

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

At the culmination of the current round of collective bargaining, The American Federation of Musicians of the United States and Canada (“the Federation”) and the Producers (collectively “the parties”) reached this Memorandum of Understanding (“MOU”), subject to the Federation’s ratification procedure and with the understanding that the Federation’s bargaining committee will unanimously recommend ratification, for a successor agreement to the 2013-2016 Television Videotape Agreement (“Agreement”).

By the terms of this MOU, the Agreement shall be modified as set forth at pages 2-11 below. Unless a later date is specified, all changes are effective upon notice of ratification.

DocuSigned by:
Joy Axelrad
By _____ Date 11/30/2020
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ABC, Inc.

DocuSigned by:
[Signature]
By _____ Date 12/1/2020
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NBC, Inc.

DocuSigned by:
David Silberman
By _____ Date 11/30/2020
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CBS Broadcasting Inc.

AMERICAN FEDERATION OF MUSICIANS

By *[Signature]* Date 11-30-2020
Ray Hair, President

1. Term

Three years from notice of ratification.

2. Wages

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

3. Health

Amend the Health and Welfare contribution provisions in Exhibit I (E) and Exhibit III (E) to increase the daily rate by \$5 from \$25 to \$30 effective the Sunday of the first payroll period following notice of ratification and by an additional \$5 from \$30 to \$35 on the Sunday of the first payroll period following notice of ratification two years thereafter.

4. Use of Excerpts (“Clips”)

Modify Article 5(F)(2)(b)(i) as follows:

It is also agreed that in those situations where excerpts are utilized of a musician(s) on a program who also renders musical services for such program, then that musician(s) shall not receive any payment for ~~the first such excerpt(s). (that musician(s) shall receive a payment based on the formula set forth above commencing with the second excerpt and each subsequent excerpt utilized).~~

5. Strip Weekly “Best of” Show

Add the following new provision to Article 5(F)(2):

“On a television program that is the fifth episode in the week of a four-day-per-week strip program, or the sixth episode in the week of a five-day-per-week strip program, and the fifth or sixth episode consists mainly of excerpts from that week’s other episodes, musician(s) shall be paid, in lieu of all other compensation, a sum equal to the applicable minimum compensation for a fifth or sixth episode of the program, as applicable. The fifth or sixth episode shall be treated as a regular episode of the series, and will be subject to reuse fees as would any other episode.”

6. Reuse Payment Deadlines

Amend Article 8(A)(i) as follows:

Upon a second or subsequent showing of any programs made during the term of this Agreement, in any market in the United States, its territories and possessions (including

Puerto Rico) and in Canada; the following percentages of the scale payment set forth in Exhibits I and II hereto, shall be paid within ~~fifteen (15) business~~ thirty (30) calendar days of such reuse to each Instrumentalist, Leader, Contractor and Music Sound Consultant who originally performed services in connection with such program (including, but not limited to, rehearsal services rendered prior to performance), except that for “off network” shows (shows in syndication that were originally on network), these payments will be due within ~~thirty (30) business~~ one hundred and twenty (120) calendar days of the airing, and for programs produced under Exhibit I, Paragraph Q (Scoring for Daytime Serials and Strip Game Shows) and Exhibit I, Paragraph S (Theme Music), these payments will be due within thirty (30) business days of the date of the airing unless the producer elects to use the optional payment formula under Exhibit I, Paragraph S, in which case these payments will be due within twenty (20) business days of the date of the airing.

7. First Run Syndication Replays

Amend Article 8(A)(ii) as follows:

For replays of any first run syndication programs or any programs that occur between 2 a.m. and 6 a.m. in any market in the United States, its territories and possessions (including Puerto Rico) and in Canada a Special Replay Rate shall be established as follows:

[second unnumbered paragraph and table unchanged]

Any listed runs in this time period or of first run syndication programs will not be counted as “network runs.”

Should any programs, excluding first run syndication programs, be otherwise repeated on the network outside this time period 2 a.m. – 6 a.m. (e.g., a repeat of “The Tonight Show” in its regular time period), the rerun obligations under Article 8(A)(i) will apply.

[last unnumbered paragraph unchanged]

8. West Coast Replays of Award Programs

Add the following new provision to Article 8(A):

“(v) In the event of a limited West Coast rerun of an awards program which has aired live and then is rerun beginning on the same day as the live broadcast, the residual payment shall be 33% of the applicable rerun fee.”

9. Foreign Use

Modify Article 9(A) as follows:

[First unnumbered paragraph unchanged]

As used herein, except with respect to programs specified in Subparagraph (E)(i) below, the term “Foreign Residual Base” shall mean, with respect to each Instrumentalist, Leader, Contractor and Production Musician who performed services in connection with the program, the applicable scale set forth in Exhibits I and II hereof to a maximum of one hundred fifty percent (150%) of the applicable air rate plus guaranteed rehearsal for programs of sixty (60) minutes or less, and one hundred twenty-five percent (125%) of the applicable air rate plus guaranteed rehearsal for programs in excess of sixty (60) minutes. With respect to each such program or series, excluding award shows and sports programs, the foreign use compensation percentage shall be determined under the Distributor’s Foreign Gross formula (Section (2) below), ~~Foreign Area formula (Section (1) below)~~, unless the Producer elects to utilize the Foreign Area formula (Section (1) below) ~~Distributor’s Foreign Gross formula (Section (2) below)~~, subject to the limitation stated in Subparagraph (E)(i) below.

(1) Foreign Area Formula

This formula (instead of the Distributor’s Foreign Gross Formula set forth in Section (2) below) may be elected by the Producer for any such program or series except as otherwise provided in Subparagraph (E) of this Paragraph 9, provided that the Producer must give written notice of such election to the Federation prior to the first broadcast in any “Foreign Area,” and such election shall be irrevocable as to that program or series. Under this formula, such percentage shall be:

[subparagraphs unchanged]

(2) Distributor’s Foreign Gross Formula

(a) This formula applies to any such program or series, excluding award shows and sports programs, unless the Producer timely elects the Foreign Area formula in Section (1) above and except as otherwise provided in Subparagraph (E) of this Paragraph 9. (instead of the Foreign Area Formula set forth in Section (1) above) may be elected by the Producer for any such program or series except as otherwise provided in Subparagraph (E) of this Paragraph 9, provided that the Producer must give written notice of such election to the Federation prior to the first broadcast in any “Foreign Area,” and such election shall be irrevocable as to that program or series. Under this formula, such percentage shall be:

[subparagraphs unchanged]

[Paragraphs B-E unchanged]

10. License to Secondary Digital Channels

Add new provision to Article 13(C) as follows:

“(6) For any license to a secondary digital channel of a free television or basic cable program, an aggregate sum equal to 2% of Distributor’s gross receipts shall be paid to the American Federation of Musicians and Employers’ Pension Fund. Such AFM-EPF contribution shall not constitute contributions on behalf of any particular individual.”

11. No Discrimination

Amend Article 17 as follows:

The parties agree not to discriminate against any Musician because of race, sex, creed, color, national origin, ~~or~~ age, sexual orientation, gender identity or disability.

12. Cartage Fees

Amend Exhibit I, Paragraph D as follows:

Harp, Electric Piano	\$30.00 <u>\$40.00</u>
Tympani (whole set), String-Bass, Tuba, Drums, Amplifiers, Baritone Saxophone, Bass Saxophone, Cello, Contra Bass Clarinet and Contra Bassoon	\$6.00 <u>\$10.00</u> each

13. Late Payment Penalties

Modify Exhibit I, Paragraph P(e) and (f) as follows:

- (e) A penalty of twenty-five percent (25%) of the above mentioned amount due and unpaid (excluding the penalties in (a), (b), (c), and (d) above) if the delinquent payment is made between the 31st and 50th business days (excluding Saturdays, Sundays and holidays) after the payment was due. Such twenty-five percent (25%) penalty payment shall not be required unless written notice has been given (which may not be given before the 31st day after the date of receipt of their completed billings and all necessary and completed W-4 forms) that the employer is delinquent and the employer has not made the payment within thirty (30) business days after receipt of such notice.
- (f) Payments made after such fiftieth (50th) business day, provided the written notice specified in (e) was received by an authorized representative of the Company, shall require, in lieu of the said additional twenty-five percent (25%) payment, the payment of an additional amount equal to fifty-five percent (55%) of the initial amount payable, plus an additional ten percent (10%) payment for each thirty (30) days after the 50th day in which payment is not made. ~~Such fifty five (55%) and ten percent (10%) payments shall not be required unless written notice has been given (which may not be given before the 31st day after the date of receipt of their completed billings and all~~

necessary and completed W-4 forms) that the employer is delinquent and the employer has not made the payment within fifteen (15) business days after receipt of such notice.

14. Daytime Serials

- (a) Delete Exhibit I, Paragraph Q(1) “Annual Commitment” and Paragraph Q(2)(a) “Daytime Serials.”
- (b) The modifications in Sideletter 11, Paragraph 2 shall not apply to Daytime Serials and there shall be no payment for advertiser-supported streaming.

15. Theme Music

Amend Exhibit I Paragraph S(8)(b) as follows:

- (b) A producer may elect upfront payments for subsequent 52-week cycles of ~~one hundred thirty five percent (135%)~~ one hundred percent (100%) of scale, provided that such payment is made within twenty (20) business days of release. If the producer fails to make the payment within that time limit, the producer will forfeit the right to utilize this optional formula, will also be subject to applicable late payment penalties, and will be entitled to a credit against any subsequent cycle payment for any overpayment made. Theme music in use for five or more consecutive 52-week cycles may be renewed thereafter at 75% of scale.

16. Electronic Sell Through (“EST”)

Modify Paragraph 1(b) of Sideletter 11 as follows:

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

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

If the consumer pays for an EST copy of a program, the Company shall pay ~~1%~~ 1.5% of 20% of “Distributor’s gross,” as that term is defined in Paragraph 9 below, for the first 100,000 units, and ~~1.9%~~ 2.9% of 20% thereafter. Said amount shall be paid to the FMSMF.

17. Advertiser-Supported Streaming

Replace Paragraph 2 of Sideletter 11 with the following new provision:

- A. Instrumentalists who perform live on a program or as the program is being recorded and those who provide music preparation services for such Instrumentalists shall receive payment for the streaming of television programs on a free to the consumer basis on advertiser-supported services transmitted via New Media, the production of

which commences on or after the date the 2020-2023 Television Videotape Agreement becomes effective, in accordance with the following:

- (1) The Producer shall be entitled to a free “streaming window” for a seven (7) consecutive day period, except it shall be twenty-four (24) consecutive days for the first seven (7) episodes of a new series and any one time program; and seventeen (17) consecutive days for children’s programming.
- B. There shall also be a seven (7) consecutive day free streaming window surrounding each rerun on broadcast television of a program made for initial exhibition on broadcast television, for which free television residuals are payable. The seven (7) consecutive day period shall be measured separately for each city in the United States and Canada. If the program is rerun more than once in any seven (7) consecutive day period, the free streaming window shall nevertheless be limited to a single seven (7) consecutive day period surrounding one of the runs, which shall be determined by the Producer. During the streaming window, the Producer may make a television program available for streaming without payment for such use. The streaming window may be divided between the period immediately prior to and immediately following the initial exhibition of the program on television in any ratio determined by the Producer, except that for each episode of a series in its first year, the streaming window may commence up to thirty (30) days before the initial exhibition on television of the episode.

No payment is due, if during the free streaming period windows provided above, the Producer makes available a television program, production of which commences on or after the date the 2020-2023 Television Videotape Agreement becomes effective, for exhibition on a free-to-the consumer, advertiser-supported service transmitted via the internet or mobile or other device or on the advertiser-supported video-on-demand service (“AVOD”) of a multichannel video programming distributor (“MVPD”) or any similar service that currently exists or may hereafter be developed.

- (1) If outside the streaming window, but within one (1) year of the expiration of the streaming window, the Producer makes available a television program, production of which commences on or after the date the 2020-2023 Television Videotape Agreement becomes effective, for exhibition on a free-to-the-consumer, advertiser-supported service transmitted via the internet or mobile or other device or on the advertiser supported video-on-demand service (“AVOD”) of a multichannel video programming distributor (“MVPD”) or any similar service that currently exists or may hereafter be developed, then the Producer shall make a residual payment in the following amount as consideration for a twenty-six (26) consecutive week period beginning on the first day that the television program is made available as described above following the expiration of the streaming window: two percent (2%) of the program fee applicable to the television program.
- (2) If the Producer desires to make the television program available as described above for all or any part of the twenty-six (26) consecutive week period immediately following the twenty-six (26) consecutive week period described in the preceding

paragraph, but within one (1) year of the expiration of the streaming window, then the Producer shall make a residual payment in the following amount as consideration for a twenty-six (26) consecutive week period beginning on the first day that the television program is made available during such twenty-six (26) consecutive week period: two percent (2%) of the program fee applicable to the television program.

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

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

- (4) During the streaming window, or during either of the twenty-six (26) consecutive week periods described in Paragraphs 2.B.(1) and (2) above, the Producer may allow excerpts of those television programs that are being made available to be used on free to the consumer, advertiser-supported services transmitted via New Media without any additional payment therefor.
- (5) Upon expiration of the one (1) year period following expiration of the streaming window, if the Producer desires to make available a television program, production of which commences on or after the date the 2020-2023 Television Videotape Agreement becomes effective, for streaming on a free-to-the-consumer, advertiser-supported service transmitted via the internet or mobile or other device or on the advertiser-supported video-on-demand service (“AVOD”) of a multichannel video programming distributor (“MVPD”) or any similar service that currently exists or may hereafter be developed, then it shall pay residuals at the rate of one and two tenths percent (1.2%) of “Distributor’s gross,” as that term is defined in Paragraph 9 below.

18. Virtual MVPD

Add the following new provision to Sideletter 11:

During the course of the 2016 negotiations, the parties discussed how the landscape of the free television marketplace has evolved from the past – when the exhibition of a given television program was only available to the viewer in the home on a television set on a linear channel at a specific scheduled time – to the current marketplace, commonly referred

to as ‘TV everywhere,’ where the viewing public, in addition to viewing a program on a linear channel at a scheduled time, is also provided the time-shifted option to view the same program on a variety of digital devices on a video-on-demand (‘VOD’) basis. The bargaining parties agree that television exhibitions on a linear channel provided through an MVPD, whether such channel was a free broadcast channel or a basic cable channel, were considered exploitation of free television rights even though the consumer paid a monthly fee to access such programming.

Consistent with the above, the bargaining parties agree that with respect to new internet-delivered “virtual MVPD” services, such as Sling TV and Sony’s PlayStation Vue, and other like services, such as CBS All Access, (collectively referred to hereafter as “vMVPD Services”), any VOD rights which are associated with exhibition of the program on a linear channel on the vMVPD Service (commonly referred to as “stacking rights”) shall be considered exploitation of free television rights and not a form of pay or subscription television. Such “stacking rights” shall be treated the same as if such programs were exhibited on traditional MVPDs.

Under this framework, the parties clarified the treatment of covered television programs¹ on vMVPD Services as described below. It is understood that in order to qualify as an “vMVPD Service” under this Sideletter, such service must include at least one free television or basic cable linear channel that is non-exclusive to that service and is generally made available for exhibition on other traditional and/or virtual MVPD services.

1. When the License for Linear Channel Exhibition of the Covered Television Program or Series on the vMVPD Service Includes On-Demand Availability
 - a. When a linear channel on an MVPD is also offered on a vMVPD Service (such as when ABC is offered on Sling TV), no additional payment is required for the linear channel availability on the vMVPD Service.
 - b. When a covered television program is available on demand on the vMVPD Service pursuant to a license agreement with a channel or network that includes the right to exhibit the covered television program or other episodes of the same series on a linear channel on the vMVPD Service, the same free streaming windows and residual formulas that apply to the on-demand availability of a covered television program on an MVPD are applicable. (See Paragraph 2.A. and B. of this Sideletter.)
 - c. The use of excerpts from a covered television program on the vMVPD Service pursuant to a license agreement with a channel or network that includes the right to exhibit the covered television program or other episodes of the same series on a linear channel on the vMVPD Service shall likewise be governed by the provisions of Paragraphs 2.B.(4) and 8 of this Sideletter.

¹ It is understood by the parties that the provisions set forth herein apply to all television programs produced under this or any AFM Videotape Agreement, the principal photography of which commences on or after the date the 2020-2023 Television Videotape Agreement becomes effective.

- d. The fixed residual payment applicable under Paragraph 2.B. of this Sideletter covers on demand availability on a free-to-the-consumer, advertiser-supported new media service and on an MVPD (or any similar service that exists or may hereafter be developed) and vMVPD Service.
 - e. The on-demand availability provisions under Paragraph 2.B. of this Sideletter apply regardless of whether there are advertisements.
 - f. When the Producer directly licenses the right to exhibit a covered television program on a linear channel available only on a vMVPD Service(s), the supplemental exhibition on such channel, as well as any associated stacking rights and the use of excerpts, shall be treated in the same manner as a license of a free television program to basic cable. The exhibition rights on the linear channel shall be subject to the applicable formula set forth in Article 13 for release to Basic Cable, and the stacking rights and use of excerpts shall be subject to the same free streaming windows and residual formulas that apply to the on-demand availability and use of excerpts of a covered television program pursuant to Paragraphs 2.A., 2.B., and 8 of this Sideletter.
2. When the License Is for On-Demand Availability on the vMVPD Service

By contrast, when the Producer licenses the right to exhibit a covered television program, or one or more episodes of a covered television series, on an on-demand basis on the vMVPD Service, and such rights are not associated with the right to exhibit the program or episodes of the series on a linear channel on the vMVPD Service, the parties agree that Paragraph 1.A. of this Sideletter, which governs licenses to consumer pay new media platforms for a limited period or fixed number of exhibitions, shall apply. In addition, when a program is made exclusively for on-demand availability on a vMVPD Service, it shall be treated as having been made for a subscription consumer pay new media platform subject to the provisions of Sideletter 12 governing Programs Made for New Media.

19. High Budget SVOD

Add the following new provision to Sideletter 12:

High Budget Derivative and Original Dramatic New Media Productions Made for Initial Exhibition on a Subscription Video-On-Demand Consumer Pay Platform

(1) “High Budget SVOD Programs” Defined

The Basic Rates in Exhibits I, II and III of this Agreement shall apply to Musicians employed on a “High Budget SVOD Program” which is defined as a dramatic Original or Derivative New Media Production made for initial exhibition on a subscription consumer pay New Media platform which meets the following criteria:

Length of Program as Initially Exhibited*	“High Budget” Threshold
20-35 Minutes	\$1,000,000 and above
36-65 Minutes	\$2,500,000 and above
66 Minutes or more	\$3,000,000 and above
* Programs less than 20 minutes are not considered “high budget,” regardless of their budgets.	

(2) Prospective Application

The Basic Rates in Exhibits I, II and III of this Agreement shall be applicable prospectively only. They shall not apply to:

- (a) any program or series that would otherwise qualify as a “High Budget SVOD Program” within the meaning of this Sideletter, for which the principal photography of the program, in the case of a one-time program, or the principal photography of the first episode, in the case of a series, commenced prior to the date the 2020-2023 Television Videotape Agreement becomes effective; or
- (b) any program or series that would otherwise qualify as a “High Budget SVOD Program” within the meaning of this Sideletter for which the principal photography of the program or the first episode of the series commenced after the date the 2020-2023 Television Videotape Agreement becomes effective, if such program or series was produced pursuant to the terms of a bona fide license agreement with fixed and definite terms entered into by the Producer prior to the date the 2020-2023 Television Videotape Agreement becomes effective. However, if such license agreement is entered into subject to conditions precedent, then all such conditions must be satisfied prior to the date the 2020-2023 Television Videotape Agreement becomes effective.

20. Drafting

- (a) Amend Article 7 (Pension Welfare Funds) to reflect that the contribution rate increased to 12.1% effective January 29, 2019 in accordance with the Pension Rehabilitation Plan.
- (b) Any additional necessary conforming changes to reflect the terms of the MOU.