MEMORANDUM OF UNDERSTANDING BETWEEN ABC, CBS AND NBC AND THE AMERICAN FEDERATION OF MUSICIANS

On November 19, 2012, at the culmination of the current round of collective bargaining, The American Federation of Musicians of the United States and Canada ("the Federation") and the Producers (collectively "the parties") reached this Memorandum of Understanding ("MOU"), subject to the Federation's ratification procedure and with the understanding that the Federation's bargaining committee will unanimously recommend ratification, for a successor agreement to the 2002-2006 Television Videotape Agreement ("Agreement").

1. By the terms of this MOU, the Agreement shall be modified as set forth at pages 2-17 below. Unless otherwise stated, all changes are effective upon notice of ratification.

2. In all other respects, the Agreement and the Film Musicians Secondary Markets Fund Agreement shall remain in full force and effect during the period from the date of notice of ratification through three years thereafter.

By
ABC, Inc.
Date 11/30/12

By
NBC, Inc.
Date 11/30/12

By
CBS Broadcasting Inc.
Date 12/5/12

AMERICAN FEDERATION OF MUSICIANS

By
Ray Hair, President
Date 11/19/12
1. **Term**

Three years from notice of ratification.

2. **Wages**

Provided notice of ratification is received by December 1, 2012:

Increase Basic Rates in Exhibits I, II and III: 2% effective the Sunday of the first payroll period following notice of ratification; 2% one year thereafter; 2% two years thereafter.

For resolving New Media issues, Market Adjustment to Basic Rates in Exhibits I, II and III of 4% prior to the initial annual scale increase.

3. **Pension**

Amend Article 7 (Pension Welfare Funds) to increase the applicable contribution to 11% effective January 1, 2013, provided notice of ratification from the AFM is received by December 1, 2012.

4. **Health & Welfare**

Provided notice of ratification is received by December 1, 2012, amend the Health and Welfare contribution provisions in Exhibit I (E) and Exhibit III E. (9) to eliminate the weekly cap and increase the rate of $16 to $22 effective January 1, 2013 and to increase the rate to $24 effective January 1, 2014, and to increase the rate to $25 effective January 1, 2015.

5. **Optional Pay TV Formula**

Add a new Article 13. C. (5) “Optional Pay TV Formula” as follows:

The following formula rather than the formula of Paragraphs C (1) and (2) above may be elected by the Producer for release in Pay Type CATV and/or Pay Television of any program or series produced under this Agreement or any prior AFM TV Videotape Agreement. Under this formula the musicians shall receive an aggregate payment(s) equal to 1% of Distributors’ gross receipts as defined in this Agreement. Such aggregate payment(s) shall be remitted for distribution to the Live TV subfund of the Film Musicians Secondary Market Fund.”

6. **Use of Excerpts (“Clips”)**

Replace Article 5(F) 1. with the following:

“5(F) 1. Promotional Uses: Excerpts from a covered program may be used for promotional purposes without consent or any additional payments provided that no more than 5 minutes of excerpts (10 minutes of excerpts for programs 90 minutes or longer) are used from any single episode or program provided that such excerpt may be used at any
time before and not more than three (3) years beyond the scheduled broadcast, except that the three (3) year limit shall not apply to the use of such excerpt for any musician engaged on the program as part of a house band or otherwise regularly engaged on the program.

7. **Definition of “Distributor’s gross” for the home video market**

Incorporate the following definition of “Distributor’s gross” for the home video market into the text of the Agreement in Article 13(C)(3) and delete Sideletter 7. The AFM is not waiving claims, if any, that it made prior to October 12, 2012 regarding the definition of “Distributor's gross” for the home video market, and the Networks reserve their position that the agreed upon language change was made pursuant to a clarifying proposal.

For purposes of calculating Supplemental Markets fees due under this Article 13(C)(3) arising from the distribution of programs on "cassettes," as defined above, the term "Distributor's gross" is defined as follows:

1. If the Producer is the Distributor or the Distributor is owned by or affiliated with the Producer, the "Distributor's gross" derived from the distribution of such program by "cassettes" shall be twenty percent (20%) of the worldwide wholesale receipts derived by the Distributor. In such cases, if the Distributor is also the retailer, a reasonable allocation of the retail gross receipts shall be made as between the Distributor as distributor and the Distributor as retailer, and twenty percent (20%) of the former only shall be deemed to be "Distributor's gross."

2. If the Producer is not the Distributor and is not owned by or affiliated with the Distributor, the "Distributor's gross" shall be one hundred percent (100%) of the fees received by the Producer from licensing the right to distribute such program by cassette.

8. **Exhibition of Television Programs Transmitted Via New Media**

*Add a new sideletter to read as follows:*

Re: Exhibition of Television Programs 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 Producers (collectively “the parties”) under the AFM Videotape Agreement (hereinafter “the Television Agreement”) concerning the application of the Television Agreement to the exhibition on the Internet, mobile devices (such as cell phones or PDAs) and any other new media platform known as of the date of ratification (hereinafter collectively referred to as “New Media”) of television programs (excluding news, documentary, sports and promos). The payments called for by this Sideletter shall apply only with respect to “Distributor’s gross” received on or after the first day of the first calendar quarter following ratification of the Television Agreement.
1. If the Consumer Pays

   a. License for Limited Period or Fixed Number of Exhibitions

   When the subscriber pays for the program either on a subscription or per program basis, and when the payment is in exchange for the right to view the program for a fixed and limited period of time or a fixed number of exhibitions, the Producer shall pay one percent (1%) of "Distributor's gross," as defined in Paragraph 9 below. Said amount shall be paid to the Film Musicians Secondary Markets Fund (hereinafter "FMSMF").

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

   The following shall apply only to programs produced after the date of ratification:

   If the consumer pays for an EST copy of a program, the Company shall pay 1% of 20% of "Distributor’s gross," as that term is defined in Paragraph 9 below, for the first 100,000 units and 1.9% of 20% thereafter. Said amount shall be paid to the FMSMF.

2. Streaming

   There shall be no payment for advertising supported streaming of programs.

3. Agreements and Data

   On a semi-annual basis commencing in the first calendar quarter after notice of ratification, 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 (full access includes access to all agreements, notwithstanding any confidentiality clause contained therein, and access to all sideletters, exhibits, addenda, and other ancillary documents) to all unredacted license, distribution, and other agreements pertaining to new media exploitation of covered programs that were entered into during the immediately preceding inspection period. (In the initial quarter, the Producer shall also provide the Federation with access to all said agreements that were entered into between January 1, 2012 and December 31, 2012). In any subsequent semi-annual 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 programs, such as number of downloads or streams by source and ad rates, where relevant to the payments required under this Sideletter.

4. Recordkeeping and Reporting

   Payment for exploitation of covered programs in new media shall be due sixty (60) days after the end of the quarter in which the "Distributor's gross" from such exploitation is received. The

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

5. 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.

6. Reservation of Rights

With respect to television programs, 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 television programs and that, therefore, no additional payment should be made with respect to the exhibition of television programs (including those covered by this Agreement) in new media. 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 television programs so exhibited should be improved.

7. Sunset Clause

The parties recognize that this Sideletter is being negotiated at a time when the business models and patterns of usage of television programs 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, 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 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.b. for electronic sell-through of television programs, the growth of electronic sell-through could adversely impact traditional home video sales. In future negotiations, the parties agree that the criteria to be considered in good faith in determining whether the electronic sell-through residual should be increased or decreased include patterns of cannibalization of the home video market and changes in the wholesale price.

8. Use of Excerpts in New Media

Producer 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. Producer 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

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November 19, 2012  
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in new media for the purpose of promoting the program, provided that such excerpt(s) does not exceed ten (10) minutes in length.

a. The following uses of a portion of music sound track from a program 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 program or serial or series from which the sound track is taken (including the video 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 television program 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 music sound track used in the "viral" promotion is exhibited on a revenue-generating site owned by or affiliated with the Producer shall not render this exception inapplicable, provided that the 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 music sound track with other end users (e.g., Facebook, YouTube, MySpace or Crackle).

(v) As a "ringtone" for which the consumer does not pay. For ringtones for which the consumer pays, Producer shall pay one percent (1%) of "Distributor's gross" as defined in Paragraph 9 below.

b. The use in new media of a portion of music sound tracks from a program for news or review purposes shall require no payment.

c. For any use of music sound track, not within the exceptions and with or without the accompanying footage, from a television program in new media on an advertiser-supported platform or consumer pay platform, one percent (1%) of "Distributor's gross," derived from the sale or license of such music sound track. In the case of complete production numbers, Article 5 (C) of the Agreement shall also apply.

d. The Producer shall pay sums due under this paragraph 8 to the FMSMF which will determine the musician(s) entitled to such sums, and will prorate and distribute such sums among the musicians.

e. "Distributor's gross" shall be as defined in Paragraph 9 of this document.

f. It is understood no payment shall be required for any excerpt uses in New Media which would not require payment in traditional media.

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g. Sunset Clause

The foregoing provisions regarding use of music sound track in new media 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 for use.

9. "Distributor's Gross" definition

The term "Distributor's gross," for purposes of all uses in new media of television programs made for traditional media, shall be as defined in Article 13.(C)(2)(b)(ii) and (iii) of the Television Agreement, as applicable.

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 programs, 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 not, then the amounts received by the Producer from unrelated and unaffiliated exhibitors/retailers in arms' length transactions from comparable programs, or, if none, a comparable exhibitor/retailer's payments to comparable unrelated and unaffiliated entities in arms' length transactions for comparable programs.

Add a new

UNPUBLISHED SIDELETTER REGARDING NEW MEDIA EXHIBITION

"During the negotiation of the 2012 AFM Videotape Agreement, the AFM 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."

9. Productions Made for New Media

Add a new sideletter 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 signatory Producers (collectively "the parties"), concerning the terms and conditions applicable to the production of entertainment programs (excluding news, documentaries, sports and promos) of the type

that have traditionally been covered under the AFM Television Videotape Agreement (hereinafter “the Television Agreement”) that are made for the Internet, mobile devices, or any other new media platform in existence as of the date of ratification (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 Television Agreement on entertainment programs (excluding news, documentaries, sports and promos) of the type that have traditionally been 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 C. and 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 Radio Canadian Broadcasting System Agreements within the last three (3) years.¹

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

¹The Producer shall be entitled to rely on the representation of the employee as to whether he or she meets this work experience requirement.
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.

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

A “Derivative New media Production” is a production for New Media based on an existing free television program covered by the Television Agreement ("the source production").

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 Employee 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

Employees may be employed by a Producer and assigned to an Original New Media Production as part of their regular workday (i.e., the guaranteed call) on the source broadcast production. The work for the Original New Media Production shall be considered part of the workday for the Employees on the source broadcast production and shall trigger overtime if work on the Original New Media Production extends the workday on the source broadcast 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 broadcast 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.

E. Other Provisions

(1) Union Security

The provisions of Article 3, “Union Security,” of the Television Agreement shall apply to New Media Productions except (B) which shall be amended as follows:

(B) The following provision contained in this Subparagraph (B) shall apply to services rendered hereunder in the United States and shall be included in, and whether or not so included, shall be deemed a part of all contracts calling for such services between the Employer and persons employed in a classification covered by this Sideletter. Persons who are employees of the Employer on the date of signing of this Sideletter, shall on or before the thirtieth (30th) day following this commencement of their employment or ten (10) days of employment under the terms of this Sideletter, whichever is later, become and continue to be members in good standing of the Federation as a condition of their employment. The provisions of this Paragraph shall become effective unless permitted by applicable law.”

(2) Pension and Health

On 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 Health and Welfare contributions on behalf of each employee employed under the terms of this Sideletter pursuant to Exhibit I, Section E of the Television Agreement.

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 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 Article 7 and Exhibit I, Section E, 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 Original Employment Required

It is expressly understood and agreed that there shall be no original employment required on 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 shall sell, assign, transfer, license or otherwise dispose of the distribution rights to a New Media Production for any market that may require residual payments for use of such Production therein 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 AFM Employer Pension 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 _________________________________.
(insert name of Producer)
New Media Productions covered by the Sideletter to Productions Made for New Media are subject to the provisions therein, relating to the payment of residuals for the use of such Productions in New Media and traditional media under Paragraph F. of the Sideletter, to the AFM Employers Pension Fund; and the Buyer hereby agrees, expressly for the benefit of the AFM Employers Pension Fund, to make the payments

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required thereby. It is expressly understood and agreed that the rights of Buyer to exhibit or license the exhibition of such New Media Productions in any market that may require residual payments for use of such Productions therein shall be subject to and conditioned upon payment of such residuals to the Film Musicians Secondary Markets Fund (hereinafter "FMSMF") as provided under Paragraph F. of the Sideletter, and it is agreed that the FMSMF 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 New Media Productions in any market that may require residual payments for use of such Productions therein, within the entire territory for which Buyer is granted such rights, and the Federation and/or FMSMF shall have the right at all reasonable times to inspect such records.

Buyer further agrees that in the event of a sale, transfer, license or assignment of the distribution rights to the above 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 or the FMSMF 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 New Media Production in any market that may require residual payments for use of such Production therein, and both the Federation and the FMSMF 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 in connection with the exploitation of the New Media Production in markets that may require residual payments for use of such Production therein.

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 such a New Media Production in any market that may require residual payments for use of such Production therein, 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.

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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 New Media Production in any market that may require residual payments for use of such Production therein, and the FMSMF agrees to look exclusively to the party last executing such an Assumption Agreement for the keeping of such records, payments and compliance with credit obligations.

(6) A Payroll Company that is a party signatory to the Videotape Agreement may lend the use of its signatory status, for the purpose of producing New Media Productions under the Sideletter Re Productions Made for New Media, on a production-by-production basis to any Producer not a party signatory, 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 leader/contractor shall be responsible for achieving compliance with this requirement.2

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

2The parties shall utilize best efforts to ensure that the leader/contractor complies with this requirement. Failure of the leader/contractor to do so or problems arising in connection therewith shall be referred to the Cooperative Committee for resolution.
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 such New Media Productions in any market that may require residual payments for use of such Productions therein, within the entire territory for which Producer is granted such rights, and the Federation and the FMSMF shall have the right at all reasonable times to examine and inspect such books and records.

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 based on the exhibition of the New Media Production in markets that may require residual payments for use of such Production therein and the FMSMF agrees to look exclusively to the Producer who is the party to the Assumption Agreement for the keeping of such books and records, payments and compliance with credit obligations.

F. Use of New Media Programs

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

(1) Reuse 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, Producer shall pay 1% of "Producer's gross," as that term is defined in Paragraph 9 of the "Sideletter re Exhibition of Television Programs 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 Secondary Markets Fund on behalf of musicians employed on 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 A. 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 9 of the "Sideletter re Exhibition of Television Programs 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 Secondary Markets Fund on behalf of musicians employed on the New Media Production.

(2) Use in Traditional Media

The applicable provisions of Article 13 with respect to exhibition on "pay television," as that term is defined in Article 13 of the Videotape Agreement, shall apply when a covered New Media Production is exhibited on pay television. The applicable provisions of Article 13 with respect to exhibition on "cassettes," as that term is defined in Article 13 shall apply when a covered New Media Production is exhibited on videocassettes or DVDs.
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 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.

10. Article 5, Paragraphs A and E and Article 12, Paragraph B

Execute an unpublished (but citable) sideletter to the Agreement which provides as follows:

During the course of negotiations concerning the 2012-2015 Television Videotape Agreement ("Agreement"), the parties discussed the meaning, application and enforceability of Articles 5 (A), 5(E) and 12(B) of the Agreement ("Articles") and the Federation and the Networks each asserted their respective positions regarding rights to exploit product produced under the Agreement for any purposes other than those specifically addressed therein. In furtherance of their mutual desire to resolve the Agreement, and without prejudice to their respective positions concerning the meaning, application and enforceability of the Articles, the Federation and Networks agree to continue the Articles in the Agreement subject to the following conditions:

1. Notwithstanding anything contained in the Articles, none of these provisions shall be construed to restrict or prohibit the Networks from using recordings made under the Agreement in emerging businesses other than New Media, which has been addressed in the sideletter hereunder covering Exhibition of Television Programs Via New Media. Rather, in such circumstances, upon request by the Federation, the Networks agree to negotiate over terms and conditions applicable to the use of such recordings in connection with such emerging businesses, understanding that the stage of evolution of such businesses may impact such negotiations.

2. Notwithstanding anything contained in the Articles, none of those provisions shall be construed to apply to Network TV Upfront presentations, promotional exhibitions for which the Network does not receive a licensing fee or any other payment for the exhibition, internal closed circuit exhibitions for which the Network does not receive a licensing fee or any other payment for the exhibition, film festivals for which the Network does not receive a licensing fee or any other payment for the exhibition, or any other presentations where the Network does not receive a licensing fee or any other payment for the exhibition;

3. The Federation agrees to continue its historic practice prior to the negotiations
leading to the 2012-2015 Agreement concerning the enforcement of these Articles; and

4. This sideletter applies to the Networks and shall be available to any producer of a Network program who signs the Agreement or a letter of adherence thereto.

11. Participating Program Fees

Delete Exhibit I., A. Paragraph 7 ("Participating Programs"). All issues with regard to payment of Participating Program fees are deemed resolved.

12. New Media Bargaining History

The parties agree that they will be bound by the bargaining history between the Hollywood Guilds and Unions and the AMPTP with regard to interpretation of the language in items 8 (Exhibition of Television Programs Via New Media) and 9 (Productions Made For New Media) where the terms used are the same in these new media sideletters and the new media sideletters of those agreements.