



2019 COMMERCIALS CONTRACTS FREQUENTLY ASKED QUESTIONS

I. GENERAL CONTRACT QUESTIONS

- 1) **Q: Now that the 80%/20% and 90%/10% split was removed for pension and health (“P&H”), is the \$1 million cap combined?**

A: The change to the 2019 Contract is specific to B-roll produced in connection with a commercial. In that case, a 90/10 or 80/20 split of the contribution between the SAG-Producers Pension Plan and AFTRA Retirement Fund is not necessary. However, you will still divide the contribution for contracts that have a right to TV and audio. The total P&H contribution in a contract year is capped at \$190,000 (or \$185,000 for JPC authorizers).

- 2) **Q: Can the performer direct the Producer to donate 100% of compensation to a charity?**

A: A performer cannot agree to less than scale. The exception is for celebrities in PSAs. If a celebrity has instructed a producer to make a donation to a charity in lieu of any compensation, please contact the JPC to determine what the appropriate P&H contribution might be.

- 3) **Q: If a commercial is produced by a JPC authorizer agency for a non-signatory advertiser, what happens if the commercial is then transferred to a non-authorizer when residuals are due? Does the P&H rate for residuals remain at the established 18.5% rate or does it now change to 19%?**

A: In the event of a transfer to a non-authorizer agency, the P&H rate would be 19% through the maximum period of use (“MPU”).

- 4) **Q: Are scale performers due a Category 2 session fee under the Corporate / Educational Non-Broadcast (“Co-Ed”) collective bargaining agreement for behind-the-scenes footage?**

A: Yes. Scale performers should still be engaged under the Co-Ed CBA for behind-the-scenes/B-roll footage. The only change to the treatment of behind-the-scenes/B-roll in the Commercials Contracts relates to the allocation guidelines for multi-service agreements.

- 5) **Q: Now that Over-the-Top (OTT) is covered under Internet-related payment provisions, does this include video on demand (VOD)?**

A: OTT does not include VOD unless the VOD is on the OTT platform. If the VOD is through a regular cable provider, the VOD payment depends on the media buy and what exactly was purchased (*e.g.*, cable or network), not just the delivery method.

- 6) **Q: Does the clarification regarding OTT as Internet apply only to the 2019 Contract?**

A: No. You may apply Internet rates for spots airing on OTT that were produced under the 2016 Contract for use cycles starting after April 1, 2019.

- 7) **Q: How does the hardship waiver for JPC authorizers work?**

A: This waiver is intended to allow you to produce a commercial under more favorable terms than those set forth in the CBA. Similar to the creative waiver under Section 8.D, there is no form or specific paperwork. Neither is there a specific definition of hardship. The goal was to give authorizers more flexibility to compete. In terms of process, an authorizer should work with the JPC to define the particular hardship and to request the waiver from the union. Of course, if the Union thinks that a particular authorizer is abusing the process, it will simply deny the waiver. This should be a waiver of last resort.

- 8) **Q: Under the 2019 CBA, when should a renegotiation notice be sent to the performer or performer’s representative?**

A: Not more than 120 days and not less than 60 days prior to the expiration of the MPU.

9) **Q: If a commercial was produced prior to 4/1/19 under the traditional contract but expires after 4/1/19, is the performer or their agent still responsible for sending the renegotiation letter under Section 30?**

A: Yes. The changes to Section 30 apply only to commercials produced after April 1, 2019.

10) **Q: Is the Low Budget Digital Waiver still available?**

A: There were no changes to the Low Budget Digital Waiver during the 2019 negotiations. The waiver remains available.

11) **Q: To what does the new 4-year statute of limitations apply?**

A: It relates to any claim not related to session. There is a six-month statute of limitations for session-related claims.

12) **Q: To what does the 6% wage increase apply?**

A: All wages, wardrobe, reuse, costs, etc. under the CBA.

13) **Q: With respect to use on social media and YouTube after expiration of the MPU, do the new changes in Section 17 apply to commercials produced prior to 4/1/19?**

A: Yes, this language is effective 4/1/19 and will apply to commercials produced prior to such date.

14) **Q: For use on YouTube beyond the authorized use period, is the maximum liability fixed at double scale for 2 years of unauthorized use?**

A: Provided the use on YouTube was properly paid under the CBA in the first place, the liability for use on YouTube beyond the MPU is capped at double scale (*i.e.*, whatever scale you were paying the performer in the prior use period) for up to two years of unauthorized use. Note that performers are only able to bargain for more than the minimum term *at the time of booking*, not at the time the unauthorized use is discovered.

15) Q: How was Internet and New Media collapsed?

A: Internet and New Media were collapsed for the Upfront Digital package. Similarly, there is no distinction between Internet and New Media in the Low Budget Digital Waiver and the Experimental Social Media and YouTube Waiver.

II. QUESTIONS REGARDING THE UPFRONT PACKAGES

16) Q: If a commercial was originally produced under the traditional contract (either prior to 4/1/19 or after), can you negotiate with the performer to renew the spot under one of the Upfront packages (i.e., Upfront Plus, Upfront Digital, or Upfront Flex) after the expiration of the MPU?

A: Yes.

17) Q: What happens if I produce under one of the Upfront packages and decide not to use the spot *after* paying the principals their upfront use fee (i.e., after the 60-day period to downgrade/outgrade expires)?

A: You may not recoup the funds paid to the performer if you later decide not to use the spot outside the 60-day window to downgrade or outgrade.

18) Q: When producing under an Upfront package and (i) the spot was not used, and (ii) the use payment was not made in the 60-day window, can you reinstate the spot if you decide to use it?

A: With the performer's consent, you may reinstate the spot but you cannot switch from the Alternate Compensation Structure ("ACS") to the traditional contract (i.e., the spot stays under the previously contracted Upfront package). The MPU will run from the date of reinstatement.

19) Q: Is there any exclusivity under the Upfront Digital package?

A: There is no automatic exclusivity, but you may purchase it with the principal performer's consent, and the payment of four session payments.

20) Q: What if I produce a spot under the Upfront Digital package and want to “step up” to another Upfront package?

A: You can “step up” to whichever Upfront package works best upon obtaining consent from each performer; provided, however, that if you paid the performers for exclusivity under the Upfront Digital package, only notice to the performer is required to switch. The 1-year MPU from the original Upfront Digital package will continue to apply and the following will apply to the use fee already paid under the Upfront Digital package:

“Step Up” to Upfront Plus: The \$3,825 use fee already paid under the Upfront Digital package – as well as the fees paid for exclusivity, if applicable – can be credited against the \$20,000 use fee for the Upfront Plus package.

“Step Up” to Upfront Flex: The \$3,825 use fee already paid under the Upfront Digital package – as well as the fees paid for exclusivity, if applicable – can be credited against the \$8,000 guarantee for the Upfront Flex package (*i.e.*, you pay whatever difference is owed to meet the \$8,000 amount). In the event the spot started running on digital prior to the “step up”, use should be applied to the guarantee per the Upfront Flex cycle fee for digital use.

21) Q: What if I produce a spot under the Upfront Digital package and want to move it to TV under the traditional contract?

A: You can freely negotiate with the performers to use the spot on TV under the traditional contract in addition to the digital use under the Upfront Digital package.

22) Q: If footage from a commercial produced under the Upfront Flex package is integrated with footage produced under a different Upfront package, how would performers in the new commercial be paid?

A: Any new commercial (or Unpermitted Edit) created could be paid under one of the Upfront packages so long as (i) the MPU for the new commercial is limited to the original spot’s MPU, and (ii) the original payments that were due under the applicable Upfront package for the two base spots were paid in addition to any Upfront package use fees due for the new spot/Unpermitted Edit.

Alternatively, the new commercial (or Unpermitted Edit) may be paid under the traditional contract so long as (i) the MPU for the new commercial is limited to the original spot’s MPU, and (ii) the original payments that were due under the applicable Upfront package for the two base spots were paid in addition to any use fees due under the traditional contract for the new spot/Unpermitted Edit.

23) Q: If footage from a commercial produced under an Upfront package is integrated with footage produced under the traditional contract, resulting in a new commercial, how is the new commercial paid?

A: Same as above.

24) Q: If a commercial produced under the ACS is edited to create an Unpermitted Edit, how is the performer paid?

A: The performer receives an additional session fee, and you make a use payment based on either the ACS or the traditional contract as outlined above.

25) Q: Are you allowed to mix different Upfront packages for different cast members? For instance, can you choose to pay some talent under the Upfront Plus package and some talent under the Upfront Flex package?

A: No. When you produce commercials, all performers must be paid in the same manner (*i.e.*, the same Upfront package or the traditional contract, as applicable).

26) Q: Where a commercial is produced under an Upfront package by a signatory agency, but the commercial is transferred to a non-signatory agency for payment of residuals, can the non-signatory utilize the Upfront package payment for residual payments?

A: In this example, the performer has executed an employment contract agreeing to a certain rate under the ACS. In the event of a transfer, this would not change until the MPU of the commercial expires. At this point, in the event of renegotiation, the non-signatory agency or advertiser would not be able to renew under the ACS.

27) Q: Regarding the 1 year MPU in the Upfront packages, if you have a 13-week use cycle crossing over into the next MPU and you renegotiate for the next 1-year period, can the cycle continue or must it terminate at the end of the 1-year MPU?

A: All use must cease upon expiration of the MPU.

28) Q: Under the ACS, are we allowed to create an unlimited number of Permitted Edits?

A: Yes, subject to any limitations set forth in the ACS editing provisions.

29) Q: For celebrities hired under the Upfront Plus package, do you apply the Upfront Plus rate to his/her guarantee?

A: Yes.

30) Q: Are we limited to the lengths stated in the MOA (:60, :30, :15, :08 (or :07), and :06)?

A: No, the lengths were provided as examples only. The rule is that no more than five shorter or longer versions in total may be created and no more than two of each length.

III. QUESTIONS REGARDING EDITS OR PAYMENTS UNDER THE TRADITIONAL CONTRACT

31) Q: What if I create an Unpermitted Edit of a spot under the traditional contract that results in a “new” commercial for use purposes? Can I pay the “new” spot under one of the Upfront packages?

A: Yes, and vice versa – a change that results as an unpermitted editing under the traditional contract could be paid either under the Upfront package or the traditional contract, and a new spot that was initially produced under the ACS could be paid either under the applicable Upfront package or the traditional contract. See #23 above.

32) Q: Can I utilize the alternate Unwired Network use fee on current spots (i.e., spots produced prior to 4/1/19)?

A: Yes, the 2019 Unwired Network Waiver rates should be paid for any new cycle starting after 4/1/19.

33) Q: For unwired networks (Section 33, Wild Spots-Compensation for Use), can we credit session to the unwired use payment?

A: You cannot credit the session. Also, note that the rates listed in the MOA for unwired network payments are subject to the 6% wage increase.

34) Q: Can I hire performers under the traditional contract and then change my mind before the first use payment is made and issue payments under one of the Upfront packages?

A: No. Intended use must be noted on the Exhibit E sign-in sheet, and that includes the choice of which part of the contract you intend to produce under (*i.e.*, the traditional contract or an identified Upfront package). Confirmation will be made at the time of hire.

35) Q: For a Sign Language Interpreter, are they entitled to holding fees when their faces are not shown (and they get regraded at the VO rate)?

A: Yes, they are entitled to such fees. In this instance, they would not be excluded under Section 31.

IV. AUDIO COMMERCIALS CONTRACT

36) Q: Under the Audio Flex package, is there a limit to the number of mechanical edits allowed?

A: No, but practically speaking, there is likely only a limited number of mechanical lifts you can make for a radio spot without having to re-record the script.

37) Q: Under the Audio Flex package, do the changes with respect to new permissible edits apply only to the new Upfront packages?

A: Yes, the mechanical editing allowance exists only in the Audio Flex package.

38) Q: What is the MPU for commercials produced under the Audio flex package?

A: One year from the session date.