

SIDELETTER NO. 5
Productions Made For New Media

Re: Productions Made for New Media

This confirms the understanding of the Directors Guild of Canada, B.C. District Council (hereinafter “the DGC BC” or “the Union”) and the Employers concerning the terms and conditions applicable to the production of entertainment motion pictures of the type that have traditionally been covered under the DGC Agreement which are made for the Internet, mobile devices, or any other new media platform known as of July 5, 2009 (hereinafter collectively referred to as “New Media”).

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

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

A “Derivative New Media Production” is a production for New Media based on an existing dramatic television motion picture covered by the Directors Guild of Canada, B.C. District Council Collective Agreement (hereinafter “the DGC Agreement”) that was produced for “traditional” media – *e.g.*, a free television, basic cable, or pay television motion picture (the “source production”) – and is otherwise included among the types of motion pictures traditionally covered by the DGC Agreement.

- (1) If a Director is employed on a Derivative New Media Production under this Sideletter, the Employer shall pay the Director a salary for such Derivative New Media Production which shall be subject to negotiation between the individual Employee and the Employer, and which must be reported to the Union in a deal memorandum specifying the salary and terms of employment no later than the start of principal photography. In no event may wages be less than the minimums required pursuant to the British Columbia Employment Standards Act. If the Director of the Derivative New Media Production is also employed on the source production, then the salary payable for the Derivative New Media Production shall be separate from any salary for the source production.
- (2) DGC-represented Employees (other than the Director) employed on the source production may be assigned to the Derivative Production as part of their regular workday on the source Production. The work for the Derivative Production shall be considered part of the workday for such Employees on the source production and shall trigger extended workday payments or overtime if work on the Derivative Production extends the workday past the contractually defined regular workday. In all other situations, the terms and conditions set forth below govern.
- (3) Except as provided in A.(2) above, all terms and conditions of employment, including initial compensation, will be subject to negotiation between the Employer and the individual Employee, except for Director’s credit and use fees as set forth in Paragraph A.(5)(b) and A.(5)(e) below, respectively, and those provisions of the DGC Agreement incorporated herein by reference in Paragraph A.(4) below and those additional provisions set forth in Paragraph A.(5) below. In no event may wages or overtime be less than the minimums required pursuant to the British Columbia Employment Standards Act. The

Union agrees that it will not interfere in any such negotiations between the Employee and the Employer.

- (4) The following provisions of the DGC Agreement are incorporated herein. To the extent the provisions herein are inconsistent with the Sideletter, the provisions of this Sideletter control.
- (a) Article 2.1, "Recognition of Bargaining Unit."
 - (b) Article 4, "Applicable Legislation."
 - (c) Article 5, "Management's Rights."
 - (d) Article 6.2, "Assignment of Wages."
 - (e) Articles 7.5 and 7.6, "Work Permits;" Article 7.7, "Approved by the Union;" Article 7.11, "Alternate Arrangements."
 - (f) Article 8.1, "No Strikes or Lockouts During Term of Agreement."
 - (g) Article 10, "Grievance and Arbitration."
 - (h) Article 13, "Deal Memo," except that the deal memo forms in Schedule "A-1" and "A-2" shall not apply and the deal memo for the Director of the Derivative New Media Production shall be provided to the Union no later than the start of principal photography.
 - (i) Article 14.1, "Lay-Off Defined;" Article 14.2, "Notice of Lay-Off;" Article 14.3, "Discharge;" Article 14.5, "Force Majeure;" and Article 14.6, "Recall for Services."
 - (j) Except as expressly provided in this Sideletter, no other terms and conditions of the DGC Agreement shall be applicable to Employees employed on New Media Productions.
- (5) The following additional provisions shall be applicable to Employees employed on Derivative New Media Productions:
- (a) Staffing and Assignment

Although the provisions of Article 12 are not applicable, it is understood that the Employer may not assign any of the duties described therein to persons outside the bargaining unit. The Employer shall not be required to assign work to an Employee hereunder when the Employer would not be required to do so under the DGC Agreement.
 - (b) Screen Credit

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

The Employer shall have the same rights to subcontract bargaining

unit work on Derivative New Media Productions as it enjoys under Article 3.6 for other productions covered by the DGC Agreement.

(d) Fringe Benefits

The Employer shall contribute, in the aggregate, to the Health and Welfare Fund and to the Retirement Fund and for vacation pay, ten percent (10%) of "Gross Salary" or "Gross Wages," as defined in Article 19.2 of the DGC Agreement. The Union shall have the right to allocate such percentage to the Health and Welfare Fund, the Retirement Fund and to vacation pay upon providing notification to the Employer.

(e) Reuse

Initial compensation for a Derivative New Media Production shall constitute payment for use of the Production in perpetuity in all media whether now known or developed in the future, except compact device use rights. If the Employer desires to use or agrees to the use of any Derivative New Media Production on compact devices, the Employer must pre-purchase compact device use rights as follows.

(i) **World-wide in Perpetuity:** Subject to pre-payment to the Director prior to the date of use of not less than fifty percent (50%) of the initial compensation paid to the Director by the Employer for the Derivative New Media Production, the Employer shall be entitled to compact device use rights world-wide in perpetuity; or

(ii) The Employer must pre-purchase compact device use rights in Canada and the Rest of the World, before purchasing compact device use rights in the USA.

(A) **Canada & Rest of the World (Excluding the USA) in Perpetuity:** Subject to pre-payment to the Director prior to the date of use of not less than thirty percent (30%) of the initial compensation paid to the Director by the Employer for the Derivative New Media Production, the Employer shall be entitled to compact device use rights in Canada and the Rest of the World (excluding the USA) in perpetuity; and

(B) **USA in Perpetuity:** Subject to pre-payment to the Director prior to the date of use of not less than thirty percent (30%) of the initial compensation paid to the Director by the Employer for the Derivative New Media Production, the Employer shall be entitled to compact device use rights in the USA in perpetuity. After the payment for compact device use in the USA has been made, the Employer is deemed to have acquired compact device use rights worldwide in perpetuity.

B. Terms and Conditions for Original "Made for New Media" Productions

(1) All terms and conditions of employment, including initial compensation, will be subject to negotiation between the Employer and the individual Employee, except for Director's credit and use fees as set forth in Paragraph B.(3)(b) and

B.(3)(e) below, respectively, and those provisions of the DGC Agreement incorporated herein by reference in Paragraph B.(2) below and those additional provisions set forth in Paragraph B.(3) below. In no event may wages be less than the minimums required pursuant to the British Columbia Employment Standards Act and in no event may overtime for Employees, other than the Director, be less than the minimums required by the B.C. Employment Standards Act. The Union agrees that it will not interfere in any such negotiations between the Employee and the Employer.

- (2) The following provisions of the DGC Agreement are incorporated herein. To the extent the provisions herein are inconsistent with the Sideletter, the provisions of this Sideletter control.
- (a) Article 2.1, "Recognition of Bargaining Unit."
 - (b) Article 4, "Applicable Legislation."
 - (c) Article 5, "Management's Rights."
 - (d) Article 6.2, "Assignment of Wages."
 - (e) Articles 7.5 and 7.6, "Work Permits;" Article 7.7, "Approved by the Union;" Article 7.11, "Alternate Arrangements."
 - (f) Article 8.1, "No Strikes or Lockouts During Term of Agreement."
 - (g) Article 10, "Grievance and Arbitration."
 - (h) Article 13, "Deal Memo," except that the deal memo forms in Schedule "A-1" and "A-2" shall not apply and the deal memo for the Director of the Original New Media Production shall be provided to the Union no later than the start of principal photography.
 - (i) Article 14.1, "Lay-Off Defined;" Article 14.2, "Notice of Lay-Off;" Article 14.3, "Discharge;" Article 14.5, "Force Majeure;" and Article 14.6, "Recall for Services."
 - (j) Except as expressly provided in this Sideletter, no other terms and conditions of the DGC Agreement shall be applicable to Employees employed on New Media Productions.
- (3) The following additional provisions shall be applicable to Employees employed on Original New Media Productions:
- (a) Staffing and Assignment

Although the provisions of Article 12 are not applicable, it is understood that the Employer may not assign any of the duties described therein to persons outside the bargaining unit. The Employer shall not be required to assign work to an Employee hereunder when the Employer would not be required to do so under the DGC Agreement.
 - (b) Screen Credit

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

(c) Subcontracting

The Employer shall have the same rights to subcontract bargaining unit work on Original New Media Productions as it enjoys under Article 3.6 for other productions covered by the DGC Agreement.

(d) Fringe Benefits

The Employer shall contribute, in the aggregate, to the Health and Welfare Fund and to the Retirement Fund and for vacation pay, ten percent (10%) of "Gross Salary" or "Gross Wages," as defined in Article 19.2 of the DGC Agreement. The Union shall have the right to allocate such percentage to the Health and Welfare Fund, the Retirement Fund and to vacation pay upon providing notification to the Employer.

(e) Reuse

Initial compensation for an Original New Media Production shall constitute payment for use of the Production in perpetuity in all media whether now known or developed in the future, except compact device use rights. If the Employer desires to use or agrees to the use of any Original New Media Production on compact devices, the Employer must pre-purchase compact device use rights as follows.

(i) **World-wide in Perpetuity:** Subject to pre-payment to the Director prior to the date of use of not less than fifty percent (50%) of the initial compensation paid to the Director by the Employer for the Original New Media Production, the Employer shall be entitled to compact device use rights world-wide in perpetuity; or

(ii) The Employer must pre-purchase compact device use rights in Canada and the Rest of the World, before purchasing compact device use rights in the USA.

(A) **Canada & Rest of the World (Excluding the USA) in Perpetuity:** Subject to pre-payment to the Director prior to the date of use of not less than thirty percent (30%) of the initial compensation paid to the Director by the Employer for the Original New Media Production, the Employer shall be entitled to compact device use rights in Canada and the Rest of the World (excluding the USA) in perpetuity; and

(B) **USA in Perpetuity:** Subject to pre-payment to the Director prior to the date of use of not less than thirty percent (30%) of the initial compensation paid to the Director by the Employer for the Original New Media Production, the Employer shall be entitled to compact device use rights in the USA in perpetuity. After the payment for compact device use in the USA has been made, the Employer is deemed to have acquired compact device use rights worldwide in perpetuity.

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

Coverage shall be at the Employer's option with respect to "Experimental New

Media Productions.” If the Employer elects to cover the Experimental New Media Production, the terms and conditions applicable to such Production shall be those set forth under Paragraph B. above.

An “Experimental New Media Production” is defined as any Original New Media Production (1) for which the actual cost of production does not exceed: (a) the equivalent in Canadian currency of \$15,000 (USD) per minute of program material as exhibited, and (b) the equivalent in Canadian currency of \$300,000 (USD) per single production as exhibited, and (c) the equivalent in Canadian currency of \$500,000 (USD) per series of programs produced for a single order; and (2) does not utilize a member of the DGC in any DGC-covered category.

The actual cost of the Experimental New Media Production shall consist of all direct costs actually incurred in connection with the Production, less any offsets for tax credits and production incentives. The only costs excluded in determining the actual cost of production shall be development costs, overhead charges, financing costs (*i.e.*, loan origination fees, gap fees, legal fees, and interest), contingency of up to ten percent (10%), essential elements insurance costs, the cost of the completion bond, marketing expenses, contingent payments to talent or other parties, and delivery items required by sales agents, distributors or sub-distributors (*i.e.*, delivery materials beyond the answer print, video master if the Production is delivered on videotape, or the digital equivalent if the Production is delivered in a digital format).

D. Sunset Clause

The parties recognize that this Sideletter is being negotiated at a time when the business models and patterns of usage of Productions Made for New Media are in the process of exploration, experimentation and innovation. It is agreed that the provisions of this Sideletter expire on the termination date of the 2009 DGC Agreement and will be of no force and effect thereafter. No later than sixty (60) days before that expiration date, the parties will meet to negotiate new terms and conditions for reuse of Made for New Media Productions to be in effect thereafter. The parties further acknowledge that conditions in this area are changing rapidly and that the negotiation for the successor agreement will be based on the conditions that exist and reasonably can be forecast at that time.