

MEMORANDUM OF AGREEMENT

2018-2020 SAG-AFTRA National Code of Fair Practice for Sound Recordings
October 18, 2018

1. Foreign Licensing

a. *Definition and Scope:*

- i. A Foreign Traditional Use License shall be defined as a license issued to a licensee domiciled outside the United States for exploitation anywhere in the world of a covered sound recording in a television broadcast, program for cable exhibition, commercial, motion picture, and/or video game.
- ii. For coverage under this provision, the Licensee must be *bona fide* domiciled outside the United States.

b. *H&R*

- i. Except as otherwise provided in paragraph (c) below, there shall be no H&R contributions payable with respect to such licenses.

c. *Conversion Fees*

The conversion fee payable to the SRDF for Foreign Traditional Use Licenses (i.) shall be 4.0% of Receipts, with the minimum fee for such licenses of \$150, and a maximum fee of \$4,500 (ii.) provided that in the event a commercial is actually exploited within the United States, its possessions and territories (excluding incidental use as set forth in Section 6(F)(a) of the 2015-2017 MOA) the licensee shall pay additional conversion fees to the SRDF equal to the full conversion payment (including H&R contributions and payroll costs) for the exploitation in the United States in accordance with the existing provisions set forth in the preamble to the Code, subject to the remaining provisions of this paragraph (c).

Upon request for a conversion fee estimate for a Foreign Traditional Use commercial not produced by a SAG-AFTRA Commercials Contracts signatory that is to be exploited within the United States, SAG-AFTRA shall in good faith provide the potential licensee (with a copy to the Company) such estimate within five (5) SAG-AFTRA business days, not including the date of receipt of the request, provided that the request for the estimate is made using a form or online system provided by SAG-AFTRA that contains all information necessary to identify the proposed licensee and commercial, the track or tracks involved, and the expected media buy. The estimate shall provide the conversion fee cost based on the media buy information provided for one Artist in the following categories (a) solo/duo,

(b) group of 3-5, (c) group of 6-8, and (d) group of 9 or more (or any other groups that may be established in the future as set forth in the Commercials Code).

Effective January 1, 2020, if SAG-AFTRA fails to provide such estimate in a timely manner in response to a complete request in accordance with the provisions above, notwithstanding any other provision of this Agreement, in the event the Commercial for which the estimate was requested is actually exploited within the United States, the licensee shall be required only to pay the minimum amount for the (1) session fee, (2) applicable media type(s), (3) P&H, and (4) payroll costs in accordance with the following schedule:

		Solo/Duo	Group 3-8	Group 9+
1	SESSION	\$505.04	\$284.83	\$201.59
2	PLUS (PER APPLICABLE MEDIA TYPES)			
	Broadcast Network TV	\$505.04	\$284.83	\$201.59
	Wild Spot	\$505.04	\$284.83	\$201.59
	Cable	\$505.04	\$284.83	\$201.59
	Internet	\$631.30	\$356.04	\$251.99
	New Media	\$631.30	\$356.04	\$251.99
	Social Media	\$75.76	\$42.72	\$30.24
	PLUS			
3	+Pension & Health	18%	18%	18%
4	+Payroll Costs	22%	22%	22%
	Examples:			
	Network & Cable Only (Session + Network Use + Cable Use + 18% + 22%)	\$2,121.17	\$1,196.29	\$846.68
	Internet Only (Session + Internet + 18% + 22%)	\$1,590.88	\$897.22	\$635.01
	Internet & Social Media (Session + Internet Use + Social Media Use + 18% + 22%)	\$1,696.94	\$957.03	\$677.35

The foregoing paragraph shall not be applicable in the event SAG-AFTRA's failure to provide a timely estimate is the result of force majeure.

Upon request, SAG-AFTRA will work in good-faith to identify the number of Artists on a particular track.

d. *Invoice and Reporting*

- i. Company will work with its foreign affiliates to have the foreign affiliates:
 1. send each Licensee under a Foreign Traditional Use License an invoice showing the conversion fee payable in respect of such license, except as provided under paragraph c above,
 2. provide a copy of the invoice to the SRDF at the time the invoice is issued,
 3. request that the Licensee provide another copy of the Invoice or other identifying information with the payment to the SRDF, and
 4. encourage Licensee to promptly remit the conversion fee to the SRDF.
 - ii. Each such invoice shall contain the recording name, featured artist name, the licensee, the specific nature of the use (including the title, if possible), the date of the license, the amount of the license fee, the amount of the conversion fee (except as provided under paragraph c above), instructions regarding how to remit payment to the SRDF.
 - iii. For each Foreign Traditional Use License reported to the Company, the Company will, on a semi-annual basis, provide the Union with a report showing, to the extent received by the Company, the recording name, featured artist name, the specific nature of the use (including the title, if possible), and the amount of the Receipts for the license fee.
- e. This provision is not to be used to evade or circumvent the limitations on Low Fee Traditional Use licenses in the United States.

2. **Grievance and Arbitration Timeline**

- a. Move last paragraph of 7(a) to Grievance and Arbitration provision and revise as follows:

All disputes or controversies between any Company and SAG-AFTRA arising out of or in connection with this Code, shall be deemed abandoned if not made in writing invoking the Grievance and Arbitration provision within twelve (12) months from the date that the party knew or should have known of an event giving rise to the claim, but in no event later than twenty-four (24) months after the event giving rise to the claim, except for

claims relating to conversion fees for foreign use licenses, which must be filed no later than forty-eight (48) months after the event giving rise to the claim. The limitations of the previous sentence do not apply to claims by Royalty Artists for non-payment of royalties.

- b. Modify Section 3 (Grievance and Arbitration) to provide for a sole neutral arbitrator to be selected by a mutually agreed method.
- c. Change the words “demand for arbitration” in the penultimate paragraph of Section 3 to “writing invoking the Grievance and Arbitration provision.”
- d. Add that any demand for arbitration must be made within twelve (12) months of the writing invoking the Grievance and Arbitration provision, but no more than thirty (30) months after the event giving rise to the claim, except for claims relating to conversion fees for foreign use licenses, for which demands for arbitration must be made within twelve (12) months of the writing invoking the Grievance and Arbitration provision, but no later than sixty (60) months after the event giving rise to the claim. The limitations of the previous sentence do not apply to claims by Royalty Artists for non-payment of royalties.

3. **Mobile Applications**

- a. Extend and make permanent mobile applications provisions of 2015 Sound Recordings Code.

4. **H&R Audit Process and Interpretations** – SEE SIDELETTER

5. **Economic**

a. **Wages:**

- i. January 1, 2019 – 3.00%
- ii. January 1, 2020 – 3.00%
- iii. December 31, 2020 – 2.50%

b. **H&R:**

- i. New Group Cap for Groups of six or more - Six times the current SAG-AFTRA Health Plan I Minimum Eligibility Level (currently \$33,600 for a total cap of \$201,600)
- ii. H&R on Audio Streams – As of July 1, 2018, replace H&R obligation on streaming payments with the following:

The Company will make an additional SRDF payment equal to the H&R contribution rate multiplied by 50% of its base SRDF Payment for Streams.

In addition, the Union shall have the unilateral discretion to direct the SRDF to allocate a portion of the base SRDF Payment to the SAG-AFTRA Health Plan and/or AFTRA Retirement Fund as an additional H&R contribution for streaming; provided, however, that the total H&R contributions made to the Funds with respect to streaming (as described in the preceding sentence and the first portion of this sentence) shall not exceed an amount equal to the H&R contribution rate multiplied by 100% of the base SRDF Payment for Streams.

iii. H&R Rate – As of July 1, 2019, increase rate to 13%.

c. **Contingent Scale** – To be removed from contract.

d. **Conversion Fee Late Payments** – Payments for Low Fee Traditional Uses shall be paid within 90 days of the end of the 6 month period and interest will be payable on late payment of such conversion fees and H&R contributions in accordance with Section 5.5 of the 2015-2017 Memorandum of Agreement.

6. Low Fee Traditional Use

a. Clarify that an audio/visual program made for initial exhibition in “new media” does not include uses in programs comparable to traditional full-length, scripted television programs that are produced for initial exhibition on paid streaming services (e.g., “House of Cards,” “Transparent”).

b. The Union’s proposed grievance defined in and subject to the parties’ August 16, 2018 Tolling Agreement shall be withdrawn and not refiled. Nothing in this provision shall affect grievances or claims filed or pursued against third parties.

7. **Term:** Three years, starting January 1, 2018 and ending December 31, 2020.

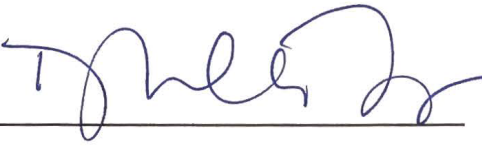
Dated: October 18, 2018

For WARNER BROS. RECORDS, ATLANTIC RECORDING CORPORATION, SONY MUSIC ENTERTAINMENT, UMG RECORDINGS, INC., CAPITOL RECORDS, LLC and HOLLYWOOD RECORDS, INC.

By: _____

Michael J. Lebowich

**For SCREEN ACTORS GUILD - AMERICAN FEDERATION OF TELEVISION AND
RADIO ARTISTS**

By: 

Duncan Crabtree-Ireland

SAG-AFTRA & INDUSTRY SIDELETTER ON AGREED INTERPRETATIONS
OF NATIONAL CODE OF FAIR PRACTICE FOR SOUND RECORDINGS
RELATING TO HEALTH & RETIREMENT ISSUES

1. Contributions Relating to Royalty Artists Signed to Another Company

When an Artist signed to an exclusive recording agreement with a signatory Company appears on sound recording released by another signatory Company (“Releasing Company”), that Artist shall be a “Borrowed Guest Artist.” A Borrowed Guest Artist shall receive non-royalty based compensation from the Releasing Company in an amount not less than scale. All non-royalty based compensation paid (whether at scale or overscale) shall be considered “Gross Compensation” for the Borrowed Guest Artist and shall be subject to the payment of contributions to the Health and Retirement Funds.

When a Borrowed Guest Artist is paid a royalty by the Releasing Company from a reduction or allocation of the royalty payments owed to a Royalty Artist with an exclusive recording agreement with the Releasing Company, such compensation is a contractual royalty obligation to a third party, and thus shall not be included in “Royalty Earnings” or otherwise be deemed as “Gross Compensation” for the Borrowed Guest Artist. For avoidance of doubt, in the event a royalty is paid through the Borrowed Guest Artist’s home Company, Health and Retirement Fund contributions will be due on such royalty up to the cap for that Company provided for by the Code. In the event that the Royalty Artist has not exceeded his/her earnings cap, H&R contributions will be made collectively for the Royalty Artist and Borrowed Guest Artist who is receiving a portion of the royalty up to the Royalty Artist’s earnings cap.

When an Artist that is signed to an exclusive recording agreement with a signatory Company appears on the sound recording of another artist signed to the same signatory Company, that Artist shall be a “Same Company Guest Artist.” A Same Company Guest Artist that receives any non-royalty based compensation shall be treated in the same manner as a Borrowed Guest Artist above. In the event that the Same Company Guest Artist receives a royalty from a reduction or allocation of the royalty payment of the primary Royalty Artist, those royalties shall be treated in the same manner as a Borrowed Guest Artists in the same circumstance. In the event that the Same Company Guest Artist receives a separate royalty payment, the payment shall be treated in the same manner as all other Royalty Earnings for that Artist.

In the event a tribute or compilation album is produced by a signatory Company, the royalties paid to Artists appearing on the album who are not signatory to an exclusive recording agreement with the Releasing Company shall be subject to Health and Retirement Fund contributions paid by the Releasing Company subject to a cap per track of 10% of the otherwise

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applicable Royalty Artist cap for a single artist under the Code. For avoidance of doubt, in the event a royalty is paid through the Guest Artist's home Company, Health and Retirement Fund contributions will be due on such royalty up to the cap for that Company provided for by the Code.

2. Soundtrack Albums

When a Company that releases the soundtrack album pays the film company an All-In royalty and does not own the master, no contributions will be made. Nothing in this provision will affect, or limit, a company's or producer's obligations to remit contributions under any other SAG-AFTRA collective bargaining agreement, including, but not limited to, the SAG-AFTRA Codified Basic Agreement of 2014, as amended.

3. Master Purchase Agreements

When a Company enters an agreement to purchase future recordings from an independent third party, such as another record label or independent production company, the Company will have an obligation to contribute to the Fund only when the Company controls the proposed recordings in a manner consistent with the control it would exercise pursuant to a standard recording agreement (e.g., has creative control over the final recording, approves budgets, etc.).

4. Licensing Agreements

When a Company enters into an agreement to exploit and/or control a recording for a limited period, the Company will be required to contribute to the Fund only if it controlled production of the recording in a manner consistent with the control it would exercise pursuant to a standard recording agreement (e.g., has creative control over the final recording, approves budgets, etc.). It is understood that registering the copyright does not mean the Company owns the recording, nor does such registration preclude a particular arrangement from being a license.

5. Producer vocals on recordings by royalty artists signed exclusively to the producing Company

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When a Record Producer provides a vocal performance on a sound recording, the Record Producer shall receive non-royalty based compensation from the Releasing Company in an amount not less than scale, and contributions shall be paid based on minimum scale and not on any royalty payments or advances against royalty payments. If Company also hires the Record Producer separately as a "Guest Artist" to provide vocal services for that specific sound recording, the applicable "Guest Artist" provisions in (1) shall apply. For the avoidance of doubt, any documents stating that the Producer's base or royalty fee include payment for vocal work without an additional agreement identifying specific and additional compensation for the vocal performance (i.e., as a "Guest Artist"), shall not require contributions above minimum scale.

6. Contributions on Foreign Withholding Taxes

"Royalty Earnings" does not include any foreign tax or other mandatory foreign government withholding applicable to royalties for performances of covered services under the Code.

7. Transfer of Rights without Assumption

If a signatory label transfers rights in a recording for which it is responsible under the Code to a non-signatory under the Code without securing the required transfer of rights agreement(s), the signatory label remains responsible for Fund contributions on those recordings, except where such transfer is to the Artist, an entity controlled by the Artist, or the entity that originally granted the rights for such recordings. In such circumstances, the Fund shall seek the actual royalty statements. If the Fund is unable to get such statement, the Company shall provide a reasonable estimate of the anticipated receipts for the relevant period, which shall be subject to rebuttal by the Fund.

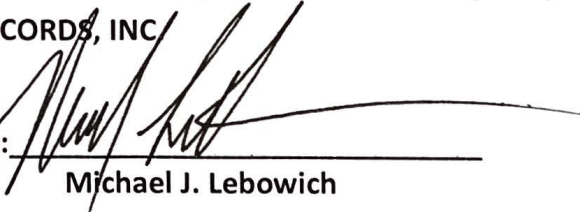
8. Overpaid Contribution Refunds

No claim for a refund of erroneously paid Schedule C health and retirement contributions shall be available more than two years after the date of payment of such contributions to the Fund, if the refund of such contributions would result in the termination, rescission, reduction of, or repayment for, health benefits coverage has been elected by and provided to the participant, or the termination, rescission, reduction of, or repayment for, pension or retirement benefits already paid or payable to a retired participant. Nothing herein shall preclude a refund for any other overpaid contributions.

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Dated: October 18, 2018

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