

ARTICLE 2

Disputes

Section 2-100 MATTERS SUBJECT TO GRIEVANCE AND ARBITRATION

2-101 Arbitrability

The following matters shall be subject to arbitration: All grievances, disputes or controversies over the interpretation or application of the BA and, in addition, all grievances, disputes or controversies over the interpretation or application of any Employee's personal services contract or deal memo with respect to (a) credit provisions, (b) cutting rights provisions, (c) preview rights provisions, (d) creative rights provisions (including, without limitation, all consultation and/or approval rights of any kind relating to any motion picture), (e) money claims for unpaid compensation seeking \$550,000 or less, (f) cash per diem payments for Employees only; provided, however, that grievances, disputes or controversies over the interpretation or application of any personal service contract or deal memo shall not be arbitrable if they relate to (1) perquisites such as per diem (except as provided above), travel arrangements, secretarial services and the like, (2) compensation measured by net or gross proceeds, or (3) other provisions not referred to in subparagraphs (a) through (f) hereinabove.

The Arbitrator shall determine any dispute as to the arbitrability of any matter hereunder.

2-102 Limitation on Arbitrator's Power

The Arbitrator shall not have the power to vary, alter, modify or amend any of the terms of the BA or of any deal memo or personal service contract in making a decision or award.

2-103**Defenses, Setoffs and Counterclaims**

- (a) In any grievance or arbitration concerning a claim for unpaid compensation under an Employee's deal memo or personal service contract, the Employer may assert any and all defenses, counterclaims and setoffs, including any defenses based on a claim of suspension or termination.
- (b) In any grievance or arbitration concerning a claim for unpaid minimum compensation under the BA only, the Employer may, but need not, assert any and all defenses including any defense based on a claim of suspension or termination and may, but need not, assert any setoff or counterclaim not exceeding the amount claimed by the Guild. It is expressly agreed that any award by the Arbitrator concerning the matter at issue in such arbitration shall not be binding, res judicata or serve as collateral estoppel upon either the Employer or Employee in any separate arbitration or court proceeding brought by the Employer or Employee, except that (1) the amount of any award and the amount of any setoff or counterclaim shall be credited against any liability of Employer to Employee or vice versa and (2) Employer may not assert any claim, counterclaim or setoff against Employee in any subsequent arbitration or court proceeding if such matter was asserted in the arbitration, except to the extent the amount exceeds the amount claimed by the Guild in the arbitration.

Section 2-200 GRIEVANCE PROCEDURE**2-201****Time Limits**

The Guild or an Employer may file a grievance over any matter subject to the disputes procedure of this Article 2; provided, however, that a joint filing by the Guild and the Employee shall be required if the grievance relates to arbitrable matters in the personal service contract or deal memo in excess of BA minimums, and provided further, however, that any grievance must be filed on or before the earlier of:

- (a) Twelve (12) months following the date on which the facts upon which the claim is based were discovered by the party bringing the grievance or arbitration proceeding; or
- (b)
 - (1) Four (4) years following the date on which the event in dispute occurred in cases involving pension and health contributions, residual compensation or other contingent or deferred compensation; or
 - (2) Two (2) years following the date on which the event in dispute occurred in all other cases.

2-202 Grievance Notice

The grievance shall be in writing, state the essential facts of the claim and refer to the contractual provisions alleged to have been breached.

2-203 Grievance Meeting

Within ten (10) working days after the filing of the grievance, an authorized representative of the Guild and an authorized representative of the Employer shall meet and attempt to settle the dispute or difference.

Section 2-300 ARBITRATION PROCEDURE

2-301 Parties

In any grievance or arbitration hereunder, only the Guild and the Employer shall be parties, except that in any grievance or arbitration involving claims for unpaid compensation under, or other arbitrable violations of, a personal service contract or deal memo, the Employee involved and the Employee's loan-out company, if any, shall also be parties.

2-302 Demand for Arbitration

If the dispute or difference is not settled at the meeting described in Paragraph 2-203 above, or if the other party refuses or fails to meet,

the party aggrieved (hereinafter "claimant") may deliver to the other party (hereinafter "respondent") a written demand for arbitration which shall set forth the basis of the dispute, the material facts, the position of the claimant, and the relief sought. Such demand must be served not later than sixty (60) days after the filing of the grievance. The arbitration shall proceed as described in the Arbitration Procedure set forth below.

2-303 Respondent's Statement of Its Position

The respondent shall promptly, within five (5) business days following receipt of the demand for arbitration, inform the claimant (the Guild in the case of a joint filing) of its representative and serve a written statement of its position.

2-304 Selection of the Arbitrator

(a) Within ten (10) business days following service of the demand for arbitration, or within such additional time as the parties mutually agree upon, the parties will attempt to mutually agree upon an Arbitrator. If the parties do not mutually agree upon an Arbitrator, the Arbitrator next in rotation on an Employer-by-Employer basis from the following list of persons shall be automatically assigned to the arbitration. The parties' mutual selection of an Arbitrator shall not affect the rotation of Arbitrators.

(1) The Los Angeles list of Arbitrators shall be as follows:

Charles Askin
Howard Block
Douglas Collins
Dixon Dern
Joseph Gentile
William B. Gould IV
Joel Grossman
Anita Knowlton
Kenneth Perea

Michael Rappaport
Barry Winograd

- (2) With respect to arbitrations held in New York, the list of Arbitrators shall be as follows:

Richard Adelman
Ralph Berger
Howard Edelman
Herbert Fishgold
Susan MacKenzie
George Nicolau
Joan Parker
Janet Spencer
Carol Wittenberg

- (3) Other Arbitrators may be added to the panels set forth in subparagraphs (1) and (2) above from time to time by mutual agreement between the Guild and the Employer.

From July 1, 2008 to and including December 31, 2009, the Arbitrator shall be selected from the panels set forth in subparagraphs (a)(1) and (2) above, as applicable, in rotation on an Employer-by-Employer basis starting from the top of the list down and, during the remainder of the term of this BA, the Arbitrator shall be selected in rotation on the same basis, starting from the bottom of the list up.

- (b) If no person on the list is available to hear the dispute, an Arbitrator shall be mutually selected by the Guild and the Employer. If they fail to agree, the Federal Mediation and Conciliation Service shall select the Arbitrator.
- (c) If more than one Employer is named as a respondent in any arbitration complaint, the Arbitrator selected shall be the one next in line from the list of the Employer most recently a party to any arbitration.
- (d) During the ten (10) business days or additional time mentioned in subparagraph (a) above, the claimant(s) and the

respondent(s) shall each have the right to exercise two (2) peremptory challenges to the four (4) Arbitrators whose names are next in order on the list immediately following the name of the Arbitrator last selected.

- (e) If the Arbitrator selected cannot serve, a substitute shall be selected in accordance with the procedure set forth in subparagraphs (a), (b), (c) and (d), except the parties need not attempt to mutually agree on the substitute Arbitrator.
- (f) The foregoing lists replace the lists of Arbitrators in all preceding Basic Agreements, starting with the 1978 Basic Agreement, and shall be effective as of July 1, 2008, notwithstanding anything to the contrary in either the 2005 BA or this BA.

2-305 Situs of Arbitration

All arbitrations shall be in Los Angeles, absent agreement by the parties, except that they shall be in New York if the personal service agreement out of which the dispute arose was negotiated, entered into and production was based in New York and a majority of the witnesses required for the arbitration hearing reside regularly in and around the New York area. Any dispute as to where the arbitration should be held shall be determined by an Arbitrator in Los Angeles selected according to the method set forth herein. If the Arbitrator determines that Los Angeles is the proper situs for the arbitration, he or she shall hear the merits thereof, provided he or she is available.

Arbitrations held in Los Angeles will alternate on an Employer-by-Employer basis between the Guild's offices and, at the election of the Employer, the AMPTP's offices, if available, or the Employer's offices, if in Los Angeles. The party providing the hearing room shall do so at no cost to the other.

2-306 Notification to Arbitrator

The claimant(s) shall notify the Arbitrator of his or her selection in writing with a copy to each respondent and at the same time furnish the Arbitrator with a copy of the BA, a copy of the demand for

arbitration and the name, address and telephone number of the person who will represent the claimant(s) in the arbitration hearing.

2-307

Hearing

- (a) Upon receipt of the demand for arbitration, the Arbitrator shall forthwith set the date for the arbitration hearing after contacting the parties' representatives for their available dates. If possible, the date for the hearing shall be within fifteen (15) to thirty (30) days after the demand for the arbitration. The Arbitrator shall notify the parties of the time and place of the arbitration hearing.
- (b) The arbitration hearing shall take place on the scheduled date. If either party fails to appear, the Arbitrator is specifically authorized and empowered to hear the matter on the evidence of the appearing party and enter an award based on such evidence.
- (c) Each party shall bear the costs of presenting its own case. The fees of the Arbitrator and the hearing shall be allocated by the Arbitrator in his or her sound discretion.
- (d) All hearings and deliberations conducted pursuant to the grievance and arbitration provisions of this Article 2 shall be closed to the public. Only authorized representatives of the Guild and Employer or witnesses called by the Arbitrator or by either party may attend.
- (e) All written communication to and from the Arbitrator or writings filed in connection with the arbitration proceedings and all testimony and arguments at the arbitration shall be privileged.

2-308

Exchange of Information

The parties will cooperate in the exchange of information reasonably in advance of the hearing date regarding the expected utilization of documents and physical evidence. Not later than thirty (30) days prior to the arbitration hearing, either party may make a written

request to the other to produce, on a date not earlier than seven (7) days before the hearing, documentary evidence of the type producible pursuant to a *subpoena duces tecum*. The documents must be produced on the date requested, but the other party may object to the production of the documents to the same extent as though the documents were subpoenaed. Any such objection shall be considered by the Arbitrator at the hearing.

The introduction of documents or physical evidence shall not be precluded because they were not exchanged in advance of the hearing.

2-309 Award

The award of the Arbitrator shall be promptly furnished to the parties in writing and shall be final and binding on the Guild, the Employee and the Employer. An arbitration award interpreting any of the terms of this BA thereafter shall be binding upon the Guild and the Employer; provided, however, that in any subsequent arbitration between the Guild and the Employer involving an interpretation of the same term or terms of the BA, the Arbitrator may determine whether or not, as a result of the different combination of facts, the prior arbitration award is relevant or determinative of the issue in such subsequent arbitration.

Section 2-400 EXPEDITED ARBITRATION PROCEDURE

2-401 Notwithstanding any other provision of the BA, any personal service contract or any deal memo, the following Expedited Arbitration Procedure shall be followed if, in the opinion of a party, a grievance will become moot or damages will be increased by reason of delay if processed through the above Grievance and Arbitration Procedure.

- (a) A Notice of Expedited Arbitration (so labeled by the claimant) shall be reduced to writing and given to the respondent and the first available Arbitrator listed in subparagraph 2-304(a) who can hear the matter within two (2) business days following the filing of the Notice of Expedited Arbitration. The Notice of Expedited Arbitration shall include the name, address and

telephone number of the claimant's representative(s) and the name of the person who represents the respondent. A copy of the BA and any applicable available personal service contract and/or deal memo shall be given to the Arbitrator along with the Notice of Expedited Arbitration.

- (b) Upon receipt of the Notice of Expedited Arbitration, the Arbitrator shall, by telephone or facsimile, notify the parties of the time and place of the Expedited Arbitration hearing.
- (c) An Expedited Arbitration hearing shall not be continued, absent agreement of the parties, except upon proof of good cause by the party requesting such continuance. The unavailability of any witness shall not constitute good cause unless the witness' testimony is relevant to the issues in the arbitration and could not be received by means consistent with fundamental fairness which do not require the witness' presence at the hearing.
- (d) Paragraphs 2-101, 2-102, 2-103, 2-201, 2-301, 2-304(a) (last paragraph) and (b), 2-305, 2-307(b) through (e) and 2-309 of this Article 2 shall be applicable to this Expedited Arbitration Procedure, except that:
 - (1) the Expedited Arbitration hearing shall be commenced not later than on the second business day next following receipt of the Notice of Expedited Arbitration;
 - (2) the Arbitrator's written award shall be issued within two (2) business days from the end of the Expedited Arbitration hearing, but failure to meet the deadline shall not oust the Arbitrator of jurisdiction;
 - (3) the award shall be served on the parties by messenger or facsimile; and
 - (4) the same list of Arbitrators for non-expedited arbitrations shall apply to Expedited Arbitrations, but the rotation shall be separate.

- (e) Nothing contained in this Expedited Arbitration Procedure shall preclude the parties from discussing the settlement of the Expedited Arbitration, except that such discussion shall not delay the Expedited Arbitration Procedure.
- (f) The failure of the claimant to serve the Notice of Expedited Arbitration within ten (10) business days following the date on which the facts upon which the claim is based were discovered by the party bringing the Expedited Arbitration shall constitute a waiver of the right to this Expedited Arbitration Procedure. If two or more claims are submitted to Expedited Arbitration and the Expedited Arbitration Procedure has been waived or is inapplicable to one or more claims, the same Arbitrator may determine the claims not subject to Expedited Arbitration, provided that such non-Expedited Arbitration claim or claims shall be determined in accordance with the regular Arbitration Procedure set forth in Section 2-300, unless the parties agree otherwise.
- (g) Any party to an arbitration hereunder may, if the circumstances hereinabove set forth exist, require that the arbitration be conducted as an expedited arbitration by serving appropriate notice to that effect.
- (h) If the Expedited Arbitration involves multiple disputes or controversies, the Arbitrator may, upon the request of a party, bifurcate or separate such disputes or controversies and render separate awards, each of which shall be deemed final.

Section 2-500 ARBITRAL REMEDIES

2-501 Authority of Arbitrator

The Arbitrator shall have the authority to grant or award one or more of money damages, orders to withdraw, cancel, change or re-do advertising material already issued or prepared, or to require Employer to change or re-do any film titles, or to order back pay or reinstatement, or to order any other reasonable relief the Arbitrator deems appropriate in the circumstances, whether relating to credit on the screen or in advertising or any other arbitrable matter, in the event

the Arbitrator finds a breach of the BA or of those provisions of the personal service contract or the deal memo which are subject to arbitration pursuant to the provisions of Paragraph 2-101 hereof.

2-502 Consideration for Determining Remedies

In determining the appropriate remedy, the Arbitrator shall take into account such evidence as may be adduced by the claimant of similar prior violations by the respondent. The Arbitrator shall also take into account evidence of failure on the part of the claimant to notify the respondent promptly of the violation, and evidence of inadvertent breach.

2-503 Compliance with Arbitrator's Award

Should the Arbitrator issue an award which in whole or part is not self-executing, and a party fails to comply with such award, the party aggrieved thereby may, but need not, submit the matter to the Arbitrator who issued the award.

Section 2-600 COURT PROCEEDINGS

2-601 Arbitration Exclusive Remedy

Arbitration hereunder shall be the exclusive remedy in connection with claims for violation by the Employee, Guild or the Employer of the provisions of the BA and of the arbitrable provisions of any personal service contract or deal memo other than claims for compensation.

2-602 Claims for Compensation

- (a) The Employee shall have the right, prior to commencement of an arbitration by any party entitled thereto, to commence action in any court of competent jurisdiction with respect to unpaid compensation in any amount, and in any event regarding the non-arbitrable portions of Employee's personal service contract. Upon the filing of such action, the further operation of the procedures and remedies described in this Article 2 shall

cease to apply to such dispute. The Guild shall have the right, but not the obligation, to be party in any such action in court.

- (b) The Guild shall have the right to take to grievance and arbitration any claim by the Guild of an Employer's breach of the BA, including a failure to pay minimum compensation, regardless of whether or not such claimed breach may also involve a breach by the Employer of its contract with the Employee. Such proceeding shall not affect the right of the Employee to pursue remedies at law or in equity, except as limited by the provisions of the BA.
- (c) If the Employee and the Guild make a claim for unpaid compensation in an arbitration proceeding, then to the extent of any unpaid non-contingent compensation in excess of \$550,000, collection of such excess from the Employer shall be deemed waived. No Employee shall have the right to commence court proceedings to collect any unpaid compensation for which claim has been made in arbitration, including, but not limited to, compensation in excess of the jurisdictional amount of \$550,000.

2-603

Petition to Confirm, Vacate or Modify Award

- (a) Nothing in the BA shall preclude any court of competent jurisdiction from confirming, setting aside or modifying any award hereunder in accordance with applicable law.
- (b) Service of a petition to confirm, set aside or modify an arbitration award hereunder may be served by certified or registered mail, return receipt requested.

Section 2-700 WITHDRAWAL OF SERVICES

2-701 Notwithstanding any provision of any personal service contract, deal memo or of the BA to the contrary, it shall not be a violation thereof for the Guild or any Employee (at the direction of the Guild) to withhold services from the Employer if the Employer fails or refuses to abide by the final award of any Arbitrator for any reason whatsoever.