

SUMMARY OF CHANGES IN THE 2008 BA and 2008 FLTTA

The Directors Guild of America Basic Agreement of 2005 is referred to herein as the “2005 BA” and the Directors Guild of America Freelance Live and Tape Television Agreement of 2005 is referred to herein as the “2005 FLTTA.” The terms of the 2005 BA (including all sideletters) shall be incorporated in the Directors Guild of America Basic Agreement of 2008, except as modified below and subject to conforming changes. The terms of the 2005 FLTTA (including all sideletters) shall be incorporated in the Directors Guild of America Freelance Live and Tape Television Agreement of 2008, except as modified below and subject to conforming changes. The language in this Summary is not in contract language, except when so designated or the context clearly indicates otherwise.

1. Term

The term of the 2008 BA and the 2008 FLTTA shall be from July 1, 2008 to June 30, 2011.

- A. Article 16 (“Term of Agreement and Modifications of Term”) of the 2005 BA shall be modified to read as follows:

Section 16-100 TERM

“The term of this BA shall be from July 1, 2008 to June 30, 2011. The provisions of this BA shall be effective as of July 1, 2008, unless otherwise specifically provided herein.

“The provisions of the 2005 BA apply to services of Employees performed on or after July 1, 2005, on motion pictures the principal photography of which commenced before July 1, 2008.

“With respect to initial compensation payable to Directors only, the minimum rate shall be the rate in effect on the date of commencement of the Director’s preparation period. With respect to all employment agreements with Directors under term contract, if the original term or any option period of employment commenced prior to July 1, 2008, then the minimum compensation provisions applicable to Term Contract Directors shall not become effective until the effective date of the exercise of the new option to renew the employment period, or one (1) year from July 1, 2008, whichever is earlier.”

Section 16-200 NEGOTIATIONS FOR A NEW AGREEMENT

“The parties hereto agree to commence negotiations concerning a new agreement at least sixty (60) days prior to June 30, 2011, and to continue such negotiations diligently and in good faith.”

- B. Article 28 of the 2005 FLTTA (“Effective Date and Term”) shall be modified to read as follows:

SECTION A.

“This Agreement, except as otherwise specifically provided, shall be effective as of July 1, 2008 and shall terminate on June 30, 2011 unless sooner terminated as herein otherwise provided.”

SECTION B.

“The parties agree that at least sixty (60) days prior to July 1, 2011, they shall in good faith negotiate with respect to a new agreement to take effect upon the termination hereof.”

SECTION C.

“The provisions of the 2005 Agreement apply to services of Employees performed prior to July 1, 2008, on programs the recording of which commenced before July 1, 2008.”

2. Compensation

- A. Minimum salaries in the 2008 BA and 2008 FLTTA shall be increased as follows:
- (1) The salary rates for directors of network prime time dramatic programs set forth in Paragraph 10-101 of the 2005 BA and in Article 6, Section A.1. of the 2005 FLTTA, and of strip dramatic non-network and network non-prime time programs set forth in Article 6, Section D.1. of the 2005 FLTTA, shall be increased by three percent (3%) effective July 1, 2008, by an additional three percent (3%) effective July 1, 2009, and by an additional three percent (3%) effective July 1, 2010. These increases shall be compounded.
 - (2) Residuals for reruns of dramatic programs in network prime time shall be increased by three percent (3%) effective July 1, 2008, by an additional three percent (3%) on July 1, 2009, and by an additional three percent (3%) on July 1, 2010. These increases shall be compounded.
 - (3) The salary rates for directors of sports programs (see Article 6., Section F. of the FLTTA), directors of news and commentary programs (see Article 6., Section G. of the FLTTA) and local freelance directors (see Article 6, Section H.2. of the FLTTA) shall be increased by three percent (3%) on July 1, 2008, by an additional three percent (3%) on July 1, 2009, and by an additional three and one-half percent (3.5%) on July 1, 2010. These increases shall be compounded.
 - (4) Except as provided in subparagraphs (1) through (3) above, all other salary rates and residual bases shall be increased by three and one-half percent (3.5%) effective July 1, 2008, by an additional three and one-half percent (3.5%) effective July 1, 2009, and by an additional three and one-half percent (3.5%) effective July 1, 2010. These increases shall be compounded.
- B. The excerpt fees set forth in Paragraph 11-201, Paragraph 11-207, Paragraph 11-303 and Paragraph 20-909 of the 2005 BA, and in Article 23, Sections B.1., 2. and 5. and in Article 29, Section I.8. of the 2005 FLTTA, and the lead-in fees set forth in Paragraph 11-210 of the 2005 BA and in Article 6, Section K. of the 2005 FLTTA shall be increased only once and by five percent (5%) effective July 1, 2010.
- C. The underwater work allowance and the aircraft flight allowance set forth in Paragraph 9-101, Paragraph 9-102, Paragraph 13-210 and Paragraph 13-211 of the 2005 BA, and in Article 9, Sections B.8. and 9. of the 2005 FLTTA shall be increased to one hundred seventy dollars (\$170.00) effective July 1, 2008.
- D. The dinner allowance set forth in Paragraph 13-216 of the BA shall be increased to \$28.00 effective July 1, 2008.
- E. The incidental allowance set forth in Paragraph 13-114 of the BA, and in Article 10, Part 1, Section B.7. of the FLTTA shall be increased to \$20.00 effective July 1, 2008.

3. High Budget Dramatic Programming Made for Basic Cable

- A. Effective July 1, 2008, initial compensation for directors employed on one-hour dramatic programs made for basic cable with a budget of \$2,000,000 (\$2,200,000 for programs, the principal photography of which commences on or after July 1, 2010) shall be \$23,520 with a guarantee of seven (7) preparation days and seven (7) shooting days. The rate of initial compensation shall be increased in the second and third years of the BA in accordance with Paragraph 2.A.(4) above. The foregoing shall not apply to the first season of one-hour dramatic programs made for basic cable.

- B. Effective July 1, 2008, initial compensation for directors employed on half-hour dramatic programs made for basic cable with a budget of \$1,200,000 (\$1,325,000 for programs, the principal photography of which commences on or after July 1, 2010) shall be \$11,760 with a guarantee of three (3) preparation days and four (4) shooting days. The rate of initial compensation shall be increased in the second and third years of the BA in accordance with Paragraph 2.A.(4) above. The foregoing shall not apply to the first season of half-hour dramatic programs made for basic cable.

4. Confirmation of Employment

Amend Article 10, Part 3, Section F. of the FLTTA as follows:

“With respect to the employment of an Associate Director or Stage Manager on a prime time entertainment program or series, and to the employment of an Associate Director or Stage Manager for five (5) days or more on other types of programs or series, the Company will confirm such employment in a written deal memo or form to the individual which contains the information set forth in Exhibit “E,” attached hereto, and indicates, if applicable, the right to credit or offset. (Credit or offset information may be included under “Other Conditions.”) On prime time dramatic programs, overscale cannot be used to credit or offset in any manner any payments required to be made hereunder to the Associate Director or Stage Manager.

“The Company will ~~endeavor to~~ deliver the deal memo or form to the individual prior to the rendition of services. ~~If not so delivered, the memo or form must be delivered to the individual as soon as possible thereafter, but in any case no later than the second work day following the day on which the individual requests delivery of the memo or form.~~

“A copy of the deal memo will be sent to the Guild. In no event is any Associate Director or Stage Manager to commence services before delivery of the deal memo to the Guild, except in cases of a bona fide emergency. Employer may require the Associate Director or Stage Manager to sign a copy of the deal memo prior to permitting the Associate Director or Stage Manager to commence services.”

5. Wrap Supervision Allowance

Add a provision to the BA as follows:

“Employer shall pay an allowance of \$50 per day to the Second Assistant Director responsible for supervising wrap on a local location, a distant location, or in the studio when “loading out” to a local location or a distant location the following day. It is understood that the Employer’s obligations under this provision shall not exceed one (1) such payment per production day. The wrap supervision allowance shall be paid on series covered by Sideletter No. 21. The allowance shall be excluded from all other computations and shall not be subject to pension and health contributions.”

6. Second AD Cooperative Committee

Add a sideletter to the BA which provides as follows:

“Re: Single Camera Assistant Director Cooperative Committee

“Dear Mr. Counter:

“This will confirm the agreement reached during the negotiations leading up to the 2008 Directors Guild of America Basic Agreement and the 2008 Directors Guild of America Freelance Live and Tape Television Agreement to convene a Single Camera Assistant Director Cooperative Committee promptly following negotiations for the purpose of discussing the utilization of Assistant Directors, including issues related to safety, duties, and conditions of employment, and other issues of mutual concern. The first meeting shall convene no later than September 1, 2008, absent extenuating circumstances that prevent such a meeting.”

7. **Location Managers**

- A. The Employers have agreed to confirm the practice that when location manager work is to be performed in New York or Chicago, the individual employed to perform such work is employed as a Second Assistant Director under the terms of the Basic Agreement. The parties have agreed to amend Basic Agreement Paragraph 1-304 as follows:

“7. Aid in the scouting, surveying and managing of locations. When location managing duties are to be performed in the New York Area or within a seventy-five (75) mile radius of Chicago, the individual assigned shall be a Second Assistant Director, except when the Employer engages and transports a Location Manager under the terms of the Local #399 Agreement. Such Second Assistant Director employed to manage locations shall receive terms and conditions of employment not less than those applicable to Second Second Assistant Directors, but shall not be considered a Second Second Assistant Director for purposes of staffing and order of employment as provided in Basic Agreement Paragraph 13-202. Persons not covered by this Basic Agreement may be employed to assist a Second Assistant Director employed to manage locations.

“For purposes of this provision, the New York Area shall be defined to include those locations within a seventy-five (75) mile radius of Columbus Circle which, for purposes of this provision, shall include Suffolk County and the New Jersey shoreline to and including Atlantic City. With respect to Chicago, the seventy-five (75) mile radius shall be measured from the intersection of State and Madison.”

- B. Add a new Basic Agreement Paragraph 14-410 as follows:

“Employer shall not be required to give preference of employment as provided in Paragraph 14-405 to Second Assistant Directors employed to manage locations in the New York Area on theatrical and television motion pictures, provided the Employer first gives consideration to individuals on the New York Area Second Assistant Director Qualification List who reside within the New York Area and have experience managing locations.

“For purposes of this provision, the Employer shall be deemed to have given “consideration” if it reviews the experience of those individuals identified by the Guild as possessing experience in managing locations in these areas.

“For purposes of this provision, the New York Area shall be defined to include those locations within a seventy-five (75) mile radius of Columbus Circle, which, for purposes of this provision, shall include Suffolk County and the New Jersey shoreline to and including Atlantic City.”

8. **Call Sheet and One Line Schedule**

Amend Paragraph 13-218 of the BA to read as follows:

“Production Reports, Call Sheets, and One Line Schedules Employer shall make production reports available for inspection by the Guild upon the Guild’s request. Employer shall make call sheets and one line schedules available for inspection by the Guild upon the Guild’s request in connection with program audits.”

9. **Health Plan Contribution Rate**

- A. Delete Paragraphs 12-304, 12-305, and the second paragraph of Paragraph 12-301 of the 2005 BA. Delete Article 11, Section B, Paragraph 2; Article 11, Section B, Paragraph 6; and the second paragraph of Article 11, Section B, Paragraph 1 of the 2005 FLTTA.

B. Add a sideletter to the BA and the FLTTA which provides as follows:

“Re: Directors Guild of America-Producer Health Plan

“Dear Mr. Counter:

“During the negotiations for the 2008 Basic Agreement and FLTTA (collectively, “Agreement”), the parties discussed the funding of the Directors Guild of America-Producer Health Plan and future retiree benefits. The parties have agreed to discuss these issues further and have requested that the Health Plan Trustees address these issues. Notwithstanding the foregoing, if, as of January 1, 2010, the NET ASSETS AVAILABLE FOR BENEFITS of the Directors Guild of America-Producer Health Plan, a line item of the Directors Guild of America-Producer Health Plan Statement of Net Assets Available for Benefits, are less than \$135,000,000, the Guild shall have the right to re-open this Agreement in its entirety no earlier than July 1, 2010, upon sixty (60) days’ prior written notice. An example of a Directors Guild of America-Producer Health Plan Statement of Net Assets Available for Benefits, which reflects net assets as of November 30, 2007 compared to November 30, 2006, is attached hereto as Exhibit ___.”

10. Geographic Scope of the Basic Agreement

Add a sideletter to the BA which provides as follows:

“Re: Geographic Scope Committee

“Dear Mr. Counter:

“During the negotiations for the 2008 Basic Agreement and FLTTA, the DGA discussed its concerns regarding the geographic scope of the Basic Agreement. Following negotiations, the parties will establish a Geographic Scope Committee for the purpose of discussing issues related to work performed by non-U.S. resident Directors outside the United States and Canada on theatrical motion pictures and long-form television programs.”

11. Episodic Television Issues

A. Revise the second paragraph of Paragraph 10-108 of the 2005 BA as follows:

“Except as specifically prohibited below, all preparation shall apply toward fulfillment of Employer's obligation on a Director's ‘guaranteed employment period.’ With respect to a single television picture, only preparation days which are consecutive with shooting days shall be applied against Employer's obligations for the guaranteed employment period, except that with respect to: (a) for 8-15 minute and 16-30 minute television films, one (1) non-consecutive day, subject to the Director's availability, prior to commencement of consecutive employment may be applied against Employer's obligation for the guaranteed employment period; (b) for 31-60 minute television films, two (2) such non-consecutive days, subject to the Director's availability, may be so applied. The parties agree that the DGA will continue to give good faith consideration to granting waivers on a case-by-case basis to expand the number of non-consecutive prep days for one-hour pilots and one-hour series from two (2) to three (3).

“The parties further agree that the DGA will not unreasonably deny waiver requests for the payment of intervening days under this provision when exigencies of production do not permit principal photography to be completed within the intended schedule. In no event shall an Employer be obligated to pay more than five (5) intervening days under this provision.”

B. Add a sideletter to the BA which provides as follows:

“Re: Episodic Television Committee

“Dear Mr. Counter:

“During the negotiations for the 2008 Basic Agreement and FLTTA, the parties discussed their concerns regarding episodic television production. Promptly following negotiations, the parties will establish an Episodic Television Committee for the purpose of discussing the complexities of episodic television production, particularly with respect to one-hour dramatic episodic series. The Committee shall be chaired by episodic television directors appointed by the Guild and shall include episodic television directors; and high-ranking production and creative executives representing the Employers. The Committee shall meet during the term of the Agreement, and the first meeting shall convene no later than April 1, 2008. The Guild agrees that it will provide information to the Committee regarding the nature and disposition of waiver requests.”

12. Electronic Data Transmission

Each Employer agrees to meet with the Guild during the first year of the 2008 BA and 2008 FLTTA, on a Company-by-Company basis, to discuss the feasibility of electronically reporting residual and other payments due to covered employees. Each Employer agrees that executives of its Information Technology and Residuals Departments shall attend this meeting.

13. Tri Guild Audit

Renew the “Gross Receipts Residual Payments Monitoring Fund” sideletter on the following basis: The Companies agree to make payments to the Fund of \$287,000 per year of the Agreements, provided that each of the WGA, DGA and SAG agrees to participate and make a payment of \$37,000 per year to the Fund. In exchange, each participating Guild agrees that such payments shall be considered a settlement of potential claims for royalty distributions from the Copyright Royalty Tribunal as to motion pictures produced through the expiration date of the successor agreements to the collective bargaining agreements between such Guild and the AMPTP in effect on July 1, 2008 (in effect on the Sunday following ratification of the successor agreements to the 2005 Basic Agreement and the 2005 Freelance Live and Tape Television Agreement).

14. ISAN Numbers

Add a provision to the BA and the FLTTA to read as follows:

“Employer shall provide the International Standard Audiovisual Number (‘ISAN’), if any, for a motion picture where known by the Employer.”

15. Legal

- A. Paragraph 2-101 of the BA and Article 20, Section A.1. of the FLTTA shall be revised to provide that the jurisdictional limit on claims for unpaid compensation shall be increased from \$450,000 to \$550,000.
- B. The parties agree to form a Committee which shall meet prior to July 1, 2008 for the purpose of discussing revisions to the lists of arbitrators in the 2005 BA and the 2005 FLTTA.
- C. Revise Paragraph 2-308 of the BA and Article 20.C.8. of the FLTTA as follows:

“The parties will cooperate in the exchange of information reasonably in advance of the hearing date regarding the expected utilization of documents and physical evidence. Not later than thirty (30) days prior to the arbitration hearing, either party may make a written request to the other to produce, on a date not earlier than seven (7) five (5) days before the hearing, documentary evidence of the type producible pursuant to a subpoena duces tecum. The documents must be produced on the date requested, but the other party may object to the production of the documents to the same extent as though the documents were subpoenaed. Any such objection shall be considered by the Arbitrator at the hearing.

“The introduction of documents or physical evidence shall not be precluded because they were not exchanged in advance of the hearing.”

16. Diversity

Amend Sideletter No. 22 of the BA and the FLTTA to read as follows:

“During the negotiations for the 2008 BA and FLTTA, the parties discussed their respective concerns regarding diversity in the production of television programs. The Employers and the DGA have agreed to address concerns regarding the implementation of BA Article 15 and FLTTA Article 19 as follows:

- “1. Both parties mutually understand the need to continue the diversity meetings with high level creative, production or programming executives, pursuant to BA 15-700 and FLTTA Article 19, Section E.
- “2. The Major Production Companies have agreed to continue their commitment of substantial resources to increase the employment of both experienced and emerging women and minority Directors in television. To this end, several programs have been instituted including the ABC/Touchstone Directing Assignment Initiative, the NBC Director in Training Program and the HBO/DGA Directing Fellowship. These programs and other initiatives have the potential to be an important source of employment opportunities. The DGA will continue to provide lists of women and minority Directors who may be available for assignment.
- “3. The DGA will endeavor to educate the DGA executive producers, supervising producers and/or showrunner members about the need to enhance the employment of women and minority Directors. In addition, the DGA will cooperate with other organizations, including the WGAW, at the Employers request, to further the goal of diversity.”

17. Promotional Uses in Traditional Media

Revise Basic Agreement Paragraph 11-207 to provide: (1) the maximum length of excerpts from a free television motion picture, other than a long-form television motion picture (i.e., a television motion picture ninety (90) minutes or more in length), that can be used for promotional purposes without payment of excerpt fee(s) is five (5) minutes for the time period prior to and up to one (1) year after the initial telecast of the motion picture; (2) the maximum length of excerpts from a long-form television motion picture that can be used for promotional purposes without payment of excerpt fee(s) is ten (10) minutes for the time period prior to and up to sixty (60) days after the initial telecast of the motion picture; (3) change “400 feet of 35mm film containing not less than two scenes or 200 feet of 35mm film containing one scene, or the equivalent in running time of the foregoing if 16mm film or videotape is used” to “400 feet of 35mm film containing one or more scenes, or the equivalent in running time of the foregoing if another format (e.g., 16mm film, videotape, etc.) is used” so that, except as otherwise provided in (1) and (2) above, the length of excerpts from a free television motion picture that may be used for promotional, trailer, news, and review purposes “shall not exceed 400 feet of 35mm film containing one or more scenes, or the equivalent in running time of the foregoing if another format (e.g., 16mm film, videotape, etc.) is used”; and (4) the Employer may use up to five (5) minutes of excerpts from a free television motion picture or series on any DVD release to advertise or promote the series without payment of excerpt fee(s).

Revise FLTTA Article 23, Section B., Paragraph 2. to provide: (1) the maximum length of excerpts from a free television program, other than a long-form television program (i.e., a program ninety (90) minutes or more in length), that can be used for promotional purposes without payment of excerpt fee(s) is five (5) minutes for the time period prior to and up to one year after the initial telecast of the program; (2) the maximum length of excerpts from a long-form television program that can be used for promotional purposes without payment of excerpt fee(s) is ten (10) minutes for the time period prior to and up to sixty (60) days after the initial telecast of the program; (3) except as otherwise provided in subparagraphs (1) and (2) above, the length of excerpts that may be used for promotional, trailer, news, and review purposes shall not exceed one hundred twenty (120) seconds; and (4) the Employer may use up to five (5) minutes of excerpts from a free television program or series on any DVD release to advertise or promote the series without payment of excerpt fee(s).

Revise Basic Agreement Paragraph 11-303 to provide: (1) the maximum length of excerpts from a theatrical motion picture that can be used to advertise or exploit the motion picture without payment of

excerpt fee(s) is ten (10) minutes for the time period prior to the initial theatrical exhibition and within sixty (60) days thereafter; (2) the Guild will freely grant waivers of the sixty (60) day limit in (1) above for motion pictures that are still in bona fide theatrical exhibition more than sixty (60) days after initial theatrical release; (3) change “four hundred (400) feet of 35mm film containing not less than two scenes with actors or two hundred (200) feet of 35mm film containing one scene with actors or the equivalent of the foregoing if 16mm film is used” to “400 feet of 35mm film containing one or more scenes with actors, or the equivalent in running time of the foregoing if another format (e.g., 16mm film, videotape, etc.) is used” so that, except as provided in (1) above, the length of excerpts from a theatrical motion picture that may be used for the purpose of advertising or exploiting the picture “shall not exceed 400 feet of 35mm film containing one or more scenes, or the equivalent in running time of the foregoing if another format (e.g., 16mm film, videotape, etc.) is used”; and (4) that for the promotional use of excerpts longer than the equivalent of 400 feet of 35mm film containing one or more scenes, the Director must be credited if any personal credits are accorded or if more than two corporate credits are accorded. Existing credit rules apply to shorter clips. The Creative Rights Committee shall determine whether to establish an exception to this rule for credits to not more than two starring actors in connection with such use.

Add a provision to Paragraph 20-909 of the Basic Agreement to provide that the maximum length of excerpts from a motion picture made-for-home-video that can be used for promotional purposes without payment of excerpt fee(s) is ten (10) minutes during the time period prior to the release of the motion picture in the home video market and within sixty (60) days thereafter.

18. Special Conditions for Pilots and New Half-Hour Series

Amend Sideletter No. 21, “Special Conditions for Pilots and New One-Hour Series,” to apply to new single camera half-hour pilots and series and to read as follows:

“Re: Special Conditions for Pilots and New One Hour and New Single Camera Half-Hour Series

“Dear Mr. Counter:

“Reference is made to the parties’ discussions during the negotiations for the 2005 and 2008 BA concerning the need for special conditions for pilots and new one hour and new single camera half-hour series.

“With respect to all Unit Production Managers, Assistant Directors and Associate Director/Technical Coordinators assigned to any episode of a new one hour or new single camera half-hour dramatic series produced during the first two production seasons of the series or assigned to any pilot, the applicable rates and production fees shall be those in effect a year previously.

“With respect to the assignment of Unit Production Managers and Assistant Directors on a pilot (other than a multi-camera pilot) or an episode of a new one hour or new single camera half-hour series produced during the first production season, the unworked holiday pay shall be 50% of the rates specified in Paragraph 13-115 and vacation pay shall be two percent (2%) instead of four percent (4%) as specified in Paragraph 13-601.”

19. Associate Director and Stage Manager Preparation Time

Amend the first two paragraphs of Article 10, Part 3, Section B₂, Paragraph 1. of the 2005 FLTTA as follows:

“Freelance Associate Directors and Stage Managers shall be guaranteed preparation time not less than that set forth within the following schedule:

“Preparation time applicable to programs covered by Article 6, Section A.1., 2., and 3. and Section B.1., 2. and 3. However, on programs covered by Article 6, Section B.1., B.2. and B.3., the Guild shall not unreasonably deny requests for waivers of the following preparation time requirements. The Company shall apply for such waiver not less than ten (10) days prior to the commencement of the work.”

20. **Third Area Meeting**

Add a sideletter to the BA which provides as follows:

“Re: Third Area Meeting

“Dear Mr. Counter:

“This will confirm the agreement reached during the negotiations leading up to the 2008 Directors Guild of America Basic Agreement and the 2008 Directors Guild of America Freelance Live and Tape Television Agreement to convene meeting(s) following negotiations to discuss issues relating to production and the employment of DGA-represented employees in the Third Area.”

21. **Alternative Digital Broadcast and Cable Channels**

Add a sideletter to the BA and the FLTTA which provides as follows:

“Re: Alternative Digital Broadcast and Cable Channel Committee

“Dear Mr. Counter:

“During the negotiations for the 2008 Basic Agreement and FLTTA (collectively, “Agreement”), the parties discussed their concerns regarding the reuse of motion pictures and programs on alternative digital broadcast and cable channels. Following negotiations, the parties will establish an Alternative Digital Broadcast and Cable Channel Committee to address issues related to the reuse of motion pictures and programs on alternative digital broadcast and cable channels.

“The Employers shall have the right to re-open this Agreement in its entirety no earlier than July 1, 2010, upon sixty (60) days’ prior written notice, in the event the Alternative Digital Broadcast and Cable Channel Committee is unable to agree upon a resolution of the reuse of motion pictures and television programs on alternative digital broadcast and cable channels.”

22. **High/Low Budget Threshold – Made for Basic Cable**

The high budget thresholds in Paragraph 23-101 of the DGA BA and Article 31.A.1 of the FLTTA shall be increased only once and by seven and one-half percent (7.5%) effective July 1, 2008.

23. **Residual Payments (Syndicated Markets)**

Revise the second paragraph in Paragraph 11-101(b)(4)(i)(B) of the BA as follows:

“However, payments made pursuant to this provision shall not exceed one hundred fifty percent (150%) of the "fixed residual schedule" set forth in subparagraphs (b)(2) and (3) above. Similarly, such payments shall not be less than fifty percent (50%) of such "fixed residual schedule" for such exhibitions, except in the case of series licensed only in markets representing less than ~~one-third~~ one-half of all United States television households.”

24. **Use of Excerpts**

Revise Paragraph 11-207(c) of the 2005 BA as follows:

“(c) When used for purposes of recapping the story to date in the context of a serial, multi-part program, episodic series, unit series or anthology; provided, however, that if such recap shall exceed ninety (90) seconds in length when used on a program ~~less than up to and including~~ sixty (60) minutes in total length, or exceed ~~three (3) minutes~~ one hundred twenty (120) seconds in length when used on a program ~~in excess of sixty (60) minutes or more~~ in total length, Employer shall pay to the Director(s) of the program(s) from which the excerpts in the recap were taken an aggregate one- time-only sum equal to ~~\$219.00~~ \$230.00 (~~\$230 effective July 1, 2007~~) (\$242.00 effective July 1, 2010) for each minute or portion thereof by which

the recap exceeds such length limitation; and provided, further, that no such recap shall exceed (without being deemed a run or foreign telecast as set forth above) 400 feet of 35mm film containing one or more scenes or the equivalent in running time of the foregoing if another format (e.g., 16mm, videotape, etc.) is used not less than two scenes or 200 feet of 35mm film containing one scene, or the equivalent in running time of the foregoing if 16mm film or videotape is used.

25. The CW and MyNetwork TV

The parties confirm that the “Promotional Launch” provision in Paragraph 11-101(h) applies to the CW and MyNetwork TV.

26. Programs Made For New Media

I. Recognition

Revise the recognition clauses (Paragraph 1-201 of the BA and Article 3, Section B. of the FLTTA) as follows:

BA Paragraph 1-201, **Definition of “Motion Picture” and “Motion Picture Industry”**

The phrase “*motion picture*” and the phrase “*motion picture industry*,” wherever used in this BA, shall be deemed to mean the production of all types of motion pictures on film or tape or transferred from tape to film or film to tape, or on digital hard drives or other storage media, or otherwise, of any gauge or size or type, whether for public or private showings as theatrical, television, videodiscs/videocassettes, supplemental markets, industrial, religious, educational, commercial, documentary or government motion pictures, or motion pictures made for the Internet, mobile devices or any other “new media” platform known as of July 1, 2008, whether produced by means of motion picture cameras, electronic cameras or devices, tape devices or any combination thereof, or other means, methods or devices now known or yet to be devised, in connection with which any Employee renders services.

Notwithstanding the foregoing, this BA does not apply to:

- (a) non-entertainment motion pictures produced primarily for the basic cable market;
- (b) entertainment motion pictures produced primarily for the basic cable market except to the extent set forth in Paragraph 1-102(b) and Article 23;
- (c) motion pictures described in Paragraph 20-905 except to the extent set forth in that Paragraph; and
- (d) news, sports and documentary programs made for the Internet, mobile devices or any other new media platform known as of July 1, 2008 and “Experimental New Media Productions,” as defined in Section B. of the “Sideletter re Programs Produced for New Media.”

The direction of second units and staged talent tests for a role in a motion picture is within the jurisdiction of the Guild.

FLTTA, Section 3.B., **Recognition**

The phrase “*television industry*,” as used in Section A. above and limited to Section A. above only, shall be deemed to mean the production by the undersigned Company of all types of television programs on film (as provided in Article 1.A.6.(b) and Article 1.B.3. hereof) or on tape or transferred from tape to film or film to tape, or on digital hard drives or other storage media, or otherwise, of any gauge or size or type, or live, whether for public or private showings as theatrical, television, supplemental markets, industrial, religious, educational, commercial, documentary or government films or films made for the Internet, mobile devices or any other “new media” platform known as of July 1, 2008 (but excluding news, sports and documentary programs made for the Internet, mobile devices or any other new media platform known as of July 1, 2008 and excluding “Experimental New Media Productions,” as defined in Section B. of the “Sideletter re Programs Produced for New Media”), whether produced by means of motion picture cameras, electronic cameras or devices, tape devices or any combination thereof, or other means, methods or devices now known or yet to be devised, in connection with which a Director, Associate Director or Stage Manager renders services as an employee.

II. Sideletter Re Programs Produced For New Media

Add a Sideletter Re Programs Produced for New Media to the BA and FLTTA that provides as follows:

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

A. Terms and Conditions for “Derivative New Media Productions”

A “Derivative New Media Production” is a production for New Media based on an existing television motion picture or program exhibited in “traditional” media – *e.g.*, a free television, basic cable, or pay television motion picture or program (the “Original Production”).

1. BA-Covered Dramatic Programs and Series.

a. A Director must be employed. The Employer shall pay the Director a salary for a Derivative New Media Production separate from any directing salary for the Original Production, which shall be subject to negotiation between the individual Employee and the Employer, and which must be reported to the Guild in a deal memorandum specifying the salary and terms of employment no later than the start of principal photography.

b. UPMs and Assistant Directors employed on the Original Production may be assigned to the derivative production as part of their regular workday on the Original Production. The work for the derivative production shall be considered part of the workday for the UPMs and ADs on the Original Production and shall trigger extended workday payments or overtime if work on the derivative production extends the workday on the Original Production past the contractually defined regular workday. If an Employee who is not employed on the Original Production is employed to perform UPM or Assistant Director duties exclusively for a derivative production, then the terms and conditions set forth below govern.

c. All terms and conditions of employment, including initial compensation and deferred compensation, if any, will be subject to negotiation between the Employer and the individual Employee, except for Director’s credit and residuals as set forth in Paragraphs (3) and (4) below and those provisions of the BA incorporated herein by reference in Paragraph (1) below. DGA agrees that it will not interfere in any such negotiations between the Employee and the Employer.

(1) The following provisions of the BA are incorporated herein. To the extent the provisions herein are inconsistent with the BA, the provisions of this sideletter control.

(a) Article 1, Recognition and Guild Shop.

Notwithstanding the Guild Shop provisions set forth in Paragraph 1-401 of the Basic Agreement, an individual engaged as the Director of a Derivative New Media Production shall not be required to become a “member of the Guild in good standing” until he or she completes production of 120 total minutes of programming, as edited for exhibition. The 120 minutes of programming applies per Director, regardless of the number of Employers for which the Director works. The above provision applies only to Directors who are not, and have not previously been, members of the DGA and only to work performed on covered new media productions.

(b) Article 2, Grievance and Arbitration.

(c) Article 12, Pension and Health Plans.

(d) Although the provisions of Section 1-300 are not applicable, it is understood that the Employer may not assign any of the duties described therein to persons outside the bargaining unit. The Employer shall not be required to assign work to an Employee hereunder when the Employer would not be required to do so under the BA.

(e) Article 17, Miscellaneous Provisions, except 17-500.

(2) The Employer shall advise DGA of the employment of any Employee by forwarding to DGA a copy of a deal memorandum, signed by both the Employer and the Employee, which shall set forth at least the information required by Exhibits 1(A) and (B) attached to this agreement no later than the start of principal photography.

(3) The Employer is required to accord screen credit to the Director if anyone else receives screen credit on the New Media Production. The Director's credit shall be in the form "Directed by" and must be in the same size and style of type as any other such credit. Credits may appear in the corner of the screen. "Click-through" credits may be used.

(4) Reuse – Refer to New Media Re-Use Sideletter.

(5) DGA agrees to make appropriate accommodations in its initiation fees in recognition of the economics of Made for New Media Productions.

2. FLTTA-Covered Programs: Dramatic, Variety, Quiz and Game, All Other

a. A Director must be employed, except in those situations in which a Director would not be required to be employed if the program were made for free television. Furthermore, the present understandings between the DGA and the AMPTP and between the DGA and the Networks regarding exceptions to Director staffing, including, but not limited to, those situations addressed in Article 1, Part B., Paragraph 4(c) of the FLTTA, remain in full force and effect. The Company shall pay the Director a salary for a Derivative New Media Production separate from any directing salary for the Original Production, which shall be subject to negotiation between the individual Employee and the Company, and which must be reported to the Guild in a deal memorandum specifying the salary and terms of employment no later than the start of principal photography.

b. Associate Directors and Stage Managers employed on the Original Production may be assigned to the derivative production as part of their regular workday on the Original Production. The work for the derivative production shall be considered part of the workday for the ADs and SMs on the Original Production and shall trigger extended workday payments or overtime if work on the derivative production extends the workday on the Original Production past the contractually defined regular workday. If an Employee who is not employed on the Original Production is employed to perform Associate Director or Stage Manager duties exclusively for a derivative production, then the terms and conditions set forth below govern.

c. All terms and conditions of employment, including initial compensation and deferred compensation, if any, will be subject to negotiation between the Company and the individual Employee, except for Director's credit and residuals as set forth in Paragraphs (3) and (4) below and those provisions of the FLTTA incorporated herein by reference in Paragraph (1) below. DGA agrees it will not interfere in any such negotiations between the Employee and the Company.

(1) The following provisions of the FLTTA are incorporated herein. To the extent the provisions herein are inconsistent with the FLTTA, the provisions of this sideletter control.

(a) Article 3, Recognition.

(b) Article 4, Guild Security.

Notwithstanding the Guild Shop provisions set forth in Article 4 of the FLTTA, an individual engaged as the Director of a Derivative New Media Production shall not be required to become a "member of the Guild in good standing" until he or she completes production of 120 total minutes of programming, as edited for exhibition. The 120 minutes of programming applies per Director, regardless of the number of Companies for which the Director works. The above provision applies only to Directors who are not, and have not previously been, members of the Guild and only to work performed on covered new media productions.

(c) Article 20, Grievance and Arbitration.

(d) Articles 11 and 12, Pension and Health Plans.

(e) Although Article 2 is not applicable, it is understood that the Company may not assign any of the duties described therein to persons outside the bargaining unit. The Employer shall not be required to assign work to an Employee hereunder when the Employer would not be required to do so under the FLTTA.

(f) Article 9, Section B., Paragraphs 11., 12., 13., 17., and 19.; Article 1, Section B., Paragraphs 1. and 2.

(2) The Company shall advise DGA of the employment of any Employee by forwarding to DGA a copy of a deal memorandum, signed by both the Company and the Employee, which shall set forth at least the information required by Exhibits 1(A) and (B) attached to this agreement no later than the start of principal photography.

(3) The Employer is required to accord screen credit to the Director if anyone else receives screen credit on the New Media Production. The Director's credit shall be in the form "Directed by" and must be in the same size and style of type as any other such credit. Credits may appear in the corner of the screen. "Click-through" credits may be used.

(4) Reuse – Refer to New Media Re-Use Sideletter.

(5) DGA agrees to make appropriate accommodations in its initiation fees in recognition of the economics of Made for New Media Productions.

B. Terms and Conditions for "Experimental New Media Productions" (Original Productions Only)

Coverage shall be at the Employer's option with respect to "Experimental New Media Productions." An "Experimental New Media Production" is defined as any Original New Media Production (1) for which the actual cost of production is either: (a) \$15,000 or less per minute of program material as exhibited, or (b) \$300,000 or less per single production as exhibited, or (c) \$500,000 or less per series of programs produced for a single order; and (2) does not utilize an employee in any DGA-covered category who has previously been employed under a DGA collective bargaining agreement.

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, gaps fees, legal fees, and interest), contingency of up to ten percent (10%), essential elements insurance costs, the cost of the completion bond, marketing expenses, contingent payments to talent or other parties, and delivery items required by sales agents, distributors or sub-distributors (*i.e.* delivery materials beyond the answer print, NTSC Video Master if the Production is delivered on videotape, or the digital equivalent if the Production is delivered in a digital format).

C. Terms and Conditions for Original "Made for New Media" Dramatic Motion Pictures and Dramatic Series Productions

A Director must be employed. All terms and conditions of employment, including initial compensation and deferred compensation, if any, will be subject to negotiation between the Employer and the individual Employee, except for Director's credit and residuals as set forth in Paragraphs 3 and 4 below and those provisions of the BA incorporated herein by reference in Paragraph 1 below. DGA agrees it will not interfere in any such negotiations between the Employee and the Employer.

1. The following provisions of the BA are incorporated herein. To the extent the provisions herein are inconsistent with the BA, the provisions of this sideletter control.

a. Article 1, Recognition and Guild Shop.

Notwithstanding the Guild Shop provisions set forth in Paragraph 1-401 of the Basic Agreement, an individual engaged as the Director of an Original New Media Production shall not be required to become a "member of the Guild in good standing" until he or she completes production of 120 total minutes of programming, as edited for exhibition. The 120 minutes of programming applies per Director, regardless of the

number of Employers for which the Director works. The above provision applies only to Directors who are not, and have not previously been, members of the DGA and only to work performed on covered new media productions.

b. Article 2, Grievance and Arbitration.

c. Article 12, Pension and Health Plans.

d. Although the provisions of Section 1-300 are not applicable, it is understood that the Employer may not assign any of the duties described therein to persons outside the bargaining unit. The Employer shall not be required to assign work to an Employee hereunder when the Employer would not be required to do so under the BA.

e. Article 17, Miscellaneous Provisions, except 17-500.

2. The Employer shall advise DGA of the employment of any Employee by forwarding to DGA a copy of a deal memorandum, signed by both the Employer and the Employee, which shall set forth at least the information required by Exhibits 1(A) and (B) attached to this agreement no later than the start of principal photography.

3. The Employer is required to accord screen credit to the Director if anyone else receives screen credit on the New Media Production. The Director's credit shall be in the form "Directed by" and must be in the same size and style of type as any other such credit. Credits may appear in the corner of the screen. "Click-through" credits may be used.

4. Reuse – Refer to New Media Re-Use Sideletter.

5. DGA agrees to make appropriate accommodations in its initiation fees in recognition of the economics of Made for New Media Productions.

D. Terms and Conditions for Original "Made for New Media" Variety Programs, Quiz and Game Programs, and All Other Programs

A Director must be employed, except in those situations where a Director would not be required to be employed if the program were made for free television. Furthermore, the present understandings between the DGA and the AMPTP and between the DGA and the Networks regarding exceptions to Director staffing, including, but not limited to, those situations addressed in Article 1, Part B., Paragraph 4(c) of the FLTTA, remain in full force and effect. All terms and conditions of employment, including initial compensation and deferred compensation, if any, will be subject to negotiation between the Company and the individual Employee, except for Director's credit and residuals as set forth in Paragraphs 3 and 4 below and those provisions of the FLTTA incorporated herein by reference in Paragraph 1 below. DGA agrees it will not interfere in any such negotiations between the Employee and the Company.

1. The following provisions of the FLTTA are incorporated herein. To the extent the provisions herein are inconsistent with the FLTTA, the provisions of this sideletter control.

a. Article 3, Recognition.

b. Article 4, Guild Security.

Notwithstanding the Guild Shop provisions set forth in Article 4 of the FLTTA, an individual engaged as the Director of an Original New Media Production shall not be required to become a "member of the Guild in good standing" until he or she completes production of 120 total minutes of programming, as edited for exhibition. The 120 minutes of programming applies per Director, regardless of the number of Companies for which the Director works. The above provision applies only to Directors who are not, and have not previously been, members of the Guild and only to work performed on covered new media productions.

c. Article 20, Grievance and Arbitration.

d. Articles 11 and 12, Pension and Health Plans.

e. Although the provisions of Article 2 are not applicable, it is understood that the Company may not assign any duties described therein to persons outside the bargaining unit. The Employer shall not be required to assign work to an Employee hereunder when the Employer would not be required to do so under the FLTTA.

f. Article 9, Section B., Paragraphs 11., 12., 13., 17., and 19.; Article 1, Section B., Paragraphs 1. and 2.

2. The Company shall advise DGA of the employment of any Employee by forwarding to DGA a copy of a deal memorandum, signed by both the Company and the Employee, which shall set forth at least the information required by Exhibits 1(A) and (B) attached to this agreement no later than the start of principal photography.

3. The Company is required to accord screen credit to the Director if anyone else receives screen credit on the New Media Production. The Director's credit shall be in the form "Directed by" and must be in the same size and style of type as any other such credit. Credits may appear in the corner of the screen. "Click-through" credits may be used.

4. Reuse – Refer to New Media Re-Use Sideletter.

5. DGA agrees to make appropriate accommodations in its initiation fees in recognition of the economics of Made for New Media Productions.

27. **Re-Use In New Media**

Add a New Media Re-Use Sideletter to the BA and FLTTA that provides as follows.

Section 1. Paid Permanent Downloads (aka "Download-To-Own" Or "Electronic Sell Through" ("EST")).

The following shall apply to motion pictures released on or after July 1, 2008:

When the consumer pays for an EST copy of a theatrical motion picture, the Employer shall pay residuals at the rate of 1.8% of 20% of "Employer's gross" on the first 50,000 units and at the rate of 3.25% of 20% of "Employer's gross" thereafter.

When the consumer pays for an EST copy of a television motion picture or program, the Employer shall pay residuals at the rate of 1.8% of 20% of "Employer's gross" on the first 100,000 units and at the rate of 3.5% of 20% of "Employer's gross" thereafter.

For BA-covered pictures and programs, the above percentages shall be payable as follows: 66.67% to the Director; 5.20% to the Unit Production Manager; 4.93% to the First Assistant Director; 3.20% to the Key Second Assistant Director; and 20% to the DGA-Producer Pension Plan. BA Paragraph 18-105 shall apply.

For FLTTA-covered programs, the above percentage shall be payable as follows: 66.67% to the Director; 6.665% to the Associate Director; 6.665% to the Stage Manager; and 20% to the DGA-Producer Pension Plan. FLTTA Article 24, Section E. shall apply.

Section 2. Advertiser-Supported Streaming

The following shall apply to the streaming of theatrical and television motion pictures on a free to the consumer basis on advertiser-supported services transmitted via the Internet or mobile device.

A. Television Motion Pictures

(1) With respect to television motion pictures, the principal photography of which commences on or after July 1, 2008:

(a) The Employer shall be entitled to a “streaming window” for a twenty-four (24) consecutive day period for the first season of a television series or for any one-time television motion picture and a seventeen (17) consecutive day period for the second and all subsequent seasons of a television series. During the streaming window, the Employer may make a television motion picture available for streaming without payment for such use. The streaming window may be divided between the period immediately prior to and immediately following the initial exhibition of the motion picture on television in any ratio determined by the Employer.

(b) If the Employer desires to stream the television motion picture outside the streaming window, but commencing within one (1) year of the expiration of the streaming window, then the Employer shall make a residual payment equal to three percent (3%) (three and one-half percent (3.5%) effective July 1, 2010) of the residual base applicable to the television motion picture^a for a six (6) consecutive month period beginning on the first day that the television motion picture is available for streaming following the expiration of the streaming window.

If the Employer desires to stream the television motion picture for all or any part of the six (6) month period immediately following the six (6) month period described in the preceding paragraph, but commencing within one (1) year of the expiration of the streaming window, then the Employer shall make a residual payment equal to three percent (3%) (three and one-half percent (3.5%) effective July 1, 2010) of the residual base applicable to the television motion picture¹ for a six (6) consecutive month period beginning on the first day that the television motion picture is available for streaming during such six (6) month period.

(c) During the streaming window, or during either of the six (6) month periods described in Paragraph A.(1)(b) above, the Employer may allow excerpts of those television motion pictures that are being streamed to be used on free to the consumer, advertiser-supported services transmitted via the Internet or mobile devices without any additional payment therefor.

(d) Upon expiration of the one (1) year period following expiration of the streaming window, if the Employer desires to stream the television motion picture, then it shall pay residuals at the rate of two percent (2%) of “Employer’s gross,” as defined in Section 5 of this Sideletter. Notwithstanding the foregoing, if the television motion picture has not been streamed during the one (1) year period following initial exhibition on television, or if it has been streamed only during the streaming window, then the foregoing payment shall apply beginning one (1) year after initial exhibition of the television motion picture on television.

(2) If the Employer should desire to stream any television motion picture, the principal photography of which commenced prior to July 1, 2008, as to which free television residuals are still payable, then the Employer shall pay residuals at the rate of two percent (2%) of “Employer’s gross,” as defined in Section 5 of this Sideletter.

(3) Revenues derived from foreign streaming shall be included in “Distributor’s Foreign Gross,” as provided in Paragraph 11-102 of the BA or in Article 7, Section D. of the FLTTA.

B. Theatrical Motion Pictures

If the Employer should desire to stream a theatrical motion picture, the principal photography of which commenced on or after July 1, 1971, then the Employer shall pay residuals at the rate of 1.2% of “Employer’s gross,” as defined in Section 5 of this Sideletter.

Section 3. Use Of Excerpts

A. Excerpts From Television Motion Pictures

- (1) Revise BA Paragraph 11-207(a) to provide: (a) except as provided in subparagraphs (b) and (c) below, the length of excerpts from a free television program that may be used for promotional, trailer, news, and review purposes “shall not exceed the equivalent of 400 feet of 35mm film containing one or more scenes;” (b) up to five (5) minutes of excerpts from a free television program, other than a long-form television motion picture, may be

^a The network prime time residual base shall be used for programs made for pay television that are of a type generally produced for network prime time.

used for promotional purposes during the time period prior to and up to one (1) year after the initial telecast of the program;^b and (c) up to ten (10) minutes of excerpts from a long-form television motion picture may be used for promotional purposes during the time period prior to and up to sixty (60) days after the initial telecast of the program, as addressed in Paragraph B.(3) below.

- (2) No payment shall be due for the promotional use of an excerpt in New Media. The “promotional use” of an excerpt from a free television program^c in New Media means any use of excerpts within the applicable length limit that:
- (a) is for the purpose of advertising or promoting the viewing or rental or purchase of the program or series; and
 - (b)
 - (i) includes tune-in information⁴ for the television network or channel on which the program or series currently is, or will be, telecast and occurs before a telecast of the program or series; or
 - (ii) references the availability of the program or series or a “special edition” of the program or series in the traditional home video market or in a separate home video format and occurs during the time period beginning sixty (60) days before and ending sixty (60) days after such release; or
 - (iii) includes instructions for renting, purchasing or streaming an electronic copy of the program or series from the website or other new media platform on which the excerpt appears or a direct link to another website or new media platform where an electronic copy of the program or series can be rented, purchased or streamed, and occurs in conjunction with the availability of an electronic copy of the program or series for rental, purchase or ad-supported streaming via the Internet or other new media platform.
 - (c) The receipt of revenue in connection with the uses set forth in Paragraphs A.(1) and (2) above shall not preclude them from being considered for the purpose of “advertising or promoting” the program or series.
- (3) Except as provided in Paragraph A.(2) above and in Paragraph A.(8) below, uses of excerpts from television programs in New Media during the first year of the telecast, but outside the streaming window covered by initial compensation pursuant to Paragraph A.(1)(a) of Section 2 of this Sideletter, are subject to the following excerpt fee provisions:
- (a) For less than two (2) minutes of excerpts, the Employer shall pay \$50 or the “applicable New Media program fee,”⁵ whichever is less;

^b The Employer may use up to five (5) minutes of excerpts from a television series on any DVD release to advertise or promote the series.

^c The provisions of this Paragraph A.(2) do not apply to long-form television motion pictures, which are addressed in Paragraph B. below.

⁴ In new media, tune-in information for promotional purposes is sufficient when it informs the consumer where he or she can view the program or series from which the excerpt is taken. The tune-in information may appear on-screen or in a “click through” format, *i.e.*, accessible through links. It is agreed that the network, channel or station “bug” alone does not suffice. It is also understood that the Employer is not required to provide the same level of tune-in information as is commonly provided in traditional network television promotional announcements.

⁵ The “applicable New Media program fee” is the applicable fee for the use of the entire program in New Media as provided in Paragraph A.(1)(b) of Section 2 of this Sideletter.

- (b) For two (2) minutes or more, but not more than four (4) minutes, of excerpts, the Employer shall pay \$150 (\$157.50 as of July 1, 2010) or the “applicable New Media program fee,” whichever is less; and
 - (c) For more than four (4) minutes of excerpts, the Employer shall pay the “applicable New Media program fee.”
- (4) Use of excerpts from “library product,” as defined in Paragraph A.(5) below, shall be paid pursuant to the percentage formula under Paragraph A.(2) of Section 2 of this Sideletter when revenue is generated.
 - (5) If excerpts from the current season of a series and excerpts from past seasons of the series, *i.e.*, “library product,” are used together on an ad-supported free to the consumer basis, then the percentage of “Employer’s gross” payment for library product shall apply to all such excerpts.
 - (6) Viral excerpts (excerpts containing no attributions or tune-in information) containing one (1) or more scenes may be used in New Media without payment if the viral excerpt(s) are free to the consumer and “non-commercial,”⁶ and the viral excerpts are distributed across multiple websites, in addition to, or other than, the Employer’s own or affiliated sites. Such uses shall be considered “non-commercial” even if the Employer’s own or affiliated websites contain advertising or sponsorships as long as there is no advertisement or sponsorship specifically tied to the viral excerpts.
 - (7) For all uses of excerpts for which the consumer pays, whether on a paid download, paid streaming, subscription, or other pay basis, the Employer shall pay 1.2% of “Employer’s gross,” as defined in Section 5 of this Sideletter.⁷
 - (8) There shall be no payment for free to consumer use of excerpts during the streaming window. If the Employer pays the “New Media program fee” pursuant to Paragraph A.(1)(b) of Section 2 of this Sideletter, then payment for the use of the entire program in New Media shall also constitute payment for the free to the consumer use of any portion thereof in New Media during the corresponding time period.
 - (9) All payments for the use of television program excerpts in New Media during the term of this Agreement shall be made to the DGA–Producer Basic Pension Plan.
 - (10) Except as provided above, all other uses of excerpts from television programs are subject to the excerpt provisions of the BA and FLTTA. Notwithstanding anything herein to the contrary, it is understood that the use of an excerpt from a television program in New Media shall not require any payment if the use would not require a payment under the television excerpt provisions of the BA or the FLTTA.
- B. Excerpts From Theatrical Motion Pictures, Made For Home Video Motion Pictures, And Long-Form Television Motion Pictures
- (1) Revise the first sentence of BA Paragraph 11-303 to provide that the length of excerpts from a theatrical motion picture that may be used for the purpose of advertising or exploiting the picture “shall not exceed the equivalent of 400 feet of 35mm film containing one or more scenes” and to further provide that the length of excerpts from a

⁶ A “non-commercial” use is a use from which the Employer and its related and affiliated entities, including, but not limited to, distributors and exhibitors, receive no revenues, including, but not limited to, advertising revenues.

⁷ This formula shall apply to a “hybrid” use where the consumer pays for the excerpt and advertising revenues are also derived by the Employer from such use. Such revenues shall be included in “Employer’s gross.”

theatrical motion picture that may be used for the purpose of advertising or exploiting the picture during the time period prior to and up to sixty (60) days after the initial theatrical release of the picture shall not exceed ten minutes.⁸ DGA agrees to freely grant waivers extending the sixty (60) day limit for motion pictures that are still in *bona fide* theatrical exhibition more than sixty (60) days after their initial theatrical release.

- (2) Revise BA Paragraph 20-909(a) to provide that excerpts not exceeding ten (10) minutes from motion pictures made for home video may be used for the purpose of advertising or promoting such picture prior to its release and up to sixty (60) days thereafter.
- (3) Revise BA Paragraph 11-207 to provide that excerpts not exceeding ten (10) minutes from long-form television motion pictures may be used for the purpose of advertising or promoting such picture prior to its telecast and up to sixty (60) days thereafter.
- (4) If the Employer accords any personal credit in connection with any use of excerpts exceeding the equivalent of 400 feet of 35mm film containing one or more scenes, then it also shall accord credit to the Director.⁹ If the Employer accords more than two (2) corporate credits in connection with any use of excerpts exceeding the equivalent of 400 feet of 35mm film containing one (1) or more scenes, then it also shall accord credit to the Director.
- (5) After the expiration of the sixty (60) day period referenced in Paragraph B.(1) above, the promotional use of excerpts from a theatrical motion picture, made for home video motion picture, or long-form television motion picture in New Media means any use of up to the equivalent of 400 feet of 35mm film containing one (1) or more scenes, that:
 - (a) is for the purpose of advertising or exploiting the viewing, rental or purchase of the motion picture; and
 - (b)
 - (i) includes tune-in information¹⁰ for the television network, channel, or service on which the motion picture is currently or will be telecast and occurs during the time period thirty (30) days before the exhibition of the motion picture on free television or basic cable television or during the time period beginning thirty (30) days before and ending forty-five (45) days after the initial exhibition of the motion picture on any pay television service; or
 - (ii) references the initial release of the motion picture or a “special edition” of the motion picture in the traditional home video market or in a separate home video format and occurs during the time period beginning sixty (60) days before and ending sixty (60) days after such release; or
 - (iii) includes instructions for renting, purchasing or streaming an electronic copy of the motion picture from the website or other new media platform on which the excerpt appears or a direct link to another website or new media platform where an electronic copy of the motion

⁸ The parties recognize that release dates for domestic and foreign exhibition may differ. Therefore, the time periods for free use of excerpts may differ.

⁹ The Creative Rights Committee shall determine whether to establish an exception to this rule for credits to not more than two starring actors in connection with such use.

¹⁰ In new media, tune-in information for promotional purposes is sufficient when it informs the consumer where he or she can view the motion picture from which the excerpt is taken. The tune-in information may appear on-screen or in a “click through” format, *i.e.*, accessible through links. It is agreed that the network, channel or station “bug” alone does not suffice. It is also understood that the Employer is not required to provide the same level of tune-in information as is commonly provided in traditional network television promotional announcements.

picture can be rented, purchased or streamed, and occurs in conjunction with the availability of an electronic copy of the motion picture for rental, purchase or ad-supported streaming via the Internet or other new media platform.

- (c) The receipt of revenue in connection with the uses set forth in Paragraphs B.(1) through (5) above shall not preclude them from being considered for the purpose of “advertising or exploiting” the motion picture.
- (6) All other uses of excerpts from theatrical motion pictures, made for home video motion pictures, and long-form television motion pictures in New Media are subject to the following excerpt fee provisions:
 - (a) For less than two (2) minutes of excerpts, the Employer shall pay \$50 or 1.2% of “Employer’s gross,” whichever is less, for theatrical motion pictures and \$50 or the “applicable New Media program fee,” whichever is less, for made for home video motion pictures and long-form television motion pictures;
 - (b) For two (2) minutes or more, but less than four (4) minutes, of excerpts, the Employer shall pay \$150 (\$157.50 as of July 1, 2010) or 1.2% of “Employer’s gross,” whichever is less, for theatrical motion pictures and \$150 (\$157.50 as of July 1, 2010) or the “applicable New Media program fee,” whichever is less, for made for home video motion pictures and long-form television motion pictures; and
 - (c) For more than four (4) minutes of excerpts, the Employer shall pay 1.2% of “Employer’s gross” for theatrical motion pictures and the “applicable New Media program fee” for made for home video motion pictures and long-form television motion pictures.
 - (d) No payment shall be required for the free to the consumer “non-commercial” promotional use of excerpts in excess of the equivalent of 400 feet of 35mm film containing one (1) or more scenes if the Director is credited. A “non-commercial” use is a use from which the Employer and its related and affiliated entities, including, but not limited to, distributors and exhibitors, receive no revenues, including, but not limited to, advertising revenues.
 - (e) Viral excerpts (excerpts containing no attributions or tune-in information) in excess of the equivalent of 400 feet of 35mm film containing one (1) or more scenes may be used in New Media without payment if the viral excerpt(s) are free to the consumer and “non-commercial,” and the viral excerpts are distributed across multiple websites, in addition to, or other than, the Employer’s own or affiliated sites. Such uses shall be considered “non-commercial” even if the Employer’s own or affiliated websites contain advertising or sponsorships as long as there is no advertisement or sponsorship specifically tied to the viral excerpts.
 - (f) For all uses of excerpts for which the consumer pays, whether on a paid download, paid streaming, subscription, or other pay basis, the Employer shall pay 1.2% of “Employer’s gross,” as defined in Section 5 of this Sideletter.¹¹
 - (g) All payments for the use of motion picture excerpts in New Media during the term of this Agreement shall be made to the DGA–Producer Basic Pension Plan.

¹¹ This formula shall apply to a “hybrid” use where the consumer pays for the excerpt and advertising revenues are also derived by the Employer from such use. Such revenues shall be included in “Employer’s gross.”

(h) Payment for the use of the entire made for home video motion picture or long-form television motion picture in New Media shall also constitute payment for the use of any portion thereof in New Media during the corresponding time period.

(7) All other uses of excerpts from theatrical motion pictures, made for home video motion pictures, and long-form television motion pictures in traditional media are subject to the excerpt provisions of the BA and FLTTA. Notwithstanding anything herein to the contrary, it is understood that the use of an excerpt from a theatrical motion picture, a made for home video motion picture or a long-form television motion picture shall not require any payment if the use would not require a payment under the theatrical or television excerpt provisions, as applicable, of the BA or FLTTA.

C. **New Media Excerpt Use Committee; Moratorium On Grievances And Arbitration Claims**

Given the novelty and complexity of the issues regarding the promotional versus non-promotional and commercial versus non-commercial use of excerpts in New Media, the parties agree to establish a Committee to review, discuss and categorize instances of such use in New Media to assist them in refining their mutual understanding of such uses and the DGA agrees not to file any grievances or arbitration claims arising out of or relating to a dispute over the use of excerpts in New Media that occurs during the period July 1, 2008 through December 31, 2008, provided that all payments as to which there is no *bona fide* dispute are timely made.

Section 4. Reuse Of Made For New Media Productions

A. **Derivative New Media Productions**

(1) What Initial Compensation Covers.

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

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

(a) If the Employer desires to use the Derivative New Media Production on advertiser-supported platforms beyond the thirteen (13) week period, but commencing within one (1) year after expiration of the thirteen (13) week period, then the Employer shall make a residual payment equal to three percent (3%) (three and one-half percent (3.5%) effective July 1, 2010) of the following “residual base for syndication” as consideration for a six (6) consecutive month period of use, commencing with the first day that the Derivative New Media Production is available for use on any advertiser-supported platform following the expiration of the thirteen (13) week period:

(i) For a Derivative New Media Production that is derivative of a dramatic television motion picture or program of the type covered by the BA or FLTTA, other than a non-network or network non-prime time dramatic program and other than a strip dramatic non-network or network non-prime time program of the type covered by the FLTTA, the “residual base for syndication” is the residual base used under the BA to pay runs in syndication for a dramatic free television motion picture of the same length as the Derivative New Media Production.

- (ii) For a Derivative New Media Production that is derivative of a non-network or network non-prime time dramatic program or a strip dramatic non-network or network non-prime time program of the type covered by the FLTTA, the “residual base for syndication” is the residual base under the FLTTA used to pay runs in syndication for a free television program of the same length as the Derivative New Media Production. The residual base shall be prorated for a Derivative New Media Production ten (10) minutes or less in length in five (5) minute increments, to a five (5) minute base equal to one-third of the 0-15 minute base for programs 0-5 minutes in length, and to a ten (10) minute base equal to two-thirds of the 0-15 minute base for programs more than five (5) minutes, but not more than ten (10) minutes, in length. In no event shall the residual payment be less than \$21.00.
 - (A) For example, for a Derivative New Media Production five (5) minutes in length that is derivative of a network prime time dramatic television motion picture, the residual payment is calculated by multiplying the residual base for syndication in the BA for a dramatic program 7 minutes and under in length (\$2,375 as of July 1, 2008) by 3% (or 3.5%, as applicable).
 - (B) As a further example, for a Derivative New Media Production three (3) minutes in length that is derivative of a non-network or network non-prime time dramatic program of the type covered by the FLTTA, the residual payment is calculated by multiplying the prorated residual base for syndication applicable to the length of the Derivative New Media Production by 3% (or 3.5%, as applicable). In this case, the “residual base for syndication” is one-third of the applicable minimum compensation for a 0-15 minute non-network or network non-prime time dramatic program, or \$1,553 (as of July 1, 2008). The applicable percentage rate (3% or 3.5%) is then applied to the \$1,553 figure.
 - (C) If, in the preceding example, the Derivative New Media Production were instead seven (7) minutes in length, then the residual base would be the prorated ten (10) minute rate, or \$3,106 (as of July 1, 2008), and the applicable percentage rate (3% or 3.5%) would then be applied to that figure.
- (iii) For a Derivative New Media Production that is more than ten (10) minutes in length and is derivative of a variety or quiz and game program of the type covered by the FLTTA (other than a network prime time variety special), and for a Derivative New Media Production of any length that is derivative of a program of the type covered under the “All Other Programs” category in the FLTTA, the “residual base for syndication” is the residual base under the FLTTA used to pay runs in syndication for a free television program of the same length and type as the Derivative New Media Production, *i.e.*, the applicable minimum initial compensation.
 - (A) For example, if the Derivative New Media Production is 22 minutes in length and is derivative of a network prime time quiz and game program, then the residual base is the applicable minimum compensation for a 16-30 minute network prime time quiz and game program, or \$3,916 (as of July 1, 2008). The applicable percentage figure (3% or 3.5%)

would then be applied to this base.

- (B) Similarly, if the Derivative New Media Production is four (4) minutes in length and is derivative of a program in the “All Other Programs” category, the residual base is the applicable minimum compensation for a five (5) minute or less, once per week program under the “All Other Programs” category, or \$611 (as of July 1, 2008). The applicable percentage figure (3% or 3.5%) would then be applied to this base.

- (iv) For a Derivative New Media Production that is ten (10) minutes or less in length and is derivative of a variety or quiz and game program of the type covered by the FLTTA (other than a network prime time variety special), the “residual base for syndication” is the residual base under the FLTTA used to pay runs in syndication for a free television program of the same length as the Derivative New Media Production, but the residual base shall be prorated as set forth in Paragraph (2)(a)(ii) above for a Derivative New Media Production ten (10) minutes or less in length.
 - (A) For example, for a Derivative New Media Production four (4) minutes in length that is derivative of a Network Prime Time Variety Series program of the type covered by the FLTTA, the residual payment is calculated by prorating the residual base for syndication and then multiplying the resulting figure by 3% (or 3.5%, as applicable). In this case, the “residual base for syndication” is the applicable minimum initial compensation for a 0-15 minute network prime time variety series program, one-third of which is \$1,662 (as of July 1, 2008). The applicable percentage rate (3% or 3.5%) is then applied to the \$1,662 figure.
 - (B) If, in the preceding example, the Derivative New Media Production were instead seven (7) minutes in length, then the residual base would be two-thirds of the 0-15 minute rate, or \$3,323 (as of July 1, 2008), and the applicable percentage rate would then be applied to that figure.

- (v) For a Derivative New Media Production five (5) minutes or less in length that is derivative of a Network Prime Time Variety Special program of the type covered by the FLTTA, the “residual base for syndication” is the minimum initial compensation for a variety program segment, or \$1,782 (as of July 1, 2008). The base for a Derivative New Media Production variety program more than five (5) minutes, but not more than ten (10) minutes, in length that is derivative of a Network Prime Time Variety Special is \$6,320 (as of July 1, 2008) and the base for a Derivative New Media Production variety program more than ten (10) minutes, but not more than fifteen (15) minutes, in length that is derivative of a Network Prime Time Variety Special is \$10,917 (as of July 1, 2008).

- (b) If the Employer desires to use the Derivative New Media Production on advertiser-supported platforms for all or any part of the six (6) month period immediately following the six (6) month period described in Paragraph (2)(a) above, but commencing within one (1) year after expiration of the thirteen (13) week period, then the Employer shall make a residual payment equal to three percent (3%) (three and one-half percent (3.5%) effective July 1, 2010) of the “residual base for syndication,” as that term is defined in Paragraph (2)(a) above, as consideration for a six (6) consecutive month period of use,

commencing with the first day that the Derivative New Media Production is available for use during such six (6) month period.

- (c) The parties recognize that payment for the aforementioned six (6) month periods may cover a period that is more than one year after the expiration of the thirteen (13) week period.

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

Upon expiration of the one (1) year period following expiration of the thirteen (13) week period or such longer period of time as is covered by the Employer's payments under Paragraph (2) above, if the Employer desires to use the Derivative New Media Production on advertiser-supported platforms, then it shall pay residuals at the rate of two percent (2%) of "Employer's gross," as defined in Section 5 of this Sideletter.

- (4) Use on Consumer Pay Platforms.

For use of a Derivative New Media Production on new media platforms for which the consumer pays (*e.g.*, download-to-own, download-to-rent, paid streaming), the Employer shall pay a residual equal to 1.2% of the "Employer's gross," as defined in Section 5 of this Sideletter, attributable to the period beyond the twenty-six (26) week period of use.

- (5) Use in Traditional Media.

The Employer shall pay residuals for the use of a Derivative New Media Production in "traditional media" (*e.g.*, free television, basic cable, pay television, home video) under existing BA and FLTTA formulas.

- (a) Free Television Exhibition

- (i) Except with respect to exhibition of Derivative New Media Productions that are more than fifteen (15) minutes in length as exhibited in network prime time, residual payments for free television exhibition of Derivative New Media Productions shall be computed as follows:

The new media exhibition of the Derivative New Media Production shall constitute the first run for purposes of calculating residual payments in free television. The residual base used to compute the payment shall be the residual base used to pay runs in syndication for a free television motion picture or program of the same category and length as the Derivative New Media Production. The residual base shall be multiplied by the percentage applicable to the run in question and the resulting product shall be the residual payment.

- (A) As an example, suppose that a five (5) minute dramatic Derivative New Media Production is exhibited for the first time in network prime time. The applicable residual base is the residual base used for dramatic programs seven (7) minutes and under in length exhibited in syndication (\$2,375 as of July 1, 2008). That figure will be multiplied by 50%, the percentage applicable to a second run on a network, for a residual payment of \$1,188.

- (B) If the same Derivative New Media Production were exhibited a second time on the network, that run would generate a residual payment of \$950 (\$2,375 x 40%).

- (ii) However, if the Derivative New Media Production is ten (10) minutes or less in length and is derivative of a program of the type covered under the non-network or network non-prime time strip dramatic, variety, or quiz and game categories covered by the FLTTA, then the residual base to be used in calculating the free television residual payment shall be prorated in five (5) minute increments as set forth in Paragraph (2)(a)(ii) above, to a five (5) minute rate for programs 0-5 minutes in length and to a ten (10) minute rate for programs more than five (5) minutes, but not more than ten (10) minutes, in length.
 - (A) For example, suppose a Derivative New Media Production in the non-network prime time quiz and game category that is ten (10) minutes in length is shown once on network television, but not in prime time. The residual base is calculated by prorating the residual base for 0-15 minute non-network prime time quiz and game programs (\$2,427 as of July 1, 2008) to take into account the shorter length of the Derivative New Media Production. In this case, the program is ten (10) minutes in length, so the prorated base is two-thirds of the 0-15 minute rate. The resulting residual payment is \$809 ($\$2,427 \times \frac{2}{3} \times 50\%$).
 - (B) If the same Derivative New Media Production were subsequently exhibited a second time on the network, that run would generate a residual payment of \$647 ($\$2,427 \times \frac{2}{3} \times 40\%$).
 - (C) If the same Derivative New Media Production were subsequently exhibited on television, whether on a network or not, the residual payment for that exhibition would be \$405 ($\$2,427 \times \frac{2}{3} \times 25\%$).
- (iii) The formula for reruns in network prime time of Derivative New Media Productions more than fifteen (15) minutes in length as exhibited is as follows: The new media exhibition of the Derivative New Media Production shall constitute the first run for purposes of calculating residual payments for use on free television. The residual payment shall be the amount payable under the BA or FLTTA for a rerun in network prime time of a free television motion picture or program of the same type and length as the Derivative New Media Production.
 - (A) For example, if a dramatic Derivative New Media Production twenty (20) minutes in length is exhibited in network prime time, the residual payment is \$11,772 (as of July 1, 2008), the same payment applicable to the rerun of a 30 minute dramatic program in network prime time.
 - (B) As another example, if a dramatic Derivative New Media Production forty-three (43) minutes in length is exhibited in network prime time, the residual payment is \$22,174, the same payment applicable to the rerun of a 60 minute dramatic program in network prime time.

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

For exhibition on pay television, the Employer shall pay residuals equal to 1.2% of "Employer's gross" pursuant to Paragraph 18-103 of the BA or Article 24, Section C. of the FLTTA, as applicable. For home video exploitation, the Employer shall pay residuals pursuant to Paragraph 18-104 of the BA or Article

24, Section D. of the FLTTA, as applicable. For exhibition on basic cable, the Employer shall pay residuals pursuant to Paragraph 11-108 of the BA or Article 7, Section E. of the FLTTA, as applicable.

B. Original New Media Productions

(1) What Initial Compensation Covers.

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

(2) Use on Consumer Pay Platforms.

- (a) No payment shall be due for any use on consumer pay platforms for an Original New Media Production budgeted below \$25,000 per minute of actual program material as exhibited.
- (b) For all uses of an Original New Media Production budgeted at or above \$25,000 per minute of actual program material as exhibited on consumer pay platforms (*e.g.*, download-to-own, download-to-rent, paid streaming) beyond the twenty-six (26) week period, the Employer shall pay a residual equal to 1.2% of the “Employer’s gross,” as defined in Section 5 of this Sideletter, attributable to the period beyond the twenty-six (26) week use period.
- (c) Paragraph (1) above shall apply to an Original New Media Production initially released on a consumer pay platform which is subsequently released on an advertiser-supported platform or vice versa.

(3) Use in Traditional Media.

The Employer shall pay residuals for the use of an Original New Media Production in “traditional media” (*e.g.*, free television, basic cable, pay television, home video) under existing BA and FLTTA formulas.

(a) Free Television Exhibition

- (i) Except with respect to exhibition of Original New Media Productions that are more than fifteen (15) minutes in length as exhibited in network prime time, residual payments for free television exhibition of Original New Media Productions shall be computed as follows:

The new media exhibition of the Original New Media Production shall constitute the first run for purposes of calculating residual payments in free television. The residual base used to compute the payment shall be the residual base used to pay runs in syndication for a free television motion picture or program produced for non-network or network non-prime time of the same category and length as the Original New Media Production. If the program category has both a high budget rate and a low budget rate, then the residual base shall be the base applicable to the low budget category. In the case of dramatic programs, the residual base described in the preceding sentence shall always be the base under the BA, rather than under the FLTTA. The residual base shall be multiplied by the percentage applicable to the run in question and the resulting product shall be the residual payment.

- (A) As an example, suppose that a five (5) minute dramatic Original New Media Production is exhibited for the first time in network prime time. The applicable residual base is the residual base used for network non-prime time dramatic programs seven (7) minutes and under in length exhibited in syndication (\$2,375 as of July 1, 2008). That figure is multiplied by 50%, the percentage applicable to a second run on a network, for a residual payment of \$1,188.
- (B) If the same Original New Media Production is exhibited a second time on the network, that run would generate a residual payment of \$950 ($\$2,375 \times 40\%$).
- (ii) However, if the Original New Media Production is ten (10) minutes or less in length and falls under the non-network or network non-prime time strip dramatic program, variety, or quiz and game categories in the FLTTA, then the residual base used in calculating the free television residual payment shall be prorated in five (5) minute increments, to a five (5) minute rate for programs 0-5 minutes in length and to a ten (10) minute rate for programs more than five (5) minutes, but not more than ten (10) minutes, in length. The residual base is one-third of the 0-15 minute rate for programs not more than five (5) minutes in length and two-thirds of the 0-15 minute rate for programs more than five (5) minutes, but not more than ten (10) minutes, in length.
- (A) For example, suppose an Original New Media Production in the non-network prime time quiz and game category that is ten (10) minutes in length is shown once on network television, but not in prime time. The residual base is two-thirds of the residual base for 0-15 minute non-network prime time quiz and game programs (\$2,427 as of July 1, 2008), or \$1,618, which is multiplied by 50% because it is treated as the second network run, for a residual payment of \$809. ($\$2,427 \times \frac{2}{3} \times 50\%$).
- (B) If the same Original New Media Production were subsequently exhibited a second time on the network, that run would generate a residual payment of \$647 ($\$2,427 \times \frac{2}{3} \times 40\%$).
- (C) If the same Original New Media Production were subsequently exhibited on television, whether on a network or not, the residual payment for that exhibition would be \$405 ($\$2,427 \times \frac{2}{3} \times 25\%$).
- (iii) The formula for reruns in network prime time of Original New Media Productions more than fifteen (15) minutes in length as exhibited is as follows: The new media exhibition of the Original New Media Production shall constitute the first run for purposes of calculating residual payments for use on free television. The residual payment shall be the amount payable for a rerun in network prime time of a free television motion picture or program produced for non-network or network non-prime time of the same category and length as the Original New Media Production. If the program category has both a high budget and a low budget rate, then the residual base shall be the base applicable to the low budget category. In the case of dramatic programs, the residual payment described in the preceding sentence shall be the amount payable under the BA rather than under the FLTTA.

- (A) For example, if a dramatic Original New Media Production twenty (20) minutes in length is exhibited in network prime time, the residual payment is \$11,772 (as of July 1, 2008), the same payment applicable to the rerun of a thirty (30) minute dramatic non-network or network non-prime time program in network prime time under the BA. If the Original New Media Production is run a second time in network prime time, the same payment (\$11,772) would be due.
- (B) As another example, if a dramatic Original New Media Production 43 minutes in length is exhibited in network prime time, the residual payment is \$22,174, the same payment applicable to the rerun of a sixty (60) minute dramatic non-network or network non-prime time program in network prime time under the BA. If the Original New Media Production is run a second time in network prime time, the same payment (\$22,174) would be due.
- (b) For exhibition on pay television, the Employer shall pay residuals equal to 1.2% of “Employer’s gross” pursuant to Paragraph 18-103 of the BA or Article 24, Section C. of the FLTTA, as applicable. For home video exploitation, the Employer shall pay residuals pursuant to Paragraph 18-104 of the BA or Article 24, Section D. of the FLTTA, as applicable. For exhibition on basic cable, the Employer shall pay residuals pursuant to Paragraph 11-108 of the BA or Article 7, Section E. of the FLTTA, as applicable.

Section 5. “Employer’s Gross”

A. Definition

The term “Employer’s gross,” for purposes of all re-uses in new media of motion pictures and television programs made for traditional media and of Original and Derivative New Media Productions (each hereinafter referred to as “such Picture”), shall be as defined in BA Paragraph 18-103(b).¹²

When the “Employer’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 “Employer’s gross” received by the Employer 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 Employer 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.

B. Agreements and Data

On a quarterly basis commencing September 30, 2008, within ten (10) business days after such request, the Employer shall provide for inspection by DGA’s designated employee or auditor, at Employer’s premises in Los Angeles, full access¹³ to all unredacted license, distribution, and other agreements pertaining to new media exploitation of covered pictures that were entered into during

¹² For sake of clarity, “Employer’s gross” specifically includes advertising revenues when the license, distribution, or other agreement provides for sharing in such revenues.

¹³ Full access includes access to all agreements, notwithstanding any confidentiality clause contained therein, and access to all sideletters, exhibits, addenda, and other ancillary documents.

the immediately preceding quarter.¹⁴ In any subsequent quarterly inspection, the DGA'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 Employer shall expeditiously provide, or make available, to DGA 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.

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 "Employer's gross" from such exploitation is received. The Employer shall accompany such payments with reports regarding the "Employer'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 Pictures in traditional media. Along with such payments, the Employer shall provide DGA with unredacted copies of all corollary distributor's, sub-distributor's, and exhibitor's statements relating to the reported "Employer's gross."

Where the Employer 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 DGA by the Employer will be treated as confidential pursuant to BA Section 17-400 and appropriate arrangements will be made to safeguard the confidentiality of that information.

E. Reservation of Rights

With respect to theatrical motion pictures and television programs, the Employer has agreed to a separate payment for this use on the Internet because Internet exhibition is at this time outside the primary market. The Employer 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 motion pictures or television programs 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) on the Internet. DGA 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 motion pictures or television programs so exhibited should be improved.

F. Other Terms and Conditions

Except as expressly provided herein, all other terms and conditions of the BA and FLTTA, including but not limited to BA Article 2 and FLTTA Article 20 and BA Section 17-400, shall apply; in the event of a conflict, the terms and condition of this Sideletter shall control.

Section 6. Sunset Clause

The parties recognize that this Sideletter is being negotiated at a time when the business models and patterns of usage of motion pictures and other productions in new media are in the process of exploration, experimentation and innovation. Therefore, all provisions of this Sideletter expire on the termination date of the 2008 BA and FLTTA

¹⁴ In the initial quarter, the Employer shall also provide DGA with access to all said agreements that were entered into between January 1, 2006 and June 30, 2008.

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

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