of such picture, then the "Producer'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 pictures, or, if none, then the amounts received by the Producer from unrelated and unaffiliated exhibitors/retailers in arms' length transactions for comparable pictures, or, if none, a comparable exhibitor/retailer's payments to comparable unrelated and unaffiliated entities in arms' length transactions for comparable pictures.

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<sup>2</sup> For sake of clarity, "Producer's gross" specifically includes advertising revenues when the license, distribution, or other agreement provides for sharing in such revenues.

b. Agreements and Data

On a quarterly basis commencing January 1, 2010, within ten (10) business days after such request, the Producer shall provide for inspection by the Federation's designated employee or auditor, at Producer's premises in Los Angeles, full access<sup>3</sup> to all unredacted license, distribution, and other agreements pertaining to new media exploitation of covered pictures that were entered into during the immediately preceding quarter.<sup>4</sup> In any subsequent quarterly inspection, the Federation'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 the Federation data in its possession or control, or the possession or control of its related distribution entities, regarding the new media exploitation of covered pictures, such as number of downloads or streams by source and ad rates, where relevant to the payments required under this Sideletter.

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 "Producer's gross" from such exploitation is received. The Producer shall accompany such payments with reports regarding the "Producer'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 picture in traditional media.

When the Producer allocates revenues between new media rights and other rights in any such picture, among new media rights in multiple such pictures, or otherwise, it shall specify such allocation.

d. Confidentiality

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

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<sup>3</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>4</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, 2009 and December 31, 2009.

e. Reservation of Rights

With respect to theatrical and television motion pictures, the Producer has agreed to a separate payment for this use in new media because exhibition in new media 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 theatrical or television motion pictures and that, therefore, no additional payment should be made with respect to the exhibition of theatrical motion pictures or television programs (including those covered by this Agreement) in new media. The Federation 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 theatrical or television motion pictures so exhibited should be improved.

4. Sunset Clause

The parties recognize that this Sideletter is being negotiated at a time when the business models and patterns of usage of theatrical and television motion pictures 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 Television Agreement or Theatrical Agreement, as applicable, 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 use of theatrical and television motion pictures 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.b. for electronic sell-through of theatrical and television motion pictures, 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.

5. Unpublished Sideletter Regarding New Media Exhibition

*Add a new Unpublished Sideletter to the Television and Theatrical Agreements entitled "Unpublished Sideletter Regarding New Media Exhibition," to read as follows:*

"During the negotiation of the 2009 AFM Basic Television Film Agreement and the 2009 AFM Basic Theatrical Motion Picture Agreement, the Federation and the Producers discussed the nature of distribution via new media. In particular, the Producers compared new media to basic cable distribution. The Producers stressed that a new media exhibitor might work with a third party in the same way that a cable network, such as FX, works with MSOs to exhibit programs. The Federation acknowledged that it considers new media exhibitors such as hulu.com to be exhibitors, and not distributors, and that analogous situations to the one in basic cable would be treated the same – namely, that the third party would be considered an exhibitor and would not make the initial exhibitor a distributor."

6. **Productions Made For New Media**

*Add a Sideletter re "Productions Made for New Media" to the Television Agreement, to read as follows:*

**Re: Productions Made for New Media**

This Sideletter confirms the understanding of the American Federation of Musicians of the United States and Canada ("the Federation") and the Alliance of Motion Picture and Television Producers, on behalf of the Producers it represented in the negotiations for a successor agreement to the 2005 American Federation of Musicians Basic Television Film Agreement (collectively "the parties"), concerning the terms and conditions applicable to the production of entertainment motion pictures of the type that have traditionally been covered under said Agreement that are made for the Internet, mobile devices, or any other new media platform in existence as of February 26, 2009 (hereinafter collectively referred to as "New Media"). With respect to such productions intended for initial use in new media, the parties agree as follows:

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

**A. Recognition**

The Producer recognizes the Federation as the exclusive bargaining representative of employees employed within the classifications covered by the Basic Television Film Agreement (hereinafter "the Television Agreement") on entertainment motion pictures of the type traditionally covered under the Television Agreement which are intended for initial exhibition in New Media, but excluding "Experimental New Media Productions," as that term is defined below, and produced within the geographic scope covered by the aforementioned Agreement.



## B. Coverage

Coverage shall be at the Producer's option with respect to "Experimental New Media Productions." Should the Producer elect to cover an Experimental New Media Production, the terms and conditions applicable to employment on Original New Media Productions, as set forth in Paragraph D. below, shall apply.

An "Experimental New Media Production" is defined as any Original New Media Production: (1) for which the actual cost of production does not exceed: (a) \$15,000 per minute of program material as exhibited, and (b) \$300,000 per single production as exhibited, and (c) \$500,000 per series of programs produced for a single order; and (2) on which fewer than two (2) recording musicians (but excluding those recording musicians who perform MIDI transcription services exclusively) are working within the geographic scope of the Television Agreement, each of whom has worked under the Basic Theatrical Motion Picture Agreement, the Basic Television Film Agreement, the TV Videotape Agreement, the Sound Recording Labor Agreement or the Television or Radio Canadian Broadcasting System Agreements within the last three (3) years.<sup>5</sup>

The actual cost of the Experimental New Media Production 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, gap 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, Video Master if the Production is delivered on videotape, or the digital equivalent if the Production is delivered in a digital format).

If the Producer began production of an "Experimental New Media Production" which the Producer elected not to cover under the terms of this Sideletter, but subsequently employs two (2) or more recording musicians on the production as provided in the second paragraph of this Paragraph B., then said production shall automatically be deemed covered hereunder, starting from the first day on which at least two (2) or more such recording musicians are so employed on the production and continuing until the production is finished.

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<sup>5</sup>The Producer shall be entitled to rely on the representation of the employee as to whether he or she meets this work experience requirement.

**C. Terms and Conditions of Employment on Derivative New Media Productions**

A "Derivative New Media Production" is a dramatic production for New Media based on an existing dramatic free television motion picture covered by the Television Agreement ("the source production"). For purposes of this sideletter only, the term "dramatic" refers to live action or animated productions of a dramatic nature, including situation comedies, but excluding documentaries.

Employees may be employed by a Producer and assigned to a Derivative New Media Production as part of their regular workday (*i.e.*, the guaranteed call) on the source production. The work for the Derivative Production shall be considered part of the workday for the Employees on the source production and shall trigger overtime if work on the Derivative Production extends the workday on the source production past the point at which overtime would normally be triggered on the source production. All other terms and conditions, including benefits, shall continue as if the employee were continuing to work on the source production.

In all other situations, terms and conditions of employment are freely negotiable between the Employee and the Producer, except for those provisions identified in Paragraph E. below.

**D. Terms and Conditions of Employment on Original New Media Productions**

Terms and conditions of employment on Original New Media Productions are freely negotiable between the Employee and the Producer, except for those provisions identified in Paragraph E. below.

**E. Other Provisions**

(1) Union Security

The provisions of Article 4, "Union Security," of the Television Agreement shall apply to New Media Productions.

(2) Pension and Health

On covered New Media Productions budgeted at \$25,000 or less per minute (using the same cost elements as described in the third paragraph of Paragraph B. above), Producer's only obligation hereunder shall be to make contributions on behalf of each Employee employed under the terms of this Sideletter in accordance with the provisions of Paragraph 4 of the Television Agreement, except that such contributions shall be based only on the greater of hours worked or guaranteed.

On New Media Productions budgeted at more than \$25,000 per minute (using the same cost elements as described in the third paragraph of Paragraph B. above), or when Employees are assigned by the Producer to a Derivative New Media Production as part of their regular workday on the source production, Producer shall be obligated to make pension and health contributions in accordance with the provisions of Paragraphs 3 and 4, respectively, of the Television Agreement, on behalf of each Employee employed under the terms of this Sideletter.

To the extent pension contributions are required under the terms of this Sideletter, the wages negotiated by the employee shall be deemed to be scale wages for the purpose of contributions to the Pension Plan.

(3) No Scoring Requirements

It is expressly understood and agreed that there shall be no scoring requirements applicable to Productions made for New Media, including any live scoring requirement.

(4) Use of Previously Recorded Music

- (a) The Producer may use up to two (2) minutes, in the aggregate, of music, with or without the accompanying footage, recorded under an AFM Agreement(s) in a New Media Production, as such production is initially exhibited, without additional payment, provided that, within thirty (30) days of initial exhibition of the New Media Production, the Producer notifies the Federation in writing of such use, along with identification of the source agreement(s), if known.
- (b) Terms and conditions for the use in a New Media Production, as such production is initially exhibited, of music, with or without the accompanying footage, previously recorded under an AFM Agreement(s) (other than under this sideletter) which exceeds two (2) minutes in the aggregate, shall be determined by agreement between the Producer and the Federation.
- (c) Notwithstanding the foregoing, no payment shall be due for the use of music sound track from the source production in a Derivative New Media Production.

- (5) If the Producer should sell, assign, transfer, license or otherwise dispose of the distribution rights to a Derivative and/or Original New Media

Production for any market for which residual payments are required under the terms of this Sideletter, Producer shall obtain from the buyer, licensee or distributor a separate agreement, made expressly for the benefit of the Film Musicians Secondary Markets Fund, requiring such buyer, licensee or distributor to comply with the provisions of this Sideletter. Such agreement shall be in the following form:

"The undersigned, \_\_\_\_\_,  
(insert name of buyer, licensee or distributor)  
herein for convenience referred to as the 'Buyer,' hereby agrees  
with \_\_\_\_\_ that all  
(insert name of Producer)

Derivative and/or Original New Media Productions covered by the Sideletter Re 'Productions Made for New Media' (herein referred to as 'the Sideletter') are subject to the provisions of Paragraph F. therein, relating to the payment to the Film Musicians Secondary Markets Fund ("Secondary Markets Fund") of residuals for the use of such productions in traditional media and in New Media, and the Buyer hereby agrees, expressly for the benefit of the Secondary Markets Fund, to make the payments required thereby. It is expressly understood and agreed that the rights of Buyer to exploit or license the exploitation of such Derivative and/or Original New Media Productions in any market for which residual payments are required under the terms of the Sideletter shall be subject to and conditioned upon payment of such residuals to the Secondary Markets Fund as provided under Paragraph F. of the Sideletter, and it is agreed that the Secondary Markets Fund shall be entitled to seek injunctive relief and damages against Buyer in the event such payments are not made.

"Buyer shall be liable to make the payments described above, but only based upon rights actually acquired by Buyer and only for the period it holds such rights.

"The undersigned agrees to keep or have access to complete records showing the income derived from the distribution of such Derivative and/or Original New Media Productions in any market for which residual payments are required under the terms of the Sideletter, within the entire territory for which Buyer is granted such rights, and the Federation, and/or Secondary Markets Fund shall have the right at all reasonable times to inspect such records. The undersigned shall give the Federation prompt written notice of the date on which each such production covered hereby is first exploited in any such market. An inadvertent failure to comply with said requirement of notice shall not constitute a default by the

undersigned hereunder, provided such default is cured promptly after notice thereof from the Federation.

“Buyer further agrees that in the event of a sale, transfer, license or assignment of the distribution rights to the Derivative and/or Original New Media Production, Buyer shall obtain from the purchaser, transferee, licensee or assignee an Assumption Agreement covering the rights disposed of in the form set forth herein and shall provide an executed copy of such Assumption Agreement to the Federation. Upon delivery of such Assumption Agreement, Buyer shall not be further liable to the Federation and/or Secondary Markets Fund for the keeping of any records related to or the payments required based upon the rights covered under the Assumption Agreement for the exploitation of the Derivative and/or Original New Media Production in any market for which residual payments are required under the terms of the Sideletter, and the Federation and Secondary Markets Fund agree to look exclusively to the purchaser, transferee, licensee or assignee executing such Assumption Agreement for the keeping of such books or records and for making the payments attributable to the rights acquired. In the event Buyer fails to deliver such Assumption Agreement, it shall continue to be liable for the keeping of records and for the residual payments due under terms of the Sideletter for the exploitation of the Derivative and/or Original New Media Production.”

It is understood that additional provisions may be included in form Assumption Agreements, so long as such additional provision(s) do not vary or alter the terms of the foregoing Assumption Agreement.

Producer agrees to give notice to the Federation within thirty (30) days of each sale, transfer or license of the distribution rights to an Original and/or Derivative New Media Production for any market for which residual payments are required under the terms of the Sideletter, with the name and address of the Buyer, assignee or distributor, and to deliver to the Federation an executed copy of each Assumption Agreement entered into by the Producer. An inadvertent failure on the part of the Producer to comply with any of the provisions of this subparagraph (5) shall in no event constitute a default by the Producer hereunder or a breach of this Agreement, provided that such failure is cured promptly after notice thereof from the Federation.

Upon delivery of such Assumption Agreement, Producer, or any subsequent owner obtaining the execution of such Assumption Agreement, shall not be further liable to the Federation for the keeping of any such records or the payments required hereunder insofar as they relate to the exploitation of the Derivative and/or Original New Media Production in any market for which residual payments are required under the terms of the Sideletter, and the Secondary Markets Fund agrees to look exclusively to the party last executing such an Assumption Agreement for the keeping of such records and payments.

- (6) A Payroll Company that is a party signatory to the AFM Basic Television Film Agreement of 2009 may grant the use of its signatory status on a production-by-production basis to any Producer not a party signatory for the purpose of producing Derivative and/or Original New Media Productions under this Sideletter, provided that no session shall be allowed unless an executed Assumption Agreement in the following form has been provided to the Local Union in advance of the session.

“The undersigned \_\_\_\_\_,  
(insert name of Payroll Company)

herein for convenience referred to as the ‘Payroll Company,’  
hereby agrees with \_\_\_\_\_ that  
(insert name of non-signatory producer)

Derivative and/or Original New Media Productions covered by the Sideletter Re ‘Productions Made for New Media’ (herein referred to as ‘the Sideletter’) are subject to the provisions of Paragraph F. therein, relating to the payment to the Film Musicians Secondary Markets Fund (“Secondary Markets Fund”) of residuals for the use of such productions in traditional media and in New Media; and the Producer hereby agrees to abide by all provisions of the Sideletter. Producer also hereby agrees, expressly for the benefit of the Secondary Markets Fund, to make the payments required by the Sideletter. It is expressly understood and agreed that the rights of any such Producer to exploit or license the exploitation of Derivative and/or Original New Media Productions in any market for which residual payments are required under the terms of the Sideletter shall be subject to and conditioned upon payment of such residuals to the Secondary Markets Fund, as provided in Paragraph F. of the Sideletter, and it is further agreed that the Secondary Markets Fund shall be entitled to seek injunctive relief and damages against Producer in the event any such payments are not made.

“The undersigned Producer agrees to keep or have access to complete books and records showing the income derived from the sale, lease, license or distribution of Derivative and/or Original New Media Productions in any market for which residual payments are required under the terms of the Sideletter, within the entire territory for which Producer is granted such rights, and the Federation and Secondary Markets Fund shall have the right at all reasonable times to examine and inspect such books and records. The undersigned shall give the Federation prompt written notice of the date on which each such production covered hereby is first exploited in such markets. An inadvertent failure to comply with said notice requirements shall not constitute a default by the undersigned Producer provided that such default is cured promptly after notice thereof from the Federation.”

Upon delivery of such Assumption Agreement, the Payroll Company shall not be further liable to the Federation for the keeping of any such records or the payment(s) required for the exploitation of the Derivative and/or Original New Media Production in markets for which residual payments are required under the terms of this Sideletter, and the Secondary Markets Fund agrees to look exclusively to the Producer who is the party to the Assumption Agreement for the keeping of such books and records and payments.

**F. Use of New Media Programs**

Only covered New Media Productions shall generate residual payments and then only in accordance with the following:

(1) Use in New Media

- (a) The Producer shall have the right to use an Original New Media Production budgeted at \$25,000 or less per minute (using the same cost elements as described in the third paragraph of Paragraph B. above) on any new media platform without limitation as to time, and without payment of residuals.
- (b) The Producer shall have the right to use an Original New Media Production budgeted at more than \$25,000 per minute (using the same cost elements as described in the third paragraph of Paragraph B. above) or a Derivative New Media Production without the payment of residuals under the following circumstances:

- (i) When such New Media Production is used on any free-to-the-consumer, advertiser-supported platform; and
  - (ii) When such New Media Production is first released on a consumer pay platform (*i.e.*, download-to-rent, download-to-own or paid streaming), even if it is subsequently released on a free-to-the-consumer, advertiser-supported platform.
- (c) If an Original New Media Production budgeted at more than \$25,000 per minute (using the same cost elements as described in the third paragraph of Paragraph B. above) or a Derivative New Media Production is initially released on a free-to-the-consumer, advertiser-supported platform and is subsequently released on consumer pay platforms (*i.e.*, download-to-own, download to rent or paid streaming), then Producer shall have a twenty-six (26) consecutive week period of use on consumer pay platforms, commencing with the first day of use on consumer pay platforms, without the payment of residuals. If the Producer uses the New Media Production on consumer pay platforms beyond such twenty-six (26) consecutive week period, then Producer shall pay 1% of "Producer's gross," as that term is defined in Paragraph 3 of the "Sideletter re Exhibition of Motion Pictures via New Media," attributable to use on consumer pay platforms beyond the twenty-six (26) consecutive week period. Said amount shall be paid to the Administrator of the Film Musicians Secondary Markets Fund for distribution to participating musicians based upon each musician's pro-rata share for the New Media Production.
- (d) If an Original New Media Production budgeted at more than \$25,000 per minute (using the same cost elements as described in the third paragraph of Paragraph B. above) or a Derivative New Media Production is initially released simultaneously on free-to-the-consumer, advertiser-supported platforms and to consumer pay platforms (*i.e.*, download-to-own, download-to-rent or paid streaming), then Producer shall have a twenty-six (26) consecutive week period of use on consumer pay platforms, commencing with the first day of use on consumer pay platforms, without the payment of residuals. If the Producer uses the New Media Production on consumer pay platforms beyond such twenty-six (26) consecutive week period, then Producer shall pay 1% of the "Producer's gross," as that term is defined in Paragraph 3 of the "Sideletter re Exhibition of Motion Pictures Transmitted via New Media," realized from any subsequent license which includes use on consumer pay platforms, which "gross" is attributable to use on



consumer pay platforms beyond the twenty-six (26) consecutive week period, measured from the first day of use on consumer pay platforms under the first license. Said amount shall be paid to the Administrator of the Film Musicians Secondary Markets Fund for distribution to participating musicians based upon each musician's pro-rata share for the New Media Production.

(2) Use in Traditional Media

The applicable provisions of Article 14 with respect to exhibition on "pay television," as that term is defined in Article 14(a)(iii)(2) of the Television Agreement, shall apply when a covered New Media Production is exhibited on pay television.<sup>6</sup> The applicable provisions of Article 14 with respect to exhibition on "cassettes," as that term is defined in Article 14(a)(iii)(1), shall apply when a covered New Media Production is exhibited on videocassettes or DVDs.

(3) General

It is understood that the proration provisions set forth in Article 14(b)(i)(5) of the Television Agreement shall also apply when music sound track for a New Media Production is scored partially with employees covered under this Sideletter and partially with employees not covered under this Sideletter.

**G. "Sunset" Clause**

The parties recognize that these provisions are being negotiated at a time when the business models and patterns of usage of productions in New Media are in the process of exploration, experimentation and innovation. Therefore, the provisions of this Sideletter (except the provisions of Paragraph A., "Recognition") shall expire on the termination date of the Television Agreement 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 concerning productions made for New Media.

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.

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<sup>6</sup> For this purpose, in-flight exhibition shall be treated as an exhibition on "pay television."

7. **Sound Track Albums**

*Modify Article 8E. of the Theatrical and Television Agreements, Sound Track Albums, to add the following new subparagraph (d):*

“(d) Special Rules for Digital Downloads

“(1) When the consumer may purchase either the entire sound track album or select recordings therefrom, then, for purposes of computing the number of units sold under subparagraphs (a) and (c)(3) above, (i) each sale of the complete sound track album shall count as one unit sold, and (ii) each sale of an individually-downloaded recording from such album shall count as 1/12th of a unit sold. By way of example, if 150,000 individual recordings from the sound track album are downloaded, then such individual sales shall constitute the sale of 12,500 units for purposes of computing the number of units sold under subparagraphs (a) and (c)(3) above.

“(2) When Producer elects to distribute sound track albums for sale in non-physical formats (such as via iTunes or other music download services), then the following shall apply:

“a. Producer shall cause the AFM and musician credits (as more fully described in this Article) to be furnished to the consumer by (i) downloadable text as part of the sound track album artwork; (ii) posting such credits on the website for the applicable theatrical or television motion picture; or (iii) displaying such credits on the retailer's page from which such sound track album download is purchased.

“b. If such sound track album is released only in a non-physical format, then Producer shall provide the AFM with 25 "white-label" CD copies of the sound track album.”

8. **Sound Track Singles**

*Add a new Article 8F. to the Theatrical and Television Agreements, Sound Track Singles Released In Connection with Theatrical [Television] Motion Pictures, which reads:*

“With respect to any individual master recording (‘single’) that is released for sale in connection with any theatrical [television] motion picture other than as part of a sound track album and that is released subsequent to the effective date of this Agreement. the Producer (or buyer, licensee or otherwise authorized transferee (‘Licensee’)) may elect to pay compensation for music embodied in such single in accordance with the following provisions:

- “(a) An amount equal to 50% of the scale wages (plus AFM Employers' Pension Fund contributions, but not including health and welfare contributions) that would have been paid pursuant to the then-effective Sound Recording Labor Agreement for sales in excess of 200,000 units;
- “(b) An amount equal to 50% of the scale wages (plus AFM Employers' Pension Fund contributions, but not including health and welfare contributions) that would have been paid pursuant to the then-effective Sound Recording Labor Agreement for sales in excess of 380,000 units; and
- “(c) An amount equal to 20% of the scale wages (plus AFM Employers' Pension Fund contributions, but not including health and welfare contributions) that would have been paid pursuant to the then-effective Sound Recording Labor Agreement for sales in excess of 450,000 units.”

9. Sound Track Regulations

*Revise the third paragraph of subparagraph (a)(1) of Article 8 of the Theatrical Agreement to read as follows:*

“Complete scenes or portions of any scene from a theatrical motion picture may not be shown on television for purposes of advertising or exploiting the theatrical motion picture without the consent of the Federation, except that this limitation does not apply to such scenes or portion of a scene, as the case may be, which do not exceed four hundred (400) feet of 35 mm film containing not less than two (2) scenes with actors or two hundred (200) feet of 35mm film containing one (1) scene with actors of the equivalent of the foregoing if 16mm film is used ten (10) minutes.”

10. Use of Music Sound Track in New Media

- (a) *Revise the definition of “promotional” use in Article 8A. of the Theatrical and Television Agreements by adding a new second paragraph to subparagraph (a) of those Articles as follows:*

“The following uses of an excerpt of excerpts a portion of music sound track from a motion picture in new media shall be considered ‘promotional’ and shall require no payment, whether or not the Producer receives revenue in connection therewith:

- “(i) For the purpose of advertising or publicizing the specific motion picture or serial or series from which the sound track is taken (including the filming of musicians engaged in the recording of such sound track).

“(ii) In ‘the making of...’ or ‘behind-the-scenes’-type programs.

“(iii) For ‘viral’ promotion in new media of a theatrical or television motion picture or series or serial and the excerpt(s) music sound track is circulated non-commercially to multiple websites or made available for individuals to circulate. The fact that the excerpt(s) music sound track is 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 excerpt(s) music sound track is released without payment to other sites.

“(iv) The excerpt(s) music sound track is made available for consumer-generated viral promotion to new media sites where end users have the ability to share such excerpt(s) with other end users (e.g., Facebook, YouTube, MySpace or Crackle).

“(v) As a ‘ringtone’ or ‘ringback,’ provided that the consumer does not make payment therefor.”

(b) *Revise subparagraphs (e)(1) and (e)(2) of Article 8A. of the Theatrical and Television Agreements, and add new subparagraphs (e)(3), (e)(4) and (e)(5) as follows:*

“(e) (1) For any use of any portion of a production number with the accompanying footage from a motion picture (other than in new media), or for the use of up to two (2) minutes of music sound track from a motion picture without the accompanying footage (other than in new media), which use is not within the exceptions provided for in subparagraphs (a) - (d) above, the Producer shall pay the following aggregate one-time only sum for each motion picture to the musician or musicians determined by the Federation to be entitled to such compensation and prorated among such musicians as determined by the Federation:

“(i) One (1) minute or less of sound track – \$1,500;

“(ii) For each thirty (30) seconds or portion thereof in excess of one (1) minute – \$750.

“(3) For the use of any other music sound track with the accompanying footage from a motion picture not covered under subparagraph (e)(1) above (other than in new media), which use is not within the

exceptions provided for in subparagraphs (a) - (d) above, the Producer shall pay the following aggregate one-time-only sum for each motion picture to the musician or musicians determined by the Federation to be entitled to such compensation and prorated among such musicians as determined by the Federation:

“(i) One (1) minute or less of sound track – \$750;

“(ii) For each thirty (30) seconds or portion thereof in excess of one (1) minute – \$375.

“(4.3) (i) For any use in new media on an advertiser-supported platform of music sound track, with or without the accompanying footage, from a theatrical or television motion picture, which use is not within the exceptions provided for in subparagraphs (a)-(d) above, one percent (1%) of ‘Producer’s gross,’ as defined in subparagraph (4) below, derived from the sale or license of such music sound track.”

“(ii) For any use in new media on a consumer pay platform of music sound track, with or without the accompanying footage, from a theatrical or television motion picture, including ‘ringtones’ and ‘ringbacks’ one percent (1%) of ‘Producer’s gross,’ as defined in subparagraph (4) below, derived from the sale or license of such excerpt(s)-music sound track.”

“(iii) “In lieu of the Producer making payment of any amounts due under subparagraphs 3(i) and (ii) above to the Federation, the Producer shall include such sums in the ‘Producer’s gross.’ for the applicable theatrical or television motion picture and make such payments to the Administrator of the Film Musicians Secondary Markets Fund for distribution to participating musicians based upon each musician’s pro-rata share for the motion picture from which the sound track is so used.””

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\* Placement of the language set forth in subparagraphs (e)(3)(i) and (ii) in this Article 8A, is without prejudice to either party’s position as to whether Article 8A, permits the use of music sound track other than in theatrical or television motion pictures. Each party reserves its position on that issue.

“(5 4) ‘Producer’s Gross’ shall be as defined in Paragraph 3.a. of the “Sideletter Re Exhibition of Motion Pictures Transmitted Via New Media.”

“(6 5) Sunset Clause

The foregoing provisions regarding use of excerpts in new media shall expire on the termination date of the 2009 Theatrical and Television Agreement 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 use of excerpts in new media to be in effect thereafter.”

(c) *Revise subparagraph (f) of Article 8A. of the Theatrical and Television Agreements to read as follows:*

“The provisions of this Article shall apply to the uses specified above, after ~~February 15, 2002~~ February 26, 2009 the date of ratification of this contract, of a portion of the music sound track from a motion picture recorded under this Agreement or any predecessor Agreement thereto; provided, however...”

11. Low Budget Thresholds

- (a) Increase the budget threshold for low budget theatrical motion pictures under Paragraph 61., *Low Budget Films*, of the Theatrical Agreement from \$40 million to \$45 million.
- (b) Increase the budget threshold for low budget theatrical motion pictures under Paragraph 62., *Theatrical Motion Pictures Budgeted At \$12 Million or Less*, of the Theatrical Agreement from \$12 million to \$15 million. Revise the title of Paragraph 62 accordingly, so that it reads, *Theatrical Motion Pictures Budgeted At \$15 Million or Less*.

12. New Use

*Revise Article 8B. of the Theatrical Agreement to read as follows (additions underlined; deletions struck through):*

- (a) When music previously recorded under another American Federation of Musicians Agreement is used in a theatrical motion picture and such Agreement requires payment for such use, the use payments shall be the then-current minimum session fee set forth in ~~Exhibit C~~ Schedule C of this Agreement for the period ending February 25, 2009.

- (i) The Producer must make payment within sixty (60) days from the date on which the Producers receives a bill.
  - (ii) In the case of a *bona fide* dispute arising hereunder, the ~~forty-five (45)~~ sixty (60) day period set forth in subparagraph (a)(i) above shall be tolled during the pendency of such dispute.
  - (iii) If payment is not made within such ~~forty-five (45)~~ sixty (60) day period (extended in accordance with subparagraph (a)(ii) above, if applicable), then interest shall be due at the prime rate (as set forth in the Wall Street Journal as of the first business day of that calendar year in which payment is due) plus one percent (1%), compounded monthly, on the unpaid amounts, effective beginning on the date following the date on which payment became due.
- (b) Notwithstanding the provisions of subparagraph (a) above, when one (1) or more phonograph records (as defined in the AFM Sound Recording Labor Agreement) produced under the AFM Sound Recording Labor Agreement is ~~are~~ used in a theatrical motion picture for which there were one or more scoring sessions under this Agreement, the following provisions will apply:
- (i) The applicable payment shall be eighty-five percent (85%) of the amount set forth in subparagraph (a) above.
  - (ii) The applicable payment shall be ~~eighty~~ seventy percent (~~80%~~ 70%) of the amount set forth in subparagraph (a) above, provided that the Producer satisfies the requirements set forth in subparagraphs (A) and (B) below.
    - (A) Within ~~forty-five (45)~~ sixty (60) days of the release of the motion picture, the Producer must provide the Federation with the following information for each phonograph record used: the title and release date of the motion picture, the title of the phonograph record (*i.e.*, song); the artist(s); and the name of the licensor. The Federation shall designate the person to whom such information shall be submitted.
    - (B) The Producer must make the ~~eighty~~ seventy percent (~~80~~ 70%) payment in full within ~~forty-five (45)~~ sixty (60) days from the date on which the Producer receives a bill from the Federation, accompanied by appropriate documentation of the Producer's obligation to make the payment to the affected musicians. For the purposes of the foregoing sentence, appropriate documentation shall include, but not be limited to: (1) B Forms identifying the

musicians who participated in the recording of the phonograph record, or (2) the album or CD jacket identifying the musicians who participated in the recording of the phonograph record, along with reasonable evidence of the signatory status of the phonograph record producer at the time of the session(s), if the Federation, after reasonable efforts, is unable to locate a B Form.

- (iii) In the case of a *bona fide* dispute arising hereunder, provided the information set forth in subparagraph (b)(ii)(A) above has been provided to the Federation within the time limit set forth in subparagraph (b)(ii)(A), the ~~forty-five (45)~~ sixty (60) day period set forth in subparagraph (b)(ii)(B) above shall be tolled during the pendency of such dispute, but only with respect to the amount in dispute.
- (iii ~~iv~~) If the ~~eighty~~ seventy percent (~~80~~ 70%) payment is not made in full within such ~~forty-five (45)~~ sixty (60) day period (extended in accordance with subparagraph (b)(iii) above, if applicable), or if the Producer fails to provide the information set forth in subparagraph (b)(ii)(A) above within the time period set forth in subparagraph (b)(ii)(A):
  - (A) ~~The~~ Producer shall not be entitled to the ~~eighty~~ seventy percent (~~80~~ 70%) payment rate and payment shall be made in accordance with subparagraph (a)(i) above; and
  - (B) ~~the late payment provisions set forth in Paragraph 8B.(a)(iii) will apply.~~
- (v) Where there is more than one B form for the phonograph record so used that includes leader scale, leader scale shall be payable only where the B form reflects one or more musicians in addition to the leader.
- (c) All musicians entitled to payment under this Article 8B. shall be treated as having received two hundred percent (200%) of the payments set forth in Article 8B.(b)(i) for purposes of distributing the musicians' share of the Film Musicians Secondary Markets Fund.

*Revise Article 8B. of the Television Agreement in the same manner, except that the payments in subsection (a) shall refer to the Television Agreement Schedule B rate for the period ending February 25, 2009.*



13. **Meal Periods**

Modify Paragraph 27(b) of the Theatrical and Television Agreements to read as follows:

“(b) The first meal period shall be called not later than six (6) hours from time of the employee’s first call for the day, and subsequent meal periods not later than six (6) hours after the termination of the preceding meal period, except on staggered calls. Producer may call a meal period on work time and the deductible meal period shall commence not later than six (6) hours thereafter. However, the following exceptions apply:

“(i) The meal interval may be extended one-half (½) hour without penalty when used for wrapping up or to complete the camera take(s) in progress, until print quality is achieved. Such extension shall not be scheduled and shall not be automatic.

“(ii) A twelve (12) minute grace period may be called for production efficiency prior to the imposition of any meal penalty. Such extension shall not be scheduled and shall not be automatic.

14. **Special Rates and Conditions for the First 25 Episodes (including the Pilot) of a Television Series**

*Delete Paragraph 63 of the Basic Television Film Agreement and revise Paragraph 62 of the Basic Television Film Agreement as follows:*

62. **OPTIONAL SPECIAL RATES AND CONDITIONS FOR THE FIRST 22 25 EPISODES OF A SERIES (INCLUDING THE PILOT)**

Paragraph 62 below may be utilized at the Producer’s option and, to the extent utilized, shall supercede and modify the provisions of this Agreement, but only to the extent set forth below and as may be necessary to make conforming changes throughout this Agreement. In all other respects, the provisions of this Agreement shall remain in full force and effect.

If, in the Federation’s judgment, any Producer is failing to comply with any of the provisions set forth subparagraph (b)(3)(ii) below, the Federation shall meet with that Producer to resolve any non-compliance issues. In the event that such compliance issues are not resolved, the Federation shall have the unilateral right to withhold, on a Producer-by-Producer basis, the right to utilize these provisions. In the event the Federation takes such action, it shall notify the Producer and the Alliance of Motion Picture & Television Producers in writing.

(a) Scope

This Paragraph 62 applies only to scoring of underscore and theme and format music which takes place on or after ~~July 17, 2005~~ the date of ratification of the 2009 Agreement for any of the first ~~twenty-two (22)~~ twenty-five (25) episodes of a series (including the pilot) for which an orchestra of fifteen (15) or more musicians, including leader and contractor, is utilized ("Special Episodic TV Session"). All other episodes will be scored in accordance with the terms and conditions of this Agreement without regard to this Paragraph 62. This Paragraph 62 does not apply to scoring sessions that take place in Canada.

(b) Conditions

- (1) All musicians shall be notified when they are initially engaged hereunder that the terms of such engagement shall be governed by the "Special Episodic TV Session" provisions.
- (2) Basic scale for recording musicians and music preparation will be the same as under Paragraph 61(c)(2) (Low Budget Films).
- (3) Basic scale for recording musicians will be as follows:
  - (i) When fewer than fifteen (15) musicians, including leader and contractor, are employed, the basic scale shall be the rate set forth in Schedule A of Paragraph 15(a)(1).
  - (ii) When fifteen (15) or more musicians, including leader and contractor, are employed, the basic scale shall be the rate set forth in Paragraph 61(c)(2).
- (34) Paragraph 8, "Vacation Pay," does not apply to amounts earned under this Paragraph 62.
- (45) Pension contributions for music prep persons employed under subparagraph (2) above and for recording musicians employed under subparagraph (3)(ii) above shall be made pursuant to Paragraph 3, "Pension Fund," shall be made in a sum equal to eleven percent (11%) of all wages earned, computed at scale. For recording musicians employed under subparagraph (3)(i) above, pension contributions shall be made in accordance with Paragraph 3, "Pension Fund."
- (56) If any music recorded using a Special Episodic TV Session is re-used for any episode scored after the first ~~22~~ 25 episodes

(including the pilot), payment will be based on the regular wage scales set forth in this Agreement and not on the wage scales set forth in this Paragraph 62.

(67) Music recorded under this Paragraph 62 for any episode of a series may be used only in that episode and other episodes of the same series.

(c) Except as set forth in this Paragraph 62, all of the terms and conditions of this Agreement shall apply to Special Episodic TV Sessions.

(d) If the Producer fails to comply with any requirement of this Paragraph 62 with respect to any session, this Paragraph 62 shall not apply and the session shall be treated for all purposes as a regular session.

15. **Number of Minutes of Finished Recorded Music and Live Scoring**

Modify subparagraph (a)(5)(iv)(B)(1) and (2) of Paragraph 15., *Minimum Rates and Conditions*, of the Television Agreement to read as follows:

“(B) Without limiting the scoring hour requirements as provided in subparagraph (a)(5)(iv)(A) above, Producer shall record the first twenty-five (25) episodes (including the pilot) of all dramatic television pictures series produced for network prime time exhibition with live scoring, except when it is impractical to do so as a result of exigencies of meeting delivery dates or air dates, or post-production situations. As used herein, television shows series produced for "network prime time" exhibition means shows series produced for ABC, CBS or NBC or any other entity which qualifies as a "network" under Section 73.662(f) of the rules of the Federal Communications Commission (FCC), unless the FCC determines that such entity is not a "network" for the purposes of such section, and aired during the hours of 8:00 p.m. to 11:00 p.m. (Eastern Standard or Daylight Time, Pacific Standard or Daylight Time), Monday through Saturday, or 7:00 p.m. to 11:00 p.m. (Eastern Standard or Daylight Time, Pacific Standard or Daylight Time) on Sunday.

“(1) In the event such a situation exists and as a result thereof Producer is required to score an episode or episodes of that picture series with previously-recorded track from other pictures episodes of the series for that broadcasting season, then Producer shall give advance notice thereof to the Federation (through the appropriate Local) and will respond to a request from the Federation for information as to the nature of such situation. Further, Producer agrees in such circumstances to pay liquidated damages to the Federation in an amount equal to the minimum scale that would have been paid for a live scoring session for twenty-five (25) recording musicians, plus amounts equal to the pension, health and welfare and vacation pay contributions based thereon.

“With respect to and in computing the liquidated damages provided for in subparagraph (a)(5)(iv)(B)(1) above, when the picture episode is scored solely with previously-recorded track as also provided in subparagraph (a)(5)(iv)(B)(1) above, the first fifteen (15) minutes or less of such previously-recorded track used in the new picture episode shall be deemed a single three (3) hour session and the first thirty (30) minutes of such previously-recorded track used in such new picture shall be deemed a double (*i.e.*, a six (6) hour) session. Each additional five (5) minutes, or fraction thereof, of such previously-recorded music so used shall be deemed to be an additional one (1) hour session. When previously-recorded track, as provided in subparagraph (a)(5)(iv)(B)(1) above, and live scoring are both used in the picture episode, then each five (5) minutes, or fraction thereof, of the previously-recorded track shall be deemed to be a one (1) hour session.

“Previously-recorded track, when used as hereinabove provided, shall not apply against the scoring hour requirements.”

“(2) This subparagraph (2) applies only to performance documentaries, special sessions called to replicate live theatrical productions and television films of live theatrical productions. With respect to such the live scoring of performance documentaries, special sessions called to replicate live theatrical productions and television films of live theatrical productions, a single session of three (3) hours shall consist of not more than fifteen (15) minutes of finished recorded music used in the picture and a double session of six (6) hours shall consist of not more than thirty (30) minutes of finished recorded music, per music editor's cue sheets, excluding fermatas. Each additional two and one-half (2½) minutes of such recorded music scored in such session shall constitute an additional thirty (30) minutes of recording for those musicians recording such additional finished recorded music. In the case of television films of live theatrical productions, the Federation agrees to consider in good faith, on a case-by-case basis, requests for different treatment.

16. Film Musicians Secondary Markets Fund Agreement

- (a) *Add the following additional paragraph to Paragraph 2(a) of Exhibit A in the AFM Theatrical and Television Basic Agreements:*

“Contemporaneously with the distribution of the musicians’ share of the Secondary Markets Fund under Section 2(a) hereof, the Administrator shall provide to the Federation the identity of each musician to whom, or on whose behalf, a distribution was made together with all other information that the Administrator provided to the musician (including but not limited to the gross and net amount of the distribution, the title of each theatrical [television] motion picture(s) upon which such distribution was based and the amount of distribution attributable to each such theatrical [television] motion picture).”

(b) *Add a new subparagraph (i) to Paragraph 2 of Exhibit A., Film Musicians Secondary Markets Fund Agreement, to read as follows:*

“(i) If, for any reason, payments are made to any person from the Fund in excess of the amount that is due and payable to that person, the Administrator shall have full authority, in his/her sole and absolute discretion, to recover the amount of any overpayment (plus interest and costs). That authority shall include, but shall not be limited to: (A) the right to reduce benefits payable in the future to the person who received the overpayment; (B) the right to reduce benefits payable to a surviving spouse or other beneficiary who is, or may become, entitled to receive payments following the death of that person; and/or (C) the right to initiate a lawsuit or take such other legal action as may be necessary to recover any overpayment (plus interest and costs).”