



## SUMMARY OF NEW PROVISIONS 2016 SAG-AFTRA COMMERCIALS CONTRACT

### 1. Effective Date and Term

- a. Three years commencing April 1, 2016.
- b. For services performed in commercials made between April 1, 2016 and the date of ratification, all retroactive payments must be made not later than 30 days following ratification by the Union.
- c. The new working conditions and all other non-economic provisions shall be effective not later than 30 days following ratification by the Union.

### 2. Rates

Increase wages, adjustments, allowances, etc. by 7%.

### 3. Pension & Health Plans

Pension and Health contribution rate increases from 16.8% to 18%. The breakdown of the 18% is as follows: 17.25% to the P&H Plans, .50% to the Industry Advancement Cooperative Fund (IACF), and .25% to the Administrative Maintenance Fund (AMF).

### 4. Administrative Maintenance Fund (AMF)

- a. A copy of the annual AMF audit will be provided to the Union within 90 days of completion of the audit.
- b. Clarification: the delivery and findings of the audit, as with the remainder of the AMF provision, shall be subject to grievance and arbitration.

### 5. Definition of a Commercial

- a. Modify Section 4, Definitions, as follows:  
“...Commercials are short advertising or commercial messages made as motion pictures, 3 minutes or less in length, and intended for showing over television: ....  
\* \* \* \* \*

The term “commercials” also includes short advertising messages intended for showing on the Internet and/or New Media which would be treated as commercials if shown on television and which are capable of being used on television in the same form as on the Internet and/or New Media. \* \* \* \* \*.”

- b. Add New Sideletter as follows:

“Dear Mr. White:

Whether something is capable of being used on television in the same form as on the Internet is one of several factors (e.g., length and/or interactivity) to be considered when determining whether something is a “commercial.”

EXAMPLES:

If the content in question is :37 seconds in length and because such length cannot be aired on television, i.e., a :37 second time unit is not offered for placement by television networks or stations, such length cannot be the sole reason such content is not a commercial.

If the content in question includes a “click for more info” or “click to play” button such button cannot be the sole reason such content is not a commercial.

SAG-AFTRA also acknowledges that the study referenced in Section 66 of the Contract will include a mutual effort to develop a definition for a commercial that provides clarity to both the union and Producers for consideration at JCRC proceedings, arbitrations, and in negotiations for the 2019 CBA.”

## 6. Definition of a Producer

Add language stating that Performers and Extra Performers must be employed by a bona fide producer of commercials covered under the Commercials Contract. The Union reserves the right to reject or revoke the signatory status of any company if that company is not a bona fide producer of commercials.

## 7. Persons Covered – Principal Performers

- a. Revise 6.N. as follows: “The application of this Contract to persons fulfilling the requirements of this Section 6 is limited only by the provisions of Section 8, Waiver as to Certain Non-Professional Persons. Except as otherwise set forth in this Contract, members of the public who appear in testimonial or hidden camera commercials, non-professionals, minors, etc., shall receive the wages, working conditions, and other benefits provided by this Contract.”
- b. Prop masters, riggers and other like crew who do not appear in a commercial are not covered persons under the Contract.

## 8. Stock Footage

- a. The Still Photograph provision is amended to include Stock Footage.
- b. Licensed footage from professional or collegiate sports (e.g., NFL, NASCAR, MLB, NCAA) is exempt from coverage under the Contract except with respect to featured players.

## 9. Waiver As to Certain Non-Professional Persons

Where the creative for a commercial necessitates the use of non-professionals, the Union agrees to consider in good faith requests to waive coverage over such non-professionals. Additionally, under certain conditions and with a sunset date of March 31, 2019, the Union agrees to waive contract coverage over non-professionals in the following circumstances:

- a. Testimonial Endorsers: Include a new sideletter providing that coverage over non-celebrities who have never worked as principal performers shall be waived when such persons provide testimonial endorsements in commercials produced by JPC authorizers provided that such commercials comply with the *Federal Trade Commission Guides Concerning Use of Endorsements and Testimonials in Advertising* and that the producer explicitly casts for non-professionals. The waiver of coverage may be extended to other non-celebrities who have never worked as principal performers that appear in the same commercial due to their relationship with the main endorser, e.g., a family member or treating physician appearing in the same commercial as a patient/endorser who is describing his or her experience with a life-saving medication.
- b. Sideletter 7, Experimental Coverage Waiver for Made for Internet and Made for New Media Commercials, which was agreed to in 2013 has been renewed, extended to include all covered media and moved into the body of the Commercials Contract. Accordingly, coverage may be waived for members of the public appearing in commercials in the following circumstances, provided those persons are neither scripted to speak any dialogue nor cast for the commercial:
  - i. Live Events—“Live Events” attended by at least 20 persons who are neither hired nor cast by Producer to attend the event. However, such Live Events (1) shall not be staged for the purpose of producing a commercial(s); and (2) non-covered participants at the live events may not receive individual direction but may be directed as a group.
  - ii. Man on the Street—A “Man on the Street Commercial” commercial means a commercial where an interviewer interviews people on the street, at public venues, or at live events and asks them questions or makes statements or gestures to elicit a response or reaction from them. The interviewer is a Covered Person for purposes of the Contract whether or not they appear or perform in the commercial(s).
  - iii. Hidden Camera Commercials—A “Hidden Camera” commercial means a commercial(s) comprised of footage captured by a hidden camera(s) without direction to the individual(s) being filmed. An individual(s) appearing in such footage shall not be a Covered Person(s) for purposes of the Contract. Any person(s) appearing in the capacity of an interviewer, however, shall be a Covered Person whether or not they appear in the commercial.

## 10. Restrictions on Use of Commercials – Additional Services

No use payment is due when Producer, for the purposes of publicizing its business, exhibits a commercial in digital trade publications, award shows, case studies, reels (provided reels are not rented, sold, or utilized as give-aways), and for historical/archival purposes.

## **11. Public Service Announcements**

Any charity is now able to apply for a PSA waiver. In the past, this provision has applied to charities with 501(c)3 tax exempt status.

## **12. Payment Due**

- a. Session fees for principals and extras are now due 15 working days after services are rendered.
- b. Audition fees are now due 15 working days after audition.
- c. Clarify the Alternate Scenes and Lines provision by adding the following language to Agreed Interpretation 12 ("Directorial Changes"): "Payment for Alternate Scenes and Lines is required by Section 20.G. only when the alternate scene or line is reflected in a script or storyboard or when it does not relate to the fundamental concept of the commercial."

## **13. Translation Services**

Expand the translation provision so that a principal performer who performs translation services in any language (not just Spanish) on scripts at audition or session will be paid an additional 50% of the minimum session fee.

## **14. Editing – Special Offers and Promotions**

A commercial for an advertiser may be changed to reflect different special offers and promotions, sales or give-aways, sweepstakes or sales events. Separate session fees shall be payable to the on and off-camera performers employed to render services in making each such change, but any different versions so created may be considered one commercial for the purpose of use fees. No payments shall be due to performers who appear or are heard in the commercial, but who do not participate in making the changes. The following shall apply:

- a. Only one reference to any special offer or promotion may be made in the commercial, although such reference may appear anywhere in the commercial.
- b. The reference to the special offer or promotion must be in the nature of a "tag" as that term is commonly used in the industry.
- c. The commercial must be produced by, and the media time bought by, the advertiser.
- d. Multiple variations may run in the same market at the same time.
- e. Each commercial is subject to a 2-week promotional limitation.

## **15. Reservation of Rights**

The JPC will be notified of any local agreement made with a local Producer or group of Producers to set a rate for one designated city.

## **16. Maximum Period of Use – Renegotiation Notice**

A performer or his/her agent may now submit a renegotiation letter to Producer via email, as long as the email sender requests a read receipt from recipient. The employment contract shall provide both a physical address and an email address where letters can be sent. In the event that a Producer requests a copy of a renegotiation letter from the Union, the Union shall provide it within 15 working days.

## **17. Definition – Wild Spot and Program Use**

Remove terms "hitch hikes" and "cow catchers" with the understanding that the change is non-substantive and does not affect the interpretation of the collective bargaining agreement.

## **18. Program Use – Class A**

- a. Increase Class A use rates by 2% in addition to the general increase.
- b. Revise the title of Section 34.B.3 as follows: "ION TV / BounceTV / MeTV / Laff / Grit / Escape / Cozi TV / Antenna TV / This TV."

## **19. Cable Use**

Increase use rates for National Cable by 6% in addition to the general increase.

## **20. Late Night Waiver**

Add FOX to the list of TV networks (ABC, CBS, NBC) allowed to utilize lower rates for commercials airing on late night television (between 2am-6am), remove the sunset clause and incorporate the waiver into the body of the contract.

## 21. Unwired Network Waiver

Add the Unwired Network Waiver, which has been granted to qualifying unwired networks by the Union since 2006, into the body of the contract as follows:

“Please note that the Union must approve each unwired network before any Producer may utilize the waiver, to confirm that the frequency of commercial airings will comply with its terms.

An ‘unwired network’ acquires and repackages local broadcast station inventory from around the country to resell to advertisers as national inventory by guaranteeing the advertiser a minimum national audience per “unwired unit” purchased by the advertiser. Pursuant to the Unwired Network Waiver, commercials that air on a qualifying unwired network may be paid as Class A program use, rather than Wild Spot under the following conditions:

- a. In order to qualify under Tier One of this waiver, an unwired network will guarantee that the average number of uses in each Demographic Market Area (“DMA”) will be no more than 1.5 per unwired unit, using a weighted average based on the DMA’s percentage of total U.S. viewers. A Tier One unwired network must also guarantee that in the major hiring markets (Los Angeles, New York, and Chicago) the number of uses will not exceed 1.5 per unwired unit.
- b. In order to qualify under Tier Two of this waiver, an unwired network will guarantee that the average number of uses in each DMA will be no more than 2 per unwired unit, using a weighted average based on the DMA’s percentage of total U.S. viewers. A Tier Two unwired network must also guarantee that in the major hiring markets (Los Angeles, New York, and Chicago) the number of uses will not exceed 2 per unwired network.
- c. In order to qualify under either tier, an unwired network shall first provide SAG-AFTRA with information corroborating that the number of airings per unit of commercials on its network qualifies under the tier it seeks to pay under. At any given time, an unwired network may qualify to pay under Tier One or Tier Two, but may not combine tiers.
- d. Each Tier One unwired unit must be paid at 150% of the performer’s rate for a single Class A Use. Each Tier Two unwired unit must be paid at 200% of the performer’s rate for a single Class A use.
- e. Unwired network uses must be paid in the same 13-week cycle and in the same manner as other Class A use, if any. The additional 50% (for Tier One) or 100% (for Tier Two) must be paid at the end of the Class A cycle in which the use(s) occurred; for purposes of calculating that portion of the fee, the use(s) are considered to be the last ones in the cycle, regardless of when the use(s) actually ran within that cycle.
- f. The unwired networks will provide the Union with timely detailed reporting on the use of all commercials on the unwired network, including information that distinguishes which commercials ran as a part of the unwired network, and which ran only in local markets. The information will be directed to the Union and will be provided no later than 12 business days after the conclusion of every calendar month in which any commercial ran that is to be paid under the provisions of this Unwired Network Waiver.
- g. Should it be determined that, because of the frequency of commercial airings, an unwired network that has paid under Tier One does not qualify under Tier One, but qualifies under Tier Two, additional compensation will be paid to all commercials that have aired on that unwired network in the calendar month within which it did not qualify under Tier One to bring payment into compliance with Tier Two. Additionally all future payments for commercials that air on that unwired network shall be paid under Tier Two until and unless the Union determines otherwise.
- h. Should it be determined that, because of frequency of commercial airings, an unwired network that has paid under Tier One or Tier Two does not qualify under either tier, additional compensation will be paid to all commercials that have aired on that unwired network in the calendar month during which it did not qualify to bring payment into compliance with the current Commercials Contract, as though there had been no waiver was in effect. Additionally, all future payments for commercials that air on that unwired network shall be paid without the benefit of this waiver until and unless the Union determines otherwise.
- i. Except as provided herein, all provisions of the current Commercials Contract shall apply to commercials aired on a qualifying network on the same basis as any other commercial.
- j. The Union retains the discretion to revoke or modify this waiver as to any employer whose commercials air on an unwired network that breaches its obligations under this waiver.”

## 22. Internet

- a. Establish a 4-week cycle of use for the Internet.
- b. Increase rates and set a 4-week cycle rate for the Internet as follows:
  - i. Made For:

4-week	125% of session
8-week	150% of session (was 133%)

1-year	375% of session (was 350%)
ii. Move Over:	
4-week	125% of session
8-week	175% of session (was 150%)
1-year	425% of session (was 400%)

**23. New Media**

- a. Establish a 4-week cycle of use for New Media.
- b. Increase rates and set a 4-week cycle rate for the Internet as follows:
  - i. Made For:
    - 4-week 125% of session
    - 8-week 150% of session (was 133%)
    - 1-year 375% of session (was 350%)
  - ii. Move Over:
    - 4-week 125% of session
    - 8-week 175% of session (was 150%)
    - 1-year 425% of session (was 400%)

**24. Simultaneous Streaming on Internet and/or New Media**

No additional payment shall be required when a commercial is simultaneously streamed (or otherwise simultaneously transmitted) on the Internet and/or New Media at the exact same time as a paid wild spot, cable or program use. This provision shall sunset on March 31, 2019.

**25. Internet/New Media Pilot Test**

The Union and the JPC will pilot test alternative methodologies for calculating use fees due to principal performers appearing in commercials exhibited on Internet and/or New Media platforms. The bargaining parties will use good faith efforts to begin the pilot test project within 90 days of the conclusion of negotiations with the goal of completing the pilot test project not later than August 1, 2018. The JPC and the Union shall each recommend to their respective trustees that the AICF and IACF approve funding for the pilot test.

**26. Foreign Use – Internet & New Media Use**

Producer may acquire the right to exhibit commercials on the Internet and/or New Media in foreign territories by paying for the applicable foreign territories under the foreign use provision (without additional payment under the Internet or New Media provisions) provided that such Internet and/or New Media use is geofenced to such foreign territories.

**27. Alternate Method of Compensation Study**

The parties will study alternative methodologies for calculating fees due to principal performers appearing in commercials. In addition, over the 2016 to 2019 term of this Contract, the parties agree to conduct a study of industry and technological changes so that the parties may consider the results of such study at a future negotiation. The bargaining parties will use good faith efforts to begin the project within 90 days of the conclusion of negotiations with the goal of completing the project not later than August 1, 2018. The parties shall each recommend to their respective trustees that the AICF and IACF approve funding for the project. The parties shall proceed on these studies on the basis of mutual cooperation and agreement.

**28. Transfer of Rights**

In order to make it easier for non-signatory advertisers to become signatory, or to switch their business from a non-signatory agency to a signatory agency, add the following language to the Transfer of Rights provision: “Notwithstanding the foregoing, in the event that an advertiser becomes signatory to the Contract, or in the event that a non-signatory advertiser transfers all or a portion of its business from a non-signatory agency to a signatory agency, the Union shall waive application of this Contract to commercials that were produced prior to becoming a signatory or prior to transferring business to a signatory agency on the following condition: The advertiser, or its agency, shall provide to the Union a list of all such commercials within 60 days of the advertiser becoming signatory or transferring business to a signatory agency. The Contract will fully apply to such commercials, however, if they are edited or modified other than as permitted by Section 26, Editing of Commercials, subsequent to the advertiser or agency becoming a signatory or transferring business to a signatory agency.”

### **29. Arbitration**

Revise to include that any waivers granted will be provided to the JPC along with any arbitration decisions.

### **30. Most Favored Nations**

The Union agrees that it will notify the JPC of any contracts entered into with and/or waivers granted to with other employers that have provisions more favorable than this Contract. The JPC may, at its election, extend such terms to JPC authorizers, including any terms and conditions of such waiver or contract term. The foregoing shall not apply with respect to local or regional codes or to terms negotiated with local or regional advertisers or agencies.

### **31. Work on Holidays**

Veterans Day is now a recognized holiday under the contract.

### **32. Makeup, Hairdress, Wardrobe and Wardrobe Allowance**

Producer is now required to remove makeup or hairdress if it is other than ordinary street makeup or hairdress.

### **33. Casting and Auditions**

- a. Remove the requirement for payment for ad lib at audition and session, and as it applies to user-generated/crowdsourced commercials. Payment is still required for a creative session call – for devising dialogue or action not suggested by a script, storyboard or by specific direction.
- b. Performers must be notified of the primary area of conflict prior to audition. The notification may be in generic terms that do not identify the advertiser or product specifically.

### **34. Minors**

A copy of the teacher/tutor's current credentials and identification shall be provided to the parent/guardian by the Producer.

### **35. Schedule D Extras – Wild Footage**

Add the following terms to contract, which have existed as a jointly-approved bulletin since 1992:

“Payment for Wild Footage – Single Day

Notwithstanding anything contained elsewhere in this Section 8, where Producer employs an extra performer (including drivers hired in the State of Michigan) during a single day for the purpose of shooting footage which is not being photographed for use in any particular commercial or commercials (“wild footage”) such photography thereafter may be integrated into several commercials for the same advertiser made subsequently and may be used for a period not to exceed 21 months, provided that each and all of the following conditions of employment are fulfilled by the Producer:

Payment for Running/Wild Footage for Drivers – 2 or More Days

The following special provisions shall apply to a driver who is employed for 2 or more days for running/wild footage in motor vehicle commercials:

- a. Driver shall be provided a principal performer A-1 Employment Contract and the employment category shall be marked “Driver”.
- b. Driver shall be compensated at the same rate for on-camera principals, per 8-hour day, plus applicable overtime and Pension and Health.
- c. This provision shall apply to a driver who:
  - i. Is hired in Los Angeles, New York, or any of the extra zones, regardless of where he/she works.
  - ii. Works in Los Angeles, New York or any of the extra zones.
  - iii. Does not meet qualifications of a principal performer.
  - iv. Is hired in the State of Michigan.
- d. Such driver shall be entitled to “turnaround” time between shoot days, as provided in Section E. (Rest Period) of Schedule A. (Working Conditions – Principal Performers). However, the required rest period will be 10 hours (not 12); otherwise the driver must be paid liquidated damages of \$500, as provided in paragraph 3 of Section E.
- e. Any footage shot under this Section E. may be integrated into an unspecified number of commercials for the same advertiser, and used for 21 months, without payment of any integration fees. Use beyond the first 21 months in the same or different commercials would require payment of an additional session fee at the then current rate for each subsequent 21-month period.

- f. Driver must be notified in advance that he/she is being engaged under these terms. It is also recommended that a provision be inserted in the Special Provisions section of the driver's contract. The following language is an example:  
Performer is being engaged as a driver at the rate equal to the current session fee applicable to on-camera principal performers, under Section D.III.8.E. for production and use of 'Running/Wild Footage'."

### **36. Stand-Ins**

Create a Stand-in rate at 10% above the general extra rate.

### **37. Non-Disclosure/Confidentiality Agreement – A-1 & A-2 Employment Contracts**

- a. Revise to include the following confidentiality clause as Standard Provisions # 6: "Confidential Information' means trade secrets, confidential data, and other non-public confidential proprietary information (whether or not labeled as confidential) including any and all financial terms of, and products involved in the production and any and all scripts whether communicated orally, in written form, or electronically. Confidential information does not include information that was lawfully in Performer's possession prior to being disclosed in connection with the employment of Performer, is now, or hereafter becomes generally known to the public, or that Performer rightfully obtained without restriction from a third party. Performer acknowledges that Performer has and will become aware of certain Confidential Information. Unless otherwise required by law, Performer agrees that, without Producer's prior written approval, Performer shall hold such Confidential Information in the strictest confidence and that Performer will not disclose such Confidential Information to anyone (other than Performer's representatives in the course of their duties to Performer, which representatives shall be bound by the same restrictions as set forth in this Agreement) or utilize such Confidential Information for Performer's benefit or for the benefit of a third party. Notwithstanding the foregoing, nothing herein shall prohibit Performer from disclosing Confidential Information concerning Performer's wages, hours, and other terms and conditions of employment as that term is defined under Section 7 of the National Labor Relations Act. For clarity, except as set forth above, Producer may not demand or request that Performer execute any non-disclosure agreement that has not been approved in advance and in writing by the Union."
- b. This provision is not intended to supercede any confidentiality provisions in celebrity agreements. The parties shall execute a sideletter clarifying that "celebrity" refers to an individual who receives \$50,000 under a single contract.

### **38. Diversity in Casting Stunt Doubles – Sideletter #2**

Revise and implement within 6-months of ratification.

### **39. New Sideletter – Experimental Waiver for Internet/New Media Commercials Made for Use on Social Media**

"Dear Mr. Wood,

Notwithstanding anything to the contrary contained in this Contract, the following terms and conditions shall apply to Internet and/or New Media commercials produced for use on social media platforms (including, but not limited to, Facebook, Instagram, Vine, SnapChat, Tumblr, Twitter, and LinkedIn):

- a. Producer may film and record multiple commercials for the same product, service or entity in a single session for a single session fee that may not be credited.
- b. Each commercial shall have a 30-day use cycle(s) and a one-year maximum period of use.
- c. The fee per commercial for each 30-day cycle shall be 15% of a session fee.
- d. Producer shall not obtain any exclusivity from principal performers and no holding fees shall be due to principal performers.
- e. The Producer shall have no editing rights with respect to such commercials, i.e., each version must be paid separately.
- f. This waiver shall sunset on March 31, 2019."

#### 40. New Sideletter – Determinations Made at IUSC Under Corporate-Educational & Non-Broadcast Contract

“Dear Mr. Wood,

At the 2016 Commercials Contracts negotiations, the Joint Policy Committee (“JPC”) contended that determinations that may be reached under the SAG-AFTRA Corporate/Educational & Non-Broadcast Contract (“Co-Ed”) regarding the definition of ‘commercial’ as it appears in that contract may unfairly prejudice signatories to the Commercials Contracts and that such determinations should therefore be made exclusively by the Joint Commercial Review Committee under the Commercials Contracts. The Union contended that the process by which agreements are reached under the Co-Ed is not a mandatory or proper subject of bargaining under the Commercials Contracts.

Nevertheless, in the interest of achieving an amicable resolution to the negotiations, the Union agreed as follows: The Union agrees to notify the JPC in the event a claim is brought to the Co-Ed Industry Union Standing Committee regarding whether certain content constitutes a ‘commercial.’ In the event that a determination is made under the Co-Ed that certain content constitutes a ‘commercial’ under that agreement, whether by agreement at the Industry Union Standing Committee or by arbitration, the Union will provide notice of that determination to the JPC. Furthermore, the Union and the JPC agree not to submit or otherwise rely upon such determination in any arbitration conducted under the Commercials Contracts.”

#### 41. Drafting

- a. Agreed Interpretations: In an effort to streamline this contract and make it easier for Performers and Producers to use, all Agreed Interpretations will be moved from the stand-alone section and incorporated into the relevant sections of the body of the contract.
- b. Adjust the On-Camera Performer wardrobe allowance from \$17.65/\$29.45 to be equal to the Extras wardrobe allowance of \$17.95/\$29.90.
- c. Make the following changes to the Audition Reports, Television Commercials Exhibit E:
  - i. Add the director’s name, if known, to the Exhibit E.
  - ii. Remove any references to age, ethnicity and disability.
  - iii. Change the word “Sex” to “Gender.”
- d. Section 39 – Program Openings and Closings (Commercial Billboards).  
Begin what would be ¶ 2 of Section 39.A. with the following: “The rates for such program openings and closings are...”
- e. Schedule C – Section 2.B. Edit “Table A” to read “Table F”.
- f. Exhibit I – SAG-AFTRA Commercials Contract ALLOCATION GUIDELINES. Revise paragraph G as follows: “Where contracts under paragraph A. (Guideline A) hereof include services covered by both the SAG-AFTRA Commercials Contracts and the SAG-AFTRA Radio Commercials Contract, allocations for covered services may be split 80% to services covered by the SAG-AFTRA Commercials Contract and 20% to services covered by the SAG-AFTRA Radio Commercials Contract. Where contracts include non-covered services and services covered by both the SAG-AFTRA Commercials Contract, and SAG-AFTRA Radio Commercials Contract, and/or SAG-AFTRA Corporate/Educational & Non-Broadcast Contract, allocations for covered services may be split 90% to services covered by the SAG-AFTRA Commercials Contract and 10% to services covered by the SAG-AFTRA Radio Commercials Contract and/or the SAG-AFTRA Corporate/Educational & Non-Broadcast Contract.”
- g. Add to Schedule D, Section II.13.B. Extra Performers (from 2013 MOA):  
Performer shall provide the name of his/her agent on the Exhibit A-2. Performer shall only be entitled to receive the agent’s commission in his/her gross compensation if in fact performer is represented by an agent and such agent procured the employment.
- h. Revise Union Standards, Section 49.A. as follows: **“Except as otherwise permitted, a Producer will not engage in production....”**