



AMERICAN FEDERATION OF
TELEVISION AND RADIO ARTISTS

2009 RADIO RECORDED COMMERCIALS CONTRACT
MEMORANDUM OF AGREEMENT

This Memorandum of Agreement is made by and between the American Federation of Television and Radio Artists (hereinafter referred to as "AFTRA" or "Union") and the ANA-AAAA Joint Policy Committee on Broadcast Talent Union Relations (hereinafter referred to as the "JPC") acting on behalf of advertisers and advertising agencies who have authorized the JPC to act for them, a list of which has been filed with AFTRA and incorporated herein, and others who sign this Memorandum of Agreement and/or Letters of Adherence hereto, hereinafter referred to individually as "Producer".

1. **TERM AND EFFECTIVE DATE**

This contract shall be for a term commencing April 1, 2009 and continuing to and including March 31, 2012 and shall continue in effect thereafter until terminated by either party by 60 days notice in writing to the other. Except as otherwise specifically provided, the terms and provisions hereof shall apply to all commercials produced on or after April 1, 2009.

For services performed in commercials made between April 1, 2009 and June 15, 2009, all retroactive payments must be made not later than June 16, 2009.

2. **APPLICABILITY OF PRIOR CONTRACTS**

Except as is otherwise expressly provided herein, the terms and provisions of the 2006 Extension to the 2003 AFTRA Radio Recorded Commercials Contract shall apply to all commercials produced hereunder. The making of this agreement shall not modify any terms and provisions in any existing contracts of employment which are more favorable to the principal performer than the terms and provisions of this agreement. All Section references used below are references to the 2003 Contract as amended by the 2006 Extension.

3. **COMPENSATION**

Increase all compensation 5.35% effective April 1, 2009. Please refer to the Rate Chart beginning on Page 22.

4. **SECTION 8. WILD SPOTS – COMPENSATION AND LIMITATION**

Increase the unit weights in Section 8.I as follows:

<u>Market</u>	<u>From</u>	<u>To</u>
Atlanta	5	6
Charlotte	2	3
Dallas-Ft. Worth	6	7
Houston	5	6
Las Vegas	1	2
Orlando-Daytona Beach	3	4
Phoenix	4	5
Raleigh-Durham	2	3
San Francisco	6	7
Tampa-St. Petersburg	4	5

5. **SECTION 65. AFTRA HEALTH AND RETIREMENT FUNDS**

- A. Effective April 1, 2009, contributions to the AFTRA Health and Retirement Funds (“the Funds”) shall increase by one-half of one percent (.5%) and contributions to the AFTRA Industry Cooperative Fund (“AICF”) shall increase two-tenths of one percent (.2%) for a total contribution of 15.5%.

Effective January 1, 2012, no Producer shall be obligated to make Health & Retirement contributions on behalf of any individual performer on gross compensation in excess of \$1,000,000 for covered services in a contract year where all such compensation has been paid on the basis of a single contract with a single Producer.

- B. In cases when a Performer’s personal services agreement or loan-out agreement allocating a portion of the performer’s compensation between performing services covered by this Contract (“covered services”) and all other services (“non-covered services”), such allocations must be stated in the agreement as either a flat amount or a percentage of the total compensation.

With respect to such allocations, the Guidelines for Allocations in Overscale Agreements, detailed in subsection **c.** below, have been agreed upon between AFTRA and Producer to provide non-binding guidance in determining such allocations (the “Allocation Guidelines”).

Producer shall designate multi-service contract status on the contribution remittance reports filed with the Funds when contributions are tendered in connection with services related to a multiple-service agreement [See **Exhibit C** on Page 21]. Producer agrees to provide unredacted copies of all contracts relating to services provided under such multiple-service agreements to AFTRA and to the Funds at the time of submission of initial contribution

reports to the Funds or, should Producer fail to do so, Producer agrees to provide such unredacted copies upon AFTRA's or the Funds' written request. If justified by unusual circumstances, Producer may request that AFTRA's or the Funds' representatives inspect the agreements at a mutually-agreed location in *Los Angeles* or *New York*. AFTRA will be entitled to demand unredacted copies of agreements inspected if needed solely for the purpose of arbitrating a dispute hereunder. As a condition of providing any copies of contracts, the Producer may require that either or both AFTRA and the Funds execute a confidentiality agreement substantially in the form attached hereto as **Exhibit A** on page 18.

Where non-covered services are involved and there is a dispute between AFTRA and the Producer over the portion of the compensation allocated to covered services, the parties will use their reasonable efforts to negotiate a mutually agreeable allocation and failing to come to an agreement, the dispute will be resolved pursuant to the arbitration provisions contained in the Radio Recorded Commercials Contract. In any such arbitration, the performer's "customary salary" for performing services and the Allocation Guidelines shall be given substantial consideration in resolving such dispute. The arbitrator shall also consider the weighting of services between covered and non-covered services, and may also consider any other evidence submitted by the parties that the arbitrator deems to be probative."

Exhibit B. H&R Remittance Report/Production Report shall be modified to include a space to designate multi-service contract status.

- C. Add the following as a new **Exhibit F**:

INTRODUCTION

These Guidelines have been developed by the American Federation of Television and Radio Artists ("AFTRA") and the ANA-AAAA Joint Policy Committee on Broadcast Talent Relations ("JPC") to assist Producers and Performers in determining appropriate allocations between covered and non-covered services as required pursuant to the AFTRA Health and Retirement Funds provision of the AFTRA Radio Recorded Commercials Contract.

These Guidelines provide an important indication to producers regarding those situations in which contributions to the Funds may be considered by AFTRA to be inadequate. In those situations, producers will therefore have an opportunity to bring to AFTRA's attention circumstances that a Producer believes warrants different contribution levels. In making the allocation, if a Producer believes that the application of these Guidelines is inappropriate in a particular situation, or has questions about the application or appropriateness of the Guidelines in a particular situation, the Producer may bring those concerns to AFTRA's and the JPC's attention. In particular in the case of music tour contracts, or race car driver endorsement contracts meriting special consideration, Producers may wish to contact AFTRA and the JPC.

Provided a Producer allocates in accordance with the following Guidelines, such allocation shall be rebuttably presumed to be proper in any proceeding brought to challenge such allocation under the **ARBITRATION** and **AFTRA Health and Retirement Funds** provisions of the AFTRA Radio Recorded Commercials Contract.

GUIDELINES

Radio Commercial services include the right to produce and use commercials, whether or not that right is exercised.

- a) 100% of contract amount is reportable where compensation paid is solely for covered services.
- b) A 50% allocation for a multi-service contract where AFTRA radio commercial services are involved with non-covered services. This allocation also applies where no AFTRA radio commercials are produced or used in a given period but the Producer has a right to do so and to hold the performer to exclusivity. Notwithstanding the foregoing, in the event the performer's principal source of income in the entertainment industry is derived from modeling services, the allocation may be 40% for such contracts.
- c) In lieu of any other allocations provided herein, 20% allocation for a multi-service contract of currently active or inactive athletes who endorse a product/brand with which they are strongly associated and who generally wear the corporate logo/image on their clothes or equipment or who have product lines or other collateral merchandise associated with their endorsement. This allocation does not apply to athletes advertising products that are unrelated to their sport. Guideline B would be applicable in those cases.
- d) In lieu of any other allocations provided herein, 40% allocation for commercials used exclusively outside the United States.
- e) In lieu of any other allocations provided herein, 40% allocation for a performer in commercials for products or product lines which the performer has had an active role in developing and features the performer's name or image in the product, product line, or collateral merchandise.
- f) In lieu of any allocations provided herein, where compensation is comprised, in part, of royalties or stock, 40% of any upfront non-refundable guarantee to performers appearing in commercials for products or product lines, where performers have a financial interest in the sale of products or product lines, and other non-covered services are involved.

- g) Where contracts under paragraph A hereof include services covered by either the SAG and/or AFTRA Television Recorded Commercials Contracts and the AFTRA Radio Recorded Commercials Contract, allocations for covered services may be split 80% to services covered by either the SAG and/or AFTRA Television Recorded Commercials Contracts and 20% to services covered by the AFTRA Radio Commercials Contract.

Where contracts include non-covered services and services covered by either the SAG and/or AFTRA Television Recorded Commercials Contracts and the AFTRA Radio Recorded Commercials Contract, allocations for covered services may be split 90% to services covered by the SAG and/or AFTRA Television Recorded Commercials Contracts and 10% to services covered by the AFTRA Radio Recorded Commercials Contract. This provision is not intended to reduce the allocation to covered services to less than 50% as specified in Guideline b (e.g. a contract with covered services in both television and radio would result in a guideline allocation of 45% to television services and 5% to radio services for a total 50% allocation).

6. **SECTION 2. PAYMENT DUE DATE**

Adjusting Disputed Overpayments, Section 1.C.1.

Amend Section 1.C.1 to reflect that all performers must be given prior written notice of any recoupment. The notice must include the overpayment amount, dates, commercial title(s), advertiser and advertising agency involved, and the reason for recoupment.

7. **POLICY OF NON-DISCRIMINATION / AFFIRMATIVE ACTION AND DIVERSITY**

- A. Amend Section 54.A as follows (additional language underlined and in bold):

“The parties hereto reaffirm their commitment to a policy of nondiscrimination and fair employment in connection with the engagement and treatment of principal performers and extra performers (“performers”) on the basis of sex, race, color, creed, national origin, age, disability, **gender identity** or sexual orientation in accordance with applicable State and Federal law, nor shall any inquiry be made with respect to a performer’s marital status, **gender identity**, sexual orientation, national origin, age, creed or disability.”

B. With reference to Section 54.B, the following Sideletter will be added to the Contract:

“Dear Mr. Dunn,

During negotiations between the JPC and AFTRA 2009 AFTRA Radio Recorded Commercials Contract (hereafter, “the Contract”), the JPC confirmed its commitment to encouraging diverse, inclusive casting and specifically agreed that it is desirable for Producers, outside casting directors and breakdown services to routinely communicate the JPC and AFTRA’s commitment to diverse, inclusive casting to agents and performers when casting for radio commercials.

To that end, the JPC will meet with AFTRA within 90 days following the ratification of the Contract to discuss reasonable measures by which the JPC will encourage Producers, outside casting services and breakdown services to include the following language in casting specifications circulated to agents and performers:

“We are committed to diverse, inclusive casting. For every role, please submit performers without regard to disability, race, age, color, national origin, sexual orientation or gender identity, or any other basis prohibited by law, unless otherwise specifically indicated.”

The JPC will, at a minimum, send a bulletin to its members encouraging them to incorporate this language into their casting specifications, including those drafted by outside casting directors and breakdown services, but will also give serious consideration to other measures that may be suggested during the above-referenced meeting with the Unions. The JPC also recognizes that AFTRA is available to recommend language for casting specifications so as to ensure that no improper inquiries are made with respect to a performer’s marital status, sexual orientation, national origin, age, creed, disability or gender identity and will so advise its members as part of the above-referenced communications.

The JPC understands that the above-referenced communications are intended to encourage the implementation of policies expressed in Section 54 of the AFTRA Radio Recorded Commercials Contract throughout the industry. For its part, AFTRA recognized during the negotiations that Producers may have legitimate casting objectives which may limit the appropriateness of certain submissions.

Sincerely,
Douglas J. Wood”

- C. Amend Section 54.F to reflect the following:

"Producer shall not use any **documented** information ~~contained on~~ **obtained in connection with the** INS Form I-9, **or its successor**, to discriminate against any performer on the basis of sex, race, age, national origin, **or disability** in violation of the contract or law.

To that end, **information on the** INS Form I-9 ~~information~~ **or its successor** which is protected by equal employment laws or by this contract shall be maintained in confidence."

8. **SECTION 61. TRANSFER OF RIGHTS – ASSUMPTION AGREEMENT**

- A. Add a new subsection to Section 61 as follows:

"Prior to the commencement of the recording of any radio commercial involving a performer providing both covered and non-covered services to an advertiser, the Producer shall obtain from the advertiser, if the parties are separate entities and the advertiser is not itself a signatory to this agreement, and deliver to AFTRA, a separate written assumption agreement substantially in the form on Page ____:"

- B. Amend the Transfer of Rights/Assumption Agreement as follows:

This agreement is effective _____. Transferee hereby agrees with Transferor that all radio commercials covered by this agreement (listed below*) are subject to the AFTRA ~~2003~~ Radio Recorded Commercials Contract under which the commercials were produced **and that the parties contemplate a transfer of exclusive rights in the covered commercials from the Transferor to the Transferee.**

Transferee hereby agrees expressly for the benefit of AFTRA and ~~its members~~ **the performers** affected thereby, to make all payments of use fees as provided in said Contract and all Social Security, Withholding, Unemployment Insurance and Disability Insurance payments and all appropriate contributions to the AFTRA Health and Retirement Funds required under the provisions of said Contract with respect to any and all such payments and to comply with the provisions of said Contract, including specifically the arbitration provisions and procedures contained therein, with respect to the use of such radio commercials and required records and reports. It is expressly understood and agreed that the rights of Transferee to utilize such radio commercials shall be subject to, and conditioned upon the prompt payment to the Performers involved of all compensation as provided in said Contract, and AFTRA, on behalf of the Performers involved, shall be entitled to injunctive relief in the event such payments are not made.

In the event of a subsequent transfer, assignment, sale or other disposition by Transferee of any commercials covered by this agreement, Transferee agrees to give written notice, by

mail, to AFTRA of each such subsequent transfer, etc. within 30 days after the consummation thereof, and such notice shall specify the name and address of the transferee, assignee or purchaser. Transferee shall also deliver to AFTRA a copy of the agreement with the transferee, assignee or purchaser, which agreement shall be in substantially the same form as this agreement.

Failure to obtain the required written assumption agreement is considered a substantial breach of this agreement.

9. SECTION 63. ARBITRATION

- A. AFTRA agrees that any and all arbitration decisions rendered under this Agreement, regardless of whether any JPC authorizer is a party to such decision, shall be immediately provided to the JPC upon receipt by AFTRA.

AFTRA further agrees to provide copies of all prior decisions in its possession rendered on or after January 1, 2000.

- B. Add a new Subsection to Section 63 as follows:

Prior to filing any arbitration pursuant to this subsection ____, a request to meet and confer must first be made to facilitate conciliation of the dispute. Such meet and confer must commence and conclude within a reasonable period of time after the request. A demand for arbitration may be filed upon the completion of the meet and confer or after thirty (30) calendar days following the request to meet and confer, whichever occurs first. In the event of an arbitration filed pursuant to subsection ____ hereof [H&R Allocation provision], AFTRA and the Producers waive their rights to a hearing and agree to submit the grievance to the arbitrator on written submissions.

Each party shall file its initial written submission within the ten (10) days following designation of the arbitrator, each party providing a copy of its initial written submission to the other party within three (3) days following submission to the arbitrator. Such submission will include the amount of the allocation to covered services the submitting party believes to be appropriate and such other facts and evidence that support the position of the submitting party. Each party shall thereafter have the right but not the obligation, to file a reply to the other party's initial written submission within five (5) days of its receipt of the other party's initial written submission.

Upon the request of either party, the arbitrator may extend the time limitations of this paragraph at his or her discretion. Unless further written materials are requested by the arbitrator, no further submissions shall be permitted. In any arbitration under this subsection ____ involving a Producer who is an authorizer to the ANA-AAAA Joint Policy Committee ("JPC"), the JPC shall be entitled to receive copies of documents, notices, and awards

rendered in such proceedings, subject to the same confidentiality restrictions as agreed by the parties to the proceeding or ordered by the arbitrator. Such documents, notices and awards will be provided to the JPC legal counsel by AFTRA within thirty (30) days following an award. The submissions and awards relating to such proceedings shall not be published or otherwise made available beyond (a) the JPC's legal counsel, and (b) AFTRA.

Unless an authorizer that is a party to an arbitration hereunder objects, such submissions and awards relating to such proceedings may also be made available to (a) any JPC authorizer that subsequently becomes a party to an arbitration hereunder or receives a notice to meet and confer hereunder, or (b) any JPC authorizer that represents an advertiser that is not an authorizer that subsequently becomes a party to an arbitration hereunder or receives a notice to meet and confer hereunder. Except as otherwise provided by this subsection ____, such arbitration will be conducted in accordance with the provisions of this Section 63 and, to the extent not inconsistent, the Labor Arbitration Rules of the American Arbitration Association. With the exception of cases involving fraud or undisclosed conflict of interest, no proceeding to vacate an arbitration award issued pursuant to this subsection ____ shall be permitted.

Any decision of an arbitrator hereunder shall be final and binding upon all parties to the proceeding and judgment upon such award may be entered by any party in the highest court of the forum, State or Federal, having jurisdiction.

This subsection ____, shall sunset at the end of the term of this contract and shall be deemed not to be a part of this agreement for purposes of future contract negotiations unless otherwise mutually agreed by the parties.

10. **INTERNET**

Amend Section 16.A as follows:

- A. Internet Use of Commercials Made for Initial Use on Either Radio or New Media
 - i. Producer shall have the right to use a commercial made initially for Radio or New Media on the Internet unless, at the time of engagement, the performer withholds consent by checking the box provided for this purpose on the front of the contract.
 - ii. In addition to the rights and obligations set forth in **Section 16.A** and **Section 23. Editing and Dubbing**, if the Producer wishes to obtain extended or unlimited editing rights for Internet use, then the Producer shall bargain freely with performer and shall pay performer compensation in such amount as shall be

agreed by direct bargaining with the performer or the performer's agent.

Neither AFTRA nor the Producers will promulgate minimum rates for extended or unlimited editing rights for the Internet.

iii. Cycles of Internet Use

Provided the right to Radio and/or New Media use of the commercial has not terminated, Producer may initiate Internet use of the commercial for an initial cycle of either an eight-week cycle of use or a one-year cycle of use or until termination of the maximum period of use, if earlier.

Upon conclusion of either the eight-week cycle of use or the one-year cycle of initial Internet use, Producer may use the commercial for additional consecutive eight-week cycles or a one-year cycle of use for the remainder, if any, of the Maximum Period of Use for the same rates set forth in **Section 16.A.4**. Producer shall have the right to Internet use during these additional cycles whether or not holding fees have been paid for Radio or New Media use.

If the Maximum Period of Use has terminated or has not been renewed, Producer shall have no further right to Internet use unless each performer in the commercial consents to such use after separate bargaining for compensation at rates no less than those provided below.

iv. Compensation

- A. Eight-Week Cycle of Use- not less than 133% of the applicable session fee
- B. One-Year Cycle of Use- not less than 350% of the applicable session fee

Amend Section 16.B as follows:

B. Commercials Made for Initial Use on the Internet

- i. All provisions of **Section 16.B** of the 2003 AFTRA Radio Recorded Commercials Contract as amended by 2006 Extension shall continue to apply to any commercials produced for initial use on the Internet that are produced prior to April 1, 2011.

Effective on April 1, 2011, except as modified below, the terms and conditions set forth in this Contract shall apply to performers in commercials made for the Internet. Use fees shall be paid in accordance with **Section 16.A**.

- ii. In order to provide for fair negotiation for the use of commercials produced under this section, Producer shall make every effort to fully inform performers, at the time of audition and hire, of the anticipated number of commercials, and the anticipated use, e.g. websites, etc.

The performer's Standard Employment Contract shall note the number of commercials produced.

In addition to the rights and obligations set forth in **Section 16.B** and **Section 23. Editing and Dubbing**, if the Producer wishes to obtain extended or unlimited editing rights for Internet use, then the Producer shall bargain freely with the performer and shall pay the performer compensation in such amount as shall be agreed by direct bargaining with the performer or the performer's agent.

Neither AFTRA nor the Producers will promulgate minimum rates for the extended or unlimited editing rights for the Internet.

- iii. The Producer shall make no use of an Internet commercial on radio or in any other medium unless the Producer bargains for the right to such other use at no less than the rates provided in the collective bargaining agreement applicable to such other use.

In the event of Radio or New Media use of an Internet commercial, Producer shall also pay each performer, for Internet use, not less than the difference, if any, between the amount previously paid for Internet use and the amount which would have been payable for use of a radio commercial on the Internet as provided in **Section 16.A.4.B.**

11. **NEW MEDIA**

Add a new Section 17.A as follows:

This section applies to all commercials made for or designed for exhibition on New Media, defined as digital, electronic, or any other type of delivery platform including, but not limited to, commercials delivered to mobile phones, and other digital and electronic media. The term New Media is intended to be all inclusive of digital, electronic, or any other type of delivery platform, whether now known or unknown. The term New Media does not apply to commercials on radio or the Internet.

A. New Media Use of Commercials Made for Initial Use on Either Radio or the Internet

- i. Producer shall have the right to use a commercial made initially for either Radio or the Internet on New Media unless, at the time of engagement, the performer withholds consent by checking the box provided for this purpose on the front of the contract.

- ii. In addition to the rights and obligations set forth in **Section 17.A** and **Section 23. Editing and Dubbing**, if the Producer wishes to obtain extended or unlimited editing rights for New Media use, then the Producer shall bargain freely with performer and shall pay the performer compensation in such amount as shall be agreed by direct bargaining with the performer or the performer's agent.

Neither AFTRA nor the Producers will promulgate minimum rates for extended or unlimited editing rights for New Media.

- iii. Cycles of New Media Use

Provided the right to Radio and/or Internet use of the commercial has not terminated, Producer may initiate New Media use of the commercial for an initial cycle of either an eight-week cycle of use or a one-year cycle of use or until termination of the maximum period of use, if earlier.

Upon conclusion of either the eight-week cycle of use or the one-year cycle of initial New Media use, Producer may use the commercial for additional consecutive eight-week cycles or a one-year cycle of use for the remainder, if any, of the Maximum Period of Use for the same rates set forth in **Section 17.A.4**. Producer shall have the right to New Media use during these additional cycles whether or not holding fees have been paid for Radio or Internet use.

If the Maximum Period of Use has terminated or has not been renewed, Producer shall have no further right to New Media use unless each performer in the commercial consents to such use after separate bargaining for compensation at rates no less than those provided below.

- iv. Compensation

- A. Eight-Week Cycle of Use- not less than 133% of the applicable session fee
- B. One-Year Cycle of Use- not less than 350% of the applicable session fee

Add Section 17.B as follows:

B. Commercials Made for Initial Use on New Media

- i. All provisions of the 2006 Extension to the 2003 AFTRA Radio Recorded

Commercials Contract shall continue to apply to any commercials produced for initial use on New Media that are produced prior to April 1, 2011.

Effective on April 1, 2011, except as modified below, the terms and conditions set forth in this Contract shall apply to performers in commercials made for New Media.

- ii. In order to provide for fair negotiation for the use of commercials produced under this section, Producer shall make every effort to fully inform performers, at the time of audition and hire, of the anticipated number of commercials, and the anticipated platforms for such use, e.g. mobisodes, cell phones, etc.

The performer's Standard Employment Contract shall note the number of commercials produced.

In addition to the rights and obligations set forth in **Section 17.B** and **Section 23. Editing and Dubbing**, if the Producer wishes to obtain extended or unlimited editing rights for New Media use, then the Producer shall bargain freely with the performer and shall pay the performer compensation in such amount as shall be agreed by direct bargaining with the performer or the performer's agent.

Neither AFTRA nor the Producers will promulgate minimum rates for the extended or unlimited editing rights for New Media.

- iii. The Producer shall make no use of a New Media commercial on radio or in any other medium unless the Producer bargains for the right to such other use at no less than the rates provided in the collective bargaining agreement applicable to such other use.
- iv. In the event of Radio or Internet use of a New Media commercial, Producer shall also pay each performer, for New Media use, not less than the difference, if any, between the amount previously paid for New Media use and the amount which would have been payable for use of a radio commercial on New Media as provided in **Section 17.A.4.B.**

12. **SECTION 66. PUBLIC SERVICE ANNOUNCEMENTS**

A. Ad-Council Waiver

AFTRA shall grant a 3-year experimental waiver allowing Ad Council PSAs to contain solicitations for donations. Other non-profit organizations who are not members of the Ad Council may apply for similar waivers. This provision shall be co-terminus with the expiration of the 2009 AFTRA Radio Recorded Commercials Contract.

B. PSA Template

AFTRA agrees to institute a standard PSA waiver template letter which shall not restrict any of the rights granted to Producer, hereunder. (See **Exhibit B** on Page 20).

13. **RADIO STREAMING OF COMMERCIALS**

AFTRA will continue to engage in interest-based discussions with the Industry to address the issue of streaming of Radio Commercials. These discussions began during the 2009 negotiations of the Radio Recorded Commercials Contract.

14. **SPANISH LANGUAGE**

Industry-Union Collaboration Regarding Spanish Language Commercials

The JPC will use best efforts to facilitate dialogue among AFTRA, SAG, the Spanish-language performer community, the Association of Hispanic Advertising Agencies, JPC authorizer advertisers and agencies who are active in Spanish-language marketing, and such additional third parties (e.g., marketing firms, payroll houses, production companies) as the parties may mutually agree upon, with the objective of finding ways to expand the production of Spanish-language commercials under the Unions' contracts. Specifically, the JPC and the Unions shall coordinate meetings at least annually at which the above-referenced participants shall endeavor to establish reasonable and specific action items designed to promote union-covered Spanish-language commercial production. Where the JPC and the Unions mutually agree on the desirability and reasonableness of such action items, they shall use best efforts to cooperate in the achievement of those action items.

15. **MONITORING**

- A. The JPC shall meet with AFTRA within 90 days of ratification to discuss feasible methods of providing additional information regarding usage.
- B. Monitoring Consultant

The JPC and the AFTRA agree to jointly engage a consultant for the purpose of designing solutions for an automated monitoring system for both traditional and digital media. Such a consultant should collaborate with AFTRA and JPC representatives to devise specific recommendations on how to structure a system that meets the needs of both parties. The industry agrees to grant the consultant access to their current monitoring practices and to make their experts available for the study, subject to such reasonable measures as may be necessary to safeguard confidential and proprietary information. The JPC and AFTRA recommend that this initiative be financed by AICF grants.

To the extent that this Monitoring Study and the Television Commercials GRP Pilot Study are conducted by different consulting companies, or different teams within the same consulting company, the parties agree that the consultants shall all be required to cooperate and collaborate with one another to maximize the efficiency with which each consulting company or team accomplishes its work and to minimize the overall cost and burden to the parties. Specifically, the consulting companies or teams shall be required to share data and work product, identify common tasks and eliminate redundant efforts, coordinate schedules, and take such other reasonable measures as may facilitate the efficient completion of both studies.

C. Ad-ID

Both the JPC and AFTRA agree to encourage the use of Ad-ID throughout the industry.

16. **INTERNET AND NEW MEDIA MODEL STUDY**

The JPC and AFTRA shall jointly engage an independent consultant to study how best to measure the usage of commercials on the Internet and New Media. The objective of the study shall be to identify a practical structure and a metric or metrics that can serve as the basis of a usage-based compensation system for performers performing in commercials on the Internet and New Media, whether made for initial use on the Internet or New Media or later moved to the Internet or New Media.

AFTRA and the JPC shall cooperate fully with the consultant by providing data and access to experts and processes, subject to such reasonable measures as may be necessary to safeguard confidential and proprietary information. The JPC and AFTRA shall each recommend that the AICF approve funding for the study. The study shall be completed on or before June 1, 2011 unless one of the parties is unavailable due to circumstances beyond the parties' control, including conflicting negotiation-related obligations, or the deadline is otherwise extended by mutual agreement of the parties.

DRAFTING

1. REQUIRED RECORDS & REPORTS

Section 60

Add "New Media" to the list of information to be supplied upon AFTRA's request.

2. **EXHIBIT A – STANDARD EMPLOYMENT CONTRACT**

Add **Made-for Internet** and **Made-for New Media**

3. **EXHIBIT D – AUDITION REPORT**

Add new column "O" for "Other" under *ETHNICITY*.

CLARIFICATIONS

1. **SECTION 43. THEATRICAL OR INDUSTRIAL EXHIBITION**

Use of commercials in taxicabs, jumbotrons or other media that traditionally have been treated as Industrial use shall continue to be accorded such treatment (as opposed to New Media) regardless of whether such commercials are transmitted in a digital format.

2. **SECTION 65. AFTRA HEALTH AND RETIREMENT FUNDS**

The JPC and AFTRA agree that Health and Retirement contributions continue to be payable on behalf of deceased performers.

Except as modified herein, all terms and conditions of the 2003 AFTRA Radio Recorded Commercials Contract as amended by the 2006 Extension shall remain unchanged.

AMERICAN FEDERATION OF TELEVISION
AND RADIO ARTISTS

BY: _____

DATE: _____

ANA-AAAA JOINT POLICY COMMITTEE ON
BROADCAST TALENT UNION RELATIONS

BY: _____

DATE: _____

EXHIBIT A

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (the "Agreement") is entered into by and between _____ ("Company") , on the one hand, and _____ (the "Auditors") and the AFTRA Health and Retirement Funds ("the Funds") on the other hand, with respect to the Auditors' payroll compliance review of Company's books and records on behalf of the Funds ("Audit") for the period _____.

As a condition of Company making its books and records available to the Auditors for the purposes of the Audit, the Auditors and the Funds hereby agree to treat confidentially and limit access to all information contained therein and otherwise furnished by Company in connection with the Audit. The Auditors and the Funds further agree to treat confidentially and limit access, as described below, to any and all documents, records, analyses, compilations, studies, reports, and other materials prepared by the Auditors in whole or in part from the information furnished by Company in connection with the Audit or which contain, mention, or reflect any such information.

The Auditors and the Funds agree that such information and materials shall not be disclosed to any party except: (i) to the Auditors and the Funds, and AFTRA, their respective directors, officers, agents, employees and attorneys in their capacities such as, on a need-to-know basis only, solely in connection with the Audit, provided that the foregoing parties shall be bound by the provisions hereof; (ii) to the extent necessary to comply with law or legal process, in which event Company shall receive sufficient advance written notice of such proposed disclosure so as to object and/or request that the information or materials receive confidential treatment, and the Auditors and the Funds shall use reasonable efforts to ensure confidential treatment of the information or materials subject to disclosure; and (iii) in any action by the Funds arising out of the Audit, provided Company is given advance notice by the Funds of their intent to offer such information or materials in such action and the opportunity to object and/or request that the information or materials receive confidential treatment.

The Auditors and the Funds acknowledge that Company may be entitled to injunctive and other equitable relief, in addition to any all legal remedies, in the event of a breach or threatened breach of this Agreement.

The Auditors and the Funds agree to inform each of its respective employees, agents, or other representatives conducting or otherwise connected with the Audit of the foregoing requirements and to take reasonable steps to obtain their compliance with the terms hereof.

This Agreement shall not be construed as establishing any precedent with respect to any requirement for confidentiality agreements in any future audit. The Funds hereby expressly reserve their position that a

confidentiality agreement is not a precondition for access to records under the applicable collective bargaining agreement. Company hereby expressly reserves its position that a confidentiality agreement is a precondition for access to records under the applicable collective bargaining agreement.

IN WITNESS THEREOF, this Confidentiality Agreement has been executed and delivered by the individual parties hereto in their respective names by their duly authorized officers or representatives.

By: _____

Title: _____

Dated: _____

[COMPANY]

By: _____

Title: _____

Dated: _____

AFTRA HEALTH AND RETIREMENT FUNDS

By: _____

Title: _____

Dated: _____

Radio PSA Approval Waiver Template

In response to your request, AFTRA agrees to grant a Public Service Announcement (“PSA”) waiver on any media covered under the AFTRA Radio Recorded Commercials Contract for a one-year period of use, subject to performers’ consent and the following conditions:

1. Performer(s) must be notified at the time of audition or engagement that AFTRA has granted a waiver and that the applicable PSA rate allows for unlimited use not to exceed one year beginning not later than 15 working days after the first delivery of the PSA to any covered media or 13 weeks after commencement of the maximum use period, whichever first occurs.
2. All Performer(s) must be compensated at not less than the applicable minimum fee(s) pursuant to Section 66 of the 2009 AFTRA Radio Recorded Commercials Contract. AFTRA Health & Retirement contributions are payable on the gross compensation paid to the performer(s).
3. All media time must be donated. Should the PSA be utilized on purchased time, full use and reuse fees must be paid to the performer(s) in accordance with the applicable provisions of the AFTRA Radio Recorded Commercials Contract, beginning with the first use on purchased media time, subject to **Section 33** “Maximum Period of Use of Commercials”.
4. No commercial advertising or commercial sponsorship is permitted within the script, or on the landing page of any website referenced in the PSA. Additionally, PSAs may not contain solicitations for donations unless specifically approved by AFTRA.
5. Should Producer wish to utilize the PSA(s) beyond the initial one-year use period, Producer shall obtain written consent from AFTRA and the principal performer(s) for such extended use. Any individual performer shall have the right to negotiate for compensation for such extended use.

AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS

AFTRA RADIO RECORDED COMMERCIALS ■ H&R REMITTANCE REPORT ■ PRODUCTION REPORT

IMPORTANT INSTRUCTIONS

1. Use this form for Production, Use and Reuse, or Editing Reporting.
2. Make checks payable to AFTRA Health and Retirement Funds and send with a copy of this form to AFTRA Health and Retirement Funds, Post Office Box 13673, Newark, New Jersey, 07188-3673. Send talent checks with a copy of this report to your local AFTRA office and retain a copy. For inquiries to AFTRA H&R, call 1-800-562-4690 or 212-499-4800.
3. The filing by Producer of this Report shall be deemed an acceptance by Producer of the Health & Retirement Funds provisions of the applicable collective bargaining contract of AFTRA and an agreement by Producer to be bound thereby and by the Health & Retirement Funds established thereunder.

HEALTH AN RETIREMENT

Reporting Co. _____

Address _____

Account No. _____ Date _____

This sheet is ____ of ____ pages.

a) Total Gross Payment (sum of column H all pages) \$ _____

b) Contribution: _____ % \$ _____

_____ % \$ _____

c) Total Contribution _____ % \$ _____

Make checks payable to:

AFTRA HEALTH AND RETIREMENT FUNDS

Product _____

Advertiser _____

Recording Studio _____

City _____

Recording Date(s) _____

Advertising Agency _____

City _____

Producer _____

First Air Date(s) _____

Enter Category Symbol in Column (C)			
A	Actor, Actress	S6	Singer Group 6-8
ANN	Announcer	S9	Singer Group 9 or more
S	Singer Solo or Duo	C	Contractor
S3	Singer Group 3-5	SE	Sound Effects Performer

TYPE OF USE	DATES OF CYCLE	CYCLE WEEKS				NY	CHI	LA	# Units Weighted Cities	# Units Non-weighted Cities	NO. OF USES	
		1	4	8	13						26	39
Wild Spot or Local Program												
Network Program												
Regional Network Program												
Dealer (26 weeks)												
Foreign (18 months)												
				8	52							
Internet												
New Media												
Special Comments:												

(A) Social Security Account Number	(B) PERFORMER'S NAME Last First Initial			(C) Cate-gory	Fill in when reporting Sessoin Fee				(G) If an Upgrade, insert amount already paid for cycle	(H) GROSS PAYMENT	(I) CHECK IF MULTI-SERVICES CONTRACT
					(D) No. of Com'ls	(E) Date(s) Worked	(F) Hours				
							From	To			
											<input type="checkbox"/>
											<input type="checkbox"/>
											<input type="checkbox"/>
											<input type="checkbox"/>
											<input type="checkbox"/>
											<input type="checkbox"/>

2009 AFTRA Radio Recorded Commercials Contract
Schedule of Minimum Fees

PARAGRAPH 6. MINIMUM COMPENSATION - "SESSION FEES"

<u>6.B</u>	Actor, Announcer, Solo, Duo	\$262.85
	Group Singer/Speaker 3-5	193.65
	6-8	171.35
	9 +	152.00
 <u>6.G</u>		 290.45

PARAGRAPH 9. WILD SPOTS – 13 WEEK USE RATES

A. Actors, Announcers, Solos, Duos

1. LINEUP OF CITIES NOT INCLUDING NY, CHI OR LA

1 Unit	\$262.85
2-25 Units, add per unit	3.87
26 and each unit thereafter, add per unit	2.91

2. LINEUP OF CITIES INCLUDING ONE OR MORE "MAJOR" CITY

New York City alone	\$393.55
Chicago or Los Angeles alone	356.95
Any 2 of the above alone	480.00
All 3 of the above alone	606.50
Additional Units, add per unit	2.91

B. Group Singers

1. LINEUP OF CITIES NOT INCLUDING NY, CHI OR LA

	<u>3-5</u>	<u>6-8</u>	<u>9+</u>
1 Unit	\$193.65	\$171.35	\$152.00
2-25 Units, add per unit	2.01	1.72	1.52
26-60 units, add per unit	1.72	1.32	1.32
61 and each unit thereafter, add per unit	0.97	0.84	0.84

2. LINEUP OF CITIES INCLUDING ONE OR MORE "MAJOR" CITY

	<u>3-5</u>	<u>6-8</u>	<u>9+</u>
Any 1 Major Alone	\$214.00	\$190.00	\$168.65
1-35 Units, add per unit	1.72	1.44	1.38
36 and each unit thereafter, add per unit	0.97	0.84	0.84

	<u>3-5</u>	<u>6-8</u>	<u>9+</u>
Any 2 Majors Alone	\$255.60	\$196.10	\$174.50
1-60 Units, add per unit	1.44	1.44	1.38
61 and each unit thereafter, add per unit	0.97	0.84	0.84

	<u>3-5</u>	<u>6-8</u>	<u>9+</u>
Any 3 Majors Alone	\$284.75	\$220.35	\$196.10
1-60 Units, add per unit	1.44	1.44	1.38
61 and each unit thereafter, add per unit	0.97	0.84	0.84

PARAGRAPH 10. WILD SPOTS – 8 WEEK USE RATES

A. Base Fee (i.e. 1 unit, no "Majors")

Actor, Announcer, Solo, Duo	\$262.85
Group Singer/Speaker 3-5	193.65
6-8	171.35
9 +	152.00

B. Fees for use categories beyond the base fees above

Actors/Announcers/Solos/Duos	80% of 13 week use fee
Group Singers – All	95% of 13 week use fee

PARAGRAPH 12. DEALER COMMERCIALS

Actor, Announcer	\$710.80
Solo, Duo	563.85
Group Singers 3-5	367.60
6-8	294.15
9+	183.85
Sound Effects Performers	185.95

PARAGRAPH 13. NETWORK PROGRAM COMMERCIALS

One (1) Week's Use:

Actor, Announcer, Solo, Duo	\$444.75
Group Singers	333.75

Four (4) Weeks' Use:

Actor, Announcer, Solo, Duo	\$721.55
Group Singers 3-5	554.90
6-8	496.20
9+	453.30

Eight (8) Weeks' Use:

Actor, Announcer, Solo, Duo	\$1,149.40
Group Singers 3-5	884.35
6-8	790.00
9+	708.00

Thirteen (13) Weeks' Use:

Actor, Announcer, Solo, Duo	\$1,426.30
Group Singers 3-5	1,097.05
6-8	980.90
9+	898.65

Thirteen (13) Weeks' Limited Use:

26 Uses

Actor, Announcer, Solo, Duo	\$713.20
Group Singers 3-5	548.40
6-8	490.40
9+	448.10

39 Uses

Actor, Announcer, Solo, Duo	\$1,074.05
Group Singers 3-5	752.05
6-8	671.30
9+	609.85

Thirteen (13) Weeks' Use On Across-The-Board Programs:

Actor, Announcer, Solo, Duo	\$1,493.55
Group Singers 3-5	1,148.55
6-8	1,027.10
9+	941.00

PARAGRAPH 14. REGIONAL NETWORK PROGRAM COMMERCIALS

Thirteen (13) Weeks' Use:

Actor, Announcer, Solo, Duo	\$860.70
<u>Singing Groups:</u>	
In cities including 1, 2 or all of the 3 Major Cities 3-5	\$860.70
6-8	774.65
9+	696.70
In cities excluding the 3 Major Cities	403.45

PARAGRAPH 15. LOCAL PROGRAM USES

All Performers \$285.65

PARAGRAPH 16. INTERNET

<u>Move-Over to Internet</u>	<u>8-week option</u>	<u>1-year option</u>
Actor, Announcer Solo, Duo	\$349.60	\$920.00
Group Singer/Speaker 3-5	257.55	677.80
6-8	227.90	599.75
9+	202.15	532.00
Solo/Duo who Multi-Track (Section 6.G)	386.30	1,016.60

Made-for-Internet (as of 4/1/2011)

Actor, Announcer Solo, Duo	\$349.60	\$920.00
Group Singer/Speaker 3-5	257.55	677.80
6-8	227.90	599.75
9+	202.15	532.00
Solo/Duo who Multi-Track (Section 6.G)	386.30	1,016.60

NEW MEDIA

<u>Move-Over to New Media</u>	<u>8-week option</u>	<u>1-year option</u>
Actor, Announcer Solo, Duo	\$349.60	\$920.00
Group Singer/Speaker 3-5	257.55	677.80
6-8	227.90	599.75
9+	202.15	532.00
Solo/Duo who Multi-Track (Section 6.G)	386.30	1,016.60

Made-for-New Media (as of 4/1/2011)

Actor, Announcer Solo, Duo	\$349.60	\$920.00
Group Singer/Speaker 3-5	257.55	677.80
6-8	227.90	599.75
9+	202.15	532.00
Solo/Duo who Multi-Track (Section 6.G)	386.30	1,016.60

PARAGRAPH 17. SINGLE MARKET COMMERCIALS

Actor, Announcer Only (covers 1 st 13-week cycle) (60 Minute Session, per commercial)	\$181.15
Each add'l 13-week cycle	181.15
One year's pre-paid use	543.50
Singers Only (5 commercials):	
Solo, Duo	724.65
Group Singers 3-5	563.30
6-8	480.55
9 +	414.50

Additional 26 weeks' use beyond first year:		
Solo, Duo		299.55
Group Singers 3-5		232.10
	6-8	194.75
	9 +	164.70

PARAGRAPH 18. DEMOS – COPY TESTS – NON-AIR COMMERCIALS

Actor, Announcer		\$181.15
Add'l ¼-hour		45.30
Solo/Duo (up to 4 commercials)		182.80
Add'l ½-hour or commercial		45.70
Group Singers		119.50
Add'l ½-hour or commercial		29.85

PARAGRAPH 20. FOREIGN USE

Actor, Announcer, Solo, Duo		\$521.45
Group Singer/Speaker 3-5		302.45
	6-8	208.60
	9 +	166.80

PARAGRAPH 21. CONTRACTOR FOR GROUP SINGERS

When 3-8 singers are employed	\$90.25
When 9 or more singers are employed	144.35

PARAGRAPH 22. SOUND EFFECTS PERFORMERS

A. Minimum Fee for 1 st hour	\$202.10
Each hour beyond the 1 st hour	134.75
Paid in ½-hour segments	67.35
C. Dealer/Sessions	225.15
D. Use fees	
Program or program and wild spot	120.30
Wild spot only	88.40
Dealer commercials	185.95
E. TV use	387.45

PARAGRAPH 23. EDITING AND DUBBING

Tags	\$108.75
Tags – Local identifiable contact numbers:	
Tags 2-25	108.75
Tags 26-50	78.05
Tags 51+	42.60

PARAGRAPH 24. AUDITIONS

A. Auditions in excess of 1 hour - paid in ½-hour units	\$28.30
B. 3rd and subsequent calls, 1st hour	56.65
Additional audition time, paid in ½-hour units	28.30

PARAGRAPH 26. AD-LIB OR CREATIVE SESSION CALLS

Minimum fee for first hour	\$235.35
Additional half hour units	117.70

PARAGRAPH 32. SINGERS

<u>32.A.3</u> Session Fee: Solo/Duo who multi-track	\$290.45
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PARAGRAPH 66. PUBLIC SERVICE ANNOUNCEMENTS

Actor, Announcer	\$594.65
Solos, Duos	617.50
Group Singers 3-5	402.60
6-8	322.05
9 +	201.40

Health and Retirement Contribution: 15.5%