



**BASIC TERMS OF AN AGREEMENT FOR NEGOTIATION OF  
THE COMMERCIALS CONTRACTS UNDER  
THE PHASE ONE AGREEMENT**

This Agreement is entered into between the American Federation of Television and Radio Artists ("AFTRA") and the Screen Actors Guild ("SAG") in the interests of the members to enable the parties to work cooperatively in jointly negotiating and administering the Commercials Contracts under Phase One and to bring an end the public "war of words" and mutual criticisms and other actions that have been ongoing between the parties.

1. The Agreement shall be effective upon the date of execution and shall continue in effect through the term of any Commercials Contracts negotiated hereunder, provided however, that following the ratification of the Commercials Contracts the parties will jointly review the Agreement to determine whether it should be continued in effect or modified for purposes of ongoing administration of the Contracts. If, after 30 days, the parties have not mutually agreed to modify the Agreement, the Agreement will continue in effect as is unless either party terminates it by providing written notice to the other party.
2. **Commercials Contracts**
  - a. Negotiation and administration of the Commercials Contracts will take place under the terms of the Phase One agreement, as Phase One has been applied in the past.
  - b. Negotiations will be conducted by the joint negotiating committee acting as a committee of the whole, as will all caucuses and sidebars conducted during the negotiations. Neither party will conduct or participate in separate caucuses of its representatives on the committee or separate caucuses of representatives of a particular region or locality or branch regarding joint negotiations except with the approval of both parties. However, it is understood and acknowledged that there may be casual and informal conversations among Negotiating Committee members which will not be deemed to be in violation of this provision. This provision is not intended to prohibit communications between and among the parties' staff and board of directors or National Board.

- c. No statements about the negotiations, other than the fact that they are or will be taking place, will be made to the press, the public or the membership unless the statement is jointly agreed to, except that each union may report on the status of negotiations to its governing bodies in confidential, private meetings, provided that those meetings are not open to the press, the public or the general membership.

### **3. No Raiding**

Neither party will engage in any activity vis a vis the other party that would be considered a violation of Article XX of the AFL-CIO Constitution, as that Article has been interpreted by the AFL-CIO, except that for purposes of this provision, Article XX protection will be considered to apply to any situation in which a party has been voluntarily recognized by an employer, in the same manner that it applies to any situation where a party has been certified as the bargaining representative, beginning from the date of the recognition or certification. For example, neither party will seek to represent or hold itself out as available to represent performers on any production as to which the other party is the recognized or certified representative of the performers, nor will either party in any manner encourage any performer working on such a production to abandon representation by the other party.

### **4. Non-disparagement**

- a. Neither party will disparage the other party in communications to the public, the media, or the membership. In light of the purposes set forth in the preamble to this Agreement, this provision should be interpreted broadly to include any communication by a party that is critical of the other party, that portrays the other party in a negative light or that is otherwise reasonably likely to diminish the other party in the minds of the membership or public, regardless of whether the party making the communication believes that it is true. However, this provision should not be construed to apply to (i) statements or comments made in informal, private conversations; (ii) statements or comments made at confidential, private meetings of the unions' governing bodies provided that those meetings are not open to the press, the public or the general membership and the statements or comments are not disclosed to persons who are not members of the governing body; (iii) confidential, written communications to either union's governing bodies that are not disseminated beyond the designated recipients or publicly disclosed, or (iv) communications

covered by the attorney-client privilege, The parties also recognize that in circumstances where others have made statements drawing comparisons between the terms or proposed terms of the parties' respective collective bargaining agreements in areas of shared jurisdiction, a party may respond to the extent necessary to inform its membership of its position and its reasons for taking that position , provided that it does so in a manner that does not disparage the other party's motives or competence.

- b. To ensure compliance with this provision, the parties agree that communications to the public, the membership or the media that refer, either expressly or implicitly, to the other party, its officers or staff shall be submitted to the facilitators for review and approval prior to issuance. The facilitators will consult and work with both parties to assure that communications covered by this section comply with the intention and terms of this Agreement.. No communication that has been pre-approved by the facilitator(s) shall be considered a violation of this agreement.
5. To ensure performance of its obligations under this Agreement, each party shall place \$2 million in an escrow account that will be administered by a financial institution selected by the parties in accordance with the terms of an Escrow Agreement and this Agreement. Upon the termination of this Agreement pursuant to paragraph 1, the escrow accounts will be terminated in accordance with the Escrow Agreement and the funds will be returned to the respective unions, together with all accrued earnings, less any awards against the account as provided in this Agreement, provided, however, that the escrow accounts will be maintained so long as any proceeding under section 6 of this Agreement remains pending. The parties will finalize the Escrow Agreement and place money in the designated escrow account no later than ten (10) business days from the date this Agreement is executed.
6. **Enforcement**
- a. Prior to execution of this Agreement, AFL-CIO President John Sweeney shall designate an Umpire and an alternate Umpire, who shall have been approved by both parties.
  - b. (i) Any claim that a party has violated this Agreement shall be submitted to the Umpire (or, in the event the Umpire is no longer able to serve, the alternate Umpire), who shall promptly,

in accordance with the procedures and time limits of this section, determine whether a violation has occurred and, if so, the appropriate remedy. All determinations of the umpire shall be final and binding.

- (ii) Claims under this section must be submitted by the President of the Union making the claim within 5 days of when that Union's President knew, or reasonably should have known, of the alleged violation.
  - (iii) Within 24 hours of receiving a claim, the Umpire shall notify the other party that a claim has been filed and provide that party with the supporting documentation submitted with the claim.
  - (iv) The party against whom the claim has been filed shall have up to 5 days to provide the Umpire with the evidence and information it deems appropriate to submit in response to the claim.
  - (v) The Umpire shall convene a face to face, teleconference or video conference hearing with representatives of both parties within 6 to 10 days after receiving a claim.
  - (vi) The Umpire shall issue a determination and, where appropriate, order a remedy, within 3 days following the hearing.
  - (vii) The Umpire shall have the authority to extend the foregoing time periods by agreement of the parties or for good cause shown.
- c. If the Umpire finds that either party has withdrawn from these Phase One negotiations without just cause, the remedy ordered shall be an award of liquidated damages to the other party of the amount set aside pursuant to paragraph 5.
- d. If the umpire finds that any other violation has occurred, the umpire shall have the authority to order an appropriate remedy, which may include, if the violation is serious, payment of a monetary fine to the other party in an amount that the Umpire determines is commensurate to the offense. Appropriate non-monetary remedies would include the issuance of an apology, the private or public disavowal of a statement, the publication of a response to a statement, the

reimbursement of actual expenses or damages incurred, the right of reply to an improper assertion, or other similar remedies.

- e. This agreement is not intended to give the Umpire the power to make jurisdictional determinations beyond those normally authorized in Article XX proceedings.

## **7. Administration**

The parties agree to share equally in the cost of administering the provisions of this Agreement.

## **8. Coverage**

- a. The Agreement and the restrictions contained herein are intended to cover the following: AFTRA, its Officers, members of its National Board, Regional and Local Officers and Boards, staff and members of its National Committees (including, but not limited to, its Negotiating and "Wages and Working Conditions" committees), and on the other, SAG, its officers, Board of Directors, Regional and Local Branch officers and Boards, its staff, and members of its National Committees (including, but not limited to, its Negotiating and "Wages and Working Conditions" Committees). Each party will adopt the necessary internal procedures to assure compliance with the provisions of the Agreement by its Officers, Board members, staff and committee members.
- b. Nothing in this Agreement will be construed to require either party to take any action that would interfere with a candidate's exercise of free speech rights guaranteed by federal labor law. No liability to a party shall arise because of a candidate's communication that violates paragraph 4, above, as long as the union that is not being disparaged promptly issues a disclaimer to its members (e.g. a notice posted prominently on its website), with a copy to the other union and the Umpire, affirming that it does not support the communication that violates paragraph 4 and, in the event of notification of the violation by the other union, does so within 24 hours of notification. In circumstances where this provision would require the issuance of multiple disclaimers within a period of 15 to 30 days, which will be determined by the magnitude of the issue of the communication, the responding union may rely on the issuance of one disclaimer

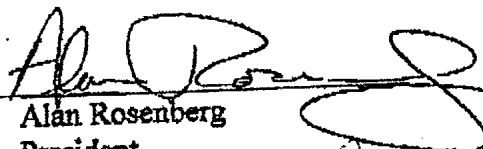
addressing the communications at issue. If the union being disparaged believes that these remedies are insufficient under the particular circumstances, it may ask the Umpire, on notice to the other party, either to order additional disclaimers or to disseminate the disclaimers to the members through means other than the union's website. The parties and the facilitators will meet promptly after the execution of this Agreement to determine the format of the disclaimers and the website location where such disclaimers must be posted.

The foregoing terms are agreed and accepted between the parties with said agreement to be effective upon its execution by both parties in counterparts.

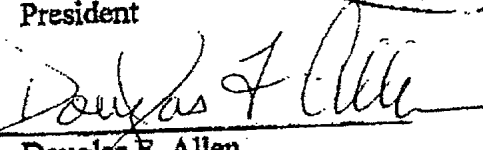
AMERICAN FEDERATION OF  
TELEVISION AND RADIO ARTISTS

SCREEN ACTORS GUILD, INC.

By: \_\_\_\_\_  
Roberta Reardon  
National President

By:   
Alan Rosenberg  
President

By: \_\_\_\_\_  
Kim Roberts Hedgpeth  
National Executive Director

By:   
Douglas F. Allen  
National Executive Director

Dated: \_\_\_\_\_

Dated: JAN 22 2009

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Douglas F. Allen  
National Executive Director

Dated: 1-25-09

Dated: \_\_\_\_\_