

## ARTICLE 18

### **Supplemental Markets - Theatrical and Free Television Motion Pictures**

#### **18-101      Motion Pictures Covered**

The provisions of this Article 18 relate and apply only to theatrical and free television motion pictures which are:

- (a) produced by the Employer or within the provisions of Paragraph 18-110;
- (b) the principal photography of which commenced on or after July 1, 2008, which motion pictures are, either during the term hereof or at any time thereafter, released in supplemental markets (as defined below); and
- (c) produced by Employer with Directors, UPMs and First and Key Second Assistant Directors employed by Employer under the terms of this BA or in the employ of the actual Producer as described in Paragraph 18-110 (to which employment the provisions of the Paragraph apply).

Such a motion picture is sometimes herein called "Such Picture."

#### **18-102      Definitions**

The term "Supplemental Markets," as used in this BA, means only: The exhibition of motion pictures by means of cassettes (to the limited extent provided in subparagraph (a) of this Paragraph 18-102) or pay television as those terms are hereafter defined in this Paragraph 18-102 and the exhibition of television motion pictures on any commercial carrier such as commercial airlines, trains, ships and buses (referred to herein as "in-flight").

- (a) Cassettes: For the purposes of this Article 18, a cassette is any audio-visual device, including without limitation, cassette, cartridge, phonogram or other similar audio-visual device now

known or hereafter devised, containing a motion picture (recorded on film, discs, tapes or other material) and designed for replay through a television receiver or comparable device. The sale or rental of cassettes for replay through a television receiver or comparable device in the home or in closed-circuit use such as in hotel rooms constitutes "Supplemental Markets."

(b) Pay Television: The term "pay television," as used in this Article, shall mean exhibition on a home-type television screen by means of a telecast, cable, closed circuit, satellite to home or CATV when a majority of licensed systems meet the following tests:

(1) a separate channel is provided for which the subscriber pays a separate fee (which fee is a substantial charge relative to other charges made to the subscriber) for that channel;

and/or

(2) the subscriber pays for the motion picture or motion pictures selected (except that a motion picture or motion pictures selected for which only a token charge is made shall not be considered pay television);

and/or

(3) the subscriber pays a fee for an encoded telecast, which fee is a substantial charge relative to other fees paid for encoded telecasts.

The foregoing tests cover those types of services and systems which exist in the industry today and are commonly understood in the industry today to be pay television services or systems.

The term "pay television," as used in this Article 18, shall also include the exhibition of motion pictures through a television receiver or comparable device by means of telecast, cable, closed circuit, satellite or CATV for which the viewing audience (whether by the individual viewer or by the hotel,

motel, hospital or other accommodation where the viewer is) pays to receive the program by making a separate payment for such specific program. Exhibition in theatres or comparable places by such means is theatrical exhibition and shall not be considered pay television.

The term "Supplemental Markets" does not include the exhibition of a motion picture by cassette or otherwise over a television broadcast station in free television, or in theatrical exhibition (and, for this purpose, "theatrical exhibition" includes what has previously been considered to be the educational market), the exhibition of theatrical motion pictures on any commercial carrier (referred to herein as "in flight") such as commercial airlines, trains, ships and buses, and other uses which have been traditionally considered theatrical exhibition of theatrical motion pictures. Wherever reference is made in this Article 18 to pay television, such reference shall be deemed to include only those uses of motion pictures as to which a charge is actually made to the subscriber (which may be a hotel, motel or other accommodation) for the program viewed, or where the subscriber or viewer has the option, for a payment, to receive special programming over one or more special channels. Subject to Paragraph 11-108, the exhibition of motion pictures made for theatrical or free television exhibition on "basic cable" is considered free television exhibition as distinguished from "Supplemental Markets" exhibition.

With respect to theatrical motion pictures, the Employer has agreed to the inclusion of pay television in the "Supplemental Markets" because under the present pattern of distribution of theatrical motion pictures, pay television is supplemental to the primary market. The Employer reserves the right in future negotiations to contend that the pattern of release has changed so that pay television is no longer a "Supplemental Market" but constitutes or is a part of the primary market of distribution of theatrical motion pictures, and that therefore no additional payment pursuant to this Article should be made with respect to the release of theatrical motion pictures (including those covered by this BA) in said markets. The Guild reserves the

right to contend in future negotiations that the method of employment and payment provided for in this BA is applicable and appropriate to employment directly for motion pictures intended primarily for release on pay television or cassettes, and that the provisions of this BA with respect to all kinds of "Supplemental Markets," whether they are or have become primary markets or not, shall be improved for the benefit of Employees hereunder for said markets. Nothing herein shall limit the scope of negotiations on said subjects.

**18-103      Supplemental Market Distribution Other Than By Cassettes**

The following provisions of this Paragraph 18-103 apply to the distribution of any "Such Picture" in "Supplemental Markets" other than by means of cassettes as defined in subparagraph 18-102(a):

(a)    Percentage Payment: Employer shall pay additional compensation of one and two-tenths percent (1.2%) of the Employer's accountable receipts from the distribution of Such Picture. Such payment is to be divided as follows: one-half ( $\frac{1}{2}$ ) of such amount to be paid to the Director; one-third ( $\frac{1}{3}$ ) of such amount to be paid to the Directors Guild of America – Producer Pension Plan (herein referred to as the "Pension Plan"); and a *pro rata* share of one-sixth ( $\frac{1}{6}$ ) of such amount to be paid to the UPM, the First Assistant Director and the Key Second Assistant Director employed on such motion picture (such portion of such one-sixth ( $\frac{1}{6}$ ) *pro rata* share to be based upon their respective minimum schedule wage rate hereunder). If more than one Director, UPM, First Assistant Director or Key Second Assistant Director renders services in connection with Such Picture, the allocations of their respective portion of the *pro rata* shares shall be determined by the Guild and the Employees shall be bound by such determination.

(b)    Definition of "Employer's Gross"

The term "Employer's gross," as used herein, means the worldwide total gross receipts derived by the distributor of Such Picture (who may be the Employer or a distributor licensed by the Employer) from licensing the right to exhibit

Such Picture in Supplemental Markets other than by means of cassettes; provided, however, that in the case of any Such Picture which is produced outside of the United States, if Such Picture is subject to this BA and if such production is under an arrangement (herein referred to as a "foreign production deal") pursuant to which a foreign producer or distributor provides or guarantees any of the financing for the production of Such Picture or furnishes any other consideration for such production and a foreign distributor acquires one or more foreign territories for the distribution of Such Picture in Supplemental Markets, then no monies from any such distribution in any such foreign territory shall be included in Employer's gross except to the extent such foreign producer or foreign distributor is obligated to account to Employer or to the distributor of Such Picture for such monies, and except for gross receipts received by such foreign distributor from such distribution in the United Kingdom.

If the distributor of Such Picture does not distribute Such Picture directly in Supplemental Markets, but employs a subdistributor to so distribute Such Picture, then the "Employer's gross" shall be the worldwide total gross receipts derived by such subdistributor from licensing the right to exhibit Such Picture in Supplemental Markets. In case of an outright sale of the Supplemental Markets distribution rights, for the entire world, or any territory or country, the income derived by the seller from such sale, but not the income realized by the purchaser or licensee of such rights, shall be the "Employer's gross." If any such outright sale shall include Supplemental Markets exhibition rights and other rights, then (but only for the purpose of the computation required hereunder) the Employer shall allocate to the Supplemental Markets exhibition rights a fair and reasonable portion of the sales price which shall, for the purpose hereof, be the "Employer's gross." In reaching this determination, Employer may consider the current market value of Supplemental Markets exhibition rights in comparable motion pictures.

If the Guild shall contend that the amount so allocated was not fair and reasonable, such claim may be determined by

submission to arbitration as herein provided; and in the event the Arbitrator shall find that such allocation was not reasonable and fair, he or she shall determine the fair and reasonable amount to be allocated. If the outright sale includes Supplemental Markets distribution rights to more than one (1) motion picture, Employer shall likewise allocate to each Such Picture a fair and reasonable portion of the sales price of the Supplemental Market rights; and if the Guild contends that such allocation is not fair and reasonable, the question may be determined by submission to arbitration as above provided. If the Arbitrator shall find that such allocation was not fair and reasonable, the Arbitrator shall determine the fair and reasonable amount to be so allocated to each Such Picture. Nothing with respect to the price received on the outright sale of only supplemental markets distribution rights in a single Such Picture shall be subject to arbitration except that, in the event of a dispute, there may be arbitrated the question of whether the price reported by the Employer to the Guild as having been received by the Employer on such outright sale is less than the amount actually received by the Employer on such outright sale.

The "Employer's gross" shall not include sums required to be paid or withheld as taxes, in the nature of turnover taxes, sales taxes or similar taxes based on the actual receipts of such motion picture or on any monies to be remitted to or by the Employer, but there shall not be excluded from Employer's gross any net income tax, franchise tax or excess profit tax or similar tax payable by the Employer or such Distributor on its net income or for the privilege of doing business.

(c) Definition of "Accountable Receipts"

The term "accountable receipts," as used herein, means one hundred percent (100%) of the "Employer's gross."

- (d) Employer's obligation shall accrue hereunder only after Employer's gross is received by Employer, but as to foreign receipts such obligation shall accrue only when such receipts can be freely converted to U.S. dollars and are remitted to the

United States, and until such time no frozen foreign receipts shall be included in Employer's gross. Payment of amounts accruing hereunder shall be made quarterly on the basis of quarterly statements, as hereinafter provided. Upon request, and if permitted by the authorities of a foreign country, the Employer will transfer to the Pension Plan and to any Director, UPM, First or Second Assistant Director, in the currency of such foreign country, its or his or her share, if any, of frozen foreign receipts in such country, provided the recipient will bear any costs involved; and such transfer shall be deemed to be payment of an equivalent number of U.S. dollars at the then current free market rate for blocked funds of that category as determined by the Employer. Concurrently with such transfer, the recipient will pay to the Employer in U.S. dollars the total amount the Employer is required to withhold from such payment under all applicable laws. If the Employer utilizes frozen foreign currencies derived from exhibition of Such Picture in Supplemental Markets by conversion thereof to properties that may be freely exported and turned to account, the amount so utilized by the Employer shall be deemed to have been converted to U.S. dollars at the then current free market rate for blocked funds of that category determined as above provided. Frozen foreign receipts from Supplemental Markets shall be deemed to be released on a "first-in, first-out basis," unless the authorities of the foreign country involved designate a specific period that would render such basis inapplicable. Such released funds shall be allocated between Such Picture and other motion pictures distributed by the distributor in Supplemental Markets in the same ratio that receipts derived from the distribution of Such Picture in Supplemental Markets within the foreign country bear to the total receipts derived from the distribution of Such Picture and all other motion pictures in Supplemental Markets within the foreign country during the applicable period, unless the authorities of the foreign country involved require another method of allocation, in which case such other method shall be used. Foreign receipts shall be accounted for in U.S. dollars at the rate of exchange at which such receipts are actually converted and remitted, and should any discounts, taxes, duties or charges be imposed in connection with the receipt or

remittance of foreign funds, only so much of such funds as remain thereafter shall be included in accountable receipts. Employer shall not be responsible for loss or diminution of foreign receipts as a result of any matter or thing not reasonably within the control of the Employer. The Guild, the Pension Plan and the Employees shall be bound by any arrangements made in good faith by the Employer or for its account, with respect to the deposit or remittance of foreign revenue. Frozen foreign receipts shall not be considered trust funds and the Employer may freely commingle the same with other funds of the Employer. No sums received by way of deposits or security need be included in Employer's gross until earned, but when the Employer is paid a non-returnable advance by a distributor, such advance shall be included in the Employer's gross.

(e) Allocation of License or Sales Fee

If any license or outright sale of exhibition rights to Such Picture in Supplemental Markets includes as a part thereof any filmed commercial or advertising material, the Employer shall be permitted to allocate a reasonable amount (in accordance with then current standard charges in the industry) to such commercial or advertising material, and the amount so allocated shall not be included in Employer's gross hereunder.

**18-104      Supplemental Market Distribution on Cassettes**

The following provisions of this Paragraph 18-104 apply to the distribution in Supplemental Markets of any Such Picture by means of cassettes as defined in subparagraph 18-102(a):

(a) Percentage Payment

Employer shall pay additional compensation of one and five-tenths percent (1.5%) of the "Employer's gross," as defined below, until the Employer's gross equals one million dollars (\$1,000,000). Thereafter, Employer shall pay one and eight-tenths percent (1.8%) of "Employer's gross" in excess of



\$1,000,000. Such percentage payments are to be divided as follows:

- (1) until the Employer's gross equals \$1,000,000, 1% thereof shall be paid to the Director, 0.3% thereof shall be paid to the Pension Plan and 0.2% thereof shall be paid to the UPM, the First Assistant Director and the Key Second Assistant Director.
- (2) after the Employer's gross exceeds \$1,000,000, 1.2% thereof shall be paid to the Director, 0.36% thereof shall be paid to the Pension Plan and 0.24% thereof shall be paid to the UPM, the First Assistant Director and the Key Second Assistant Director.
- (3) the portion of the 1.5% and 1.8% percentage payment due the UPM, First Assistant Director and Key Second Assistant Director shall be divided among them in *pro rata* shares based upon their respective minimum wage rate hereunder. If more than one Director, UPM, First Assistant Director or Key Second Assistant Director renders services in connection with Such Picture, the allocations of their respective portion of the *pro rata* shares shall be determined by the Guild and the Employees shall be bound by such determination.

(b) Definition of Employer's Gross

If the Employer is the Distributor or the Distributor is owned by or affiliated with the Employer, the "Employer's gross" derived from the distribution of Such Picture by "cassettes" shall be twenty percent (20%) of the worldwide wholesale receipts derived by the Distributor. In such cases, if the Distributor is also the retailer, a reasonable allocation of the retail gross receipts shall be made as between the Distributor as distributor and the Distributor as retailer, and twenty percent (20%) of the former only shall be deemed to be "Employer's gross." The reasonableness of such allocation shall be subject to arbitration, and in such arbitration, generally prevailing trade practices in the cassette industry with respect to dealings

between non-related companies shall be relevant evidence.  
Such worldwide wholesale receipts shall not include:

- (1) Rebates, credits or repayments for cassettes returned (and in this connection the Employer shall have the right to set up a reasonable reserve for returns);
- (2) Sums required to be paid or withheld as taxes, in the nature of turnover taxes, sales taxes or similar taxes based on the actual receipts of such motion picture or on any monies to be remitted to or by the Employer, but there shall not be excluded from Employer's gross any net income tax, franchise tax or excess profit tax or similar tax payable by the Employer or such Distributor on its net income or for the privilege of doing business;
- (3) In the case of any Such Picture which is produced outside of the United States, if Such Picture is subject to this BA and if such production is under an arrangement (herein referred to as a "foreign production deal") pursuant to which a foreign producer or distributor provides or guarantees any of the financing for the production of Such Picture or furnishes any other consideration for such production and a foreign distributor acquires one or more foreign territories for the distribution of Such Picture in Supplemental Markets, monies from any such distribution in any such foreign territory except to the extent such foreign producer or foreign distributor is obligated to account to Employer or to the distributor of Such Picture for such monies, and except for gross receipts received by such foreign distributor from such distribution in the United Kingdom.

If the Distributor is not the Employer and is not owned by or affiliated with the Employer, the "Employer's gross" shall be one hundred percent (100%) of the fees received by the Employer from licensing the right to distribute Such Picture by cassettes.

- (c) Employer's obligation shall accrue hereunder only after Employer's gross is received by Employer, but as to foreign receipts such obligation shall accrue only when such receipts can be freely converted to U.S. dollars and are remitted to the United States, and until such time no frozen foreign receipts shall be included in Employer's gross. Payment of amounts accruing hereunder shall be made quarterly on the basis of quarterly statements, as hereinafter provided. Upon request, and if permitted by the authorities of a foreign country, the Employer will transfer to the Pension Plan and to any Director, UPM, First or Second Assistant Director, in the currency of such foreign country, its or his or her share, if any, of frozen foreign receipts in such country, provided the recipient will bear any costs involved; and such transfer shall be deemed to be payment of an equivalent number of U.S. dollars at the then current free market rate for blocked funds of that category as determined by the Employer. Concurrently with such transfer, the recipient will pay to the Employer in U.S. dollars the total amount the Employer is required to withhold from such payment under all applicable laws. If the Employer utilizes frozen foreign currencies derived from exhibition of Such Picture in Supplemental Markets by conversion thereof to properties that may be freely exported and turned to account, the amount so utilized by the Employer shall be deemed to have been converted to U.S. dollars at the then current free market rate for blocked funds of that category determined as above provided. Frozen foreign receipts from Supplemental Markets shall be deemed to be released on a "first-in, first-out basis," unless the authorities of the foreign country involved designate a specific period that would render such basis inapplicable. Such released funds shall be allocated between Such Picture and other motion pictures distributed by the distributor in Supplemental Markets in the same ratio that receipts derived from the distribution of Such Picture in Supplemental Markets within the foreign country bear to the total receipts derived from the distribution of Such Picture and all other motion pictures in Supplemental Markets within the foreign country during the applicable period, unless the authorities of the foreign country involved require another method of allocation, in which case such other method shall be

used. Foreign receipts shall be accounted for in U.S. dollars at the rate of exchange at which such receipts are actually converted and remitted, and should any discounts, taxes, duties or charges be imposed in connection with the receipt or remittance of foreign funds, only so much of such funds as remain thereafter shall be included in Employer's gross. Employer shall not be responsible for loss or diminution of foreign receipts as a result of any matter or thing not reasonably within the control of the Employer. The Guild, the Pension Plan and the Employees shall be bound by any arrangements made in good faith by the Employer or for its account, with respect to the deposit or remittance of foreign revenue. Frozen foreign receipts shall not be considered trust funds and the Employer may freely commingle the same with other funds of the Employer. No sums received by way of deposits or security need be included in Employer's gross until earned, but when the Employer is paid a non-returnable advance by a distributor, such advance shall be included in the Employer's gross.

(d) Allocation of License or Sales Fee

If any license or outright sale of exhibition rights to Such Picture in Supplemental Markets includes as a part thereof any filmed commercial or advertising material, the Employer shall be permitted to allocate a reasonable amount (in accordance with then current standard charges in the industry) to such commercial or advertising material, and the amount so allocated shall not be included in Employer's gross hereunder.

**18-105**      **Participating Employees**

If there is at least one (1) participating Employee (listed in subparagraph 18-101(c)) subject to the BA who performs services in connection with Such Picture, the Employer shall pay the full amount of the percentage payment. If there is more than one participating Employee in any of the job categories, the Guild shall determine the allocation of such payment among such participating Employees, provided that the Director(s), Unit Production Manager(s), First Assistant Director(s) or Key Second Assistant Director(s) subject to

this BA shall receive no less than their share as set forth in subparagraphs 18-103(a) and 18-104(a).

If there are no participating Employees assigned to Such Picture in a job category, the share of the percentage payment allocable to that job category shall be paid to the Directors Guild of America – Producer Health Plan. (This share will be paid directly to the Health Plan, but any report to the Guild under Paragraph 18-106 shall disclose the amount so paid to the Health Plan.)

If any Employee's services for Such Picture are performed for the Employer on a loan-out basis, then for the purposes of this Article 18, the Employer shall be deemed to be the employer, and the lender shall not have any responsibility hereunder with respect to Such Picture.

#### **18-106      Reports and Manner of Payment**

- (a) Within a reasonable time after the expiration of each calendar or fiscal quarter, but not exceeding sixty (60) days, Employer will furnish or cause to be furnished to the Guild a written report showing the Employer's gross during the preceding quarter from the distribution of each Such Picture by Employer in Supplemental Markets with respect to which Employer is required to make payments hereunder (whether distributed by the Employer or through another distributor).

Concurrently with the furnishing of each such report, the Employer will make the payments shown to be due by such report. All payments shall be made by check payable to the order of the Pension Plan and the Employees (as the case may be) entitled thereto, and shall be delivered to the Guild for forwarding to the Pension Plan and such Employees; and compliance herewith shall constitute payment to the Pension Plan and such Employees.

- (b) A "non-returnable advance" is to be included in "Employer's gross" when Such Picture is "available" and "identifiable" and the amount of the advance payment is "ascertainable."

- (1) Such Picture is "available" when the first of the following occurs:
  - (i) The product first may be exhibited or otherwise exploited by a specified method of distribution and in a territory under the terms of the applicable license or distribution agreement, or
  - (ii) It first may be sold or rented by a retailer under the terms of the applicable license or distribution agreement.
- (2) Such Picture is "identifiable" when the Employer first knows or reasonably should have known that a given motion picture is covered by a particular license or distribution agreement for its exploitation in the applicable market.
- (3) The amount of the advance payment is "ascertainable" if:
  - (i) the advance is for one motion picture, means of exhibition, and territory, or
  - (ii) the total amount of the advance is for more than one (1) motion picture, means of exhibition and/or territory, in which case the Employer shall fairly and reasonably allocate such advance among the licensed motion pictures, exhibition markets and/or territorial markets. As each of these pictures becomes identifiable and available, the allocated portion of the non-returnable advance is to be included in Employer's gross for that quarter. The Employer shall notify the Guild of its allocation when the report of "Employer's gross," which includes the advance, is to be filed. The Guild has the right to challenge in an arbitration a failure to allocate or any allocation that it contends is not fair and reasonable.

If Such Picture is available in any territory or by any means of exhibition, and is identifiable and the amount of the advance is ascertainable, but the Employer does not provide the Guild with the information required by the BA and applicable law, then the advance shall be deemed includable in "Employer's gross" no later than six (6) months after the Employer receives it.

An advance received by an Employer's parent, subsidiary of any other related or affiliated entity or successor-in-interest, or by any other entity to which the advance payment is directed by the Employer or license or distribution agreement, shall be considered as an advance payment received by the Employer.

- (c) No such payment need be made to the Pension Plan or to any individual participating Employee, until the amount due to the Pension Plan or to the respective individual has accumulated to an amount equal to or more than fifty dollars (\$50) for such Pension Plan or such respective individual. At the end of any calendar or fiscal year, however, any amounts due shall be paid to the Pension Plan and any participating Employee.

The foregoing paragraph shall apply to any prior Basic Agreement binding upon the Employer, notwithstanding anything to the contrary elsewhere in this Article 18.

- (d) No such reports need be furnished with respect to any period during which there was no such Employer's gross. The Employer shall make available for inspection by the Guild all distributor's statements and exhibitor's statements which are available to the Employer insofar as they relate to such Employer's gross, and all the financial terms of contracts pertaining to such Employer's gross, and the Guild shall have the right, at reasonable times, to examine the books and records of the Employer as to such Employer's gross pertaining to such distribution of any Such Picture, at whatever place or places such records are customarily kept by the Employer. If the Guild requests that it be informed of the license fee paid under a license for the exhibition of Such Picture in Supplemental Markets, or if the Guild requests that it be sent an extract of the

financial terms of such a license, and if such information is not extensive in nature, the Employer will forward such information or extract without making it necessary for the Guild to send a representative to the offices of the Employer. In general, the Employer will cooperate in furnishing such information to the Guild by mail or telephone, when doing so is not unreasonable or burdensome. If more than one (1) picture is licensed in a single license agreement, the Employer shall inform the Guild, at its request, of the identity of the pictures covered by the license, and shall make available for inspection by the Guild in the office where such license agreement is customarily kept a copy of terms of such license showing the titles of the pictures licensed under such agreement and the license fee for each such picture. Employer agrees to cooperate in responding to reasonable inquiries from the Guild as to whether any such picture is currently being distributed for telecasting on pay television or in any other Supplemental Market as herein defined. An inadvertent failure to comply with the reporting provisions of this Paragraph 18-106 shall not constitute a default by the Employer hereunder, provided such failure is cured promptly after notice thereof from the Guild is received by the Employer.

Employer shall make all social security, withholding, unemployment insurance and disability insurance payments required by law with respect to the additional compensation provided for in this Article 18.

**18-107      Charge for Late Payment**

If the Employer shall fail to make any payment provided for in this Article 18 when and as the same becomes due and payable, interest shall accrue at the rate of one percent (1%) per month on the unpaid balance thereof from the date payment is due.

**18-108**      The compensation payable under this Article 18 shall be excluded from the gross compensation upon which the Employer contributions are to be made to the Pension Plan and Health and Welfare Plan.



**18-109** If any Employee's employment agreement with the Employer requires that such Employee's compensation shall be based, in whole or in part, upon, or measured by, a percentage of the gross receipts derived from the distribution of Such Picture, then such percentage compensation shall be credited against any amounts payable to such Employee hereunder, and likewise any payment due to such Employee hereunder shall be credited against such percentage compensation. When all or a part of any Employee's compensation is a specified sum of money, commonly known and referred to as a "deferment," such deferment may not be credited against amounts payable by the Employer to such Employee hereunder.

**18-110      Employer's Acquisition of Title**

If Employer was not the actual producer of Such Picture which was produced by a signatory Employer but acquired title thereto by purchase, assignment, transfer, voluntary or involuntary, or by foreclosure of a chattel mortgage or security agreement or a pledgee's sale, Employer shall nevertheless be obligated to make the payments herein provided when Such Picture is exhibited in Supplemental Markets, unless such payment required hereunder has already been paid.

**18-111      Production, Finance, Distribution Agreement**

The obligation of the signatory Employer hereunder with respect to the payments provided for in this Article 18 shall also apply to any Such Pictures produced by an independent producer under a contract between the signatory Employer and such independent producer for the production of such motion picture, and for the financing and distribution thereof by the signatory Employer. However, such signatory Employer shall not be liable for the payment of any Supplemental Markets fees based on monies received by a foreign distributor under a foreign production deal as defined in subparagraphs 18-103(b) or 18-104(b)(3) with respect to which such foreign distributor or such independent producer is not obligated to account to such signatory Employer. Nor shall such signatory Employer be obligated to obtain any Distributor's Assumption Agreement from any foreign distributor referred to in subparagraphs

18-103(b) or 18-104(b)(3) except if such foreign distributor is obligated to account to such signatory Employer pursuant to subparagraphs 18-103(b) or 18-104(b)(3) with respect to monies as therein provided.

**18-112      Employer Continuing Liability**

It is expressly understood and agreed that Employer shall in all events remain bound hereunder to make the payments due by reason of the exhibition of each Such Picture in Supplemental Markets, irrespective of the assumption of such liability by any other person, firm or company as provided in Article 22, except as otherwise expressly provided in this BA.

**18-113      Failure to Deliver Assumption Agreement**

The failure of Employer to obtain and deliver an executed assumption agreement as provided in Article 22-101(a) and Article 22-301(a) shall be deemed a substantial breach of this BA.

**18-114      Employer's Dissolution**

If Employer dissolves and is no longer in the business of producing motion pictures and if a distributor assumes all of the obligations of the Employer under this Article 18 and the financial responsibility of the distributor is approved by the Guild in its discretion, the Employer shall thereupon be released of any obligation with respect to any payments due hereunder; provided that if the distributor which assumes all of the obligations of the Employer is a member company of the Alliance of Motion Picture & Television Producers, Inc., or if any such member company is permanently liable to pay the Supplemental Markets fees provided for in this Article 18 with respect to the motion pictures for which the Employer is liable to make such payment of Supplemental Markets fees, then the financial responsibility of such distributor shall be conclusively deemed approved and Employer shall be released of any obligation with respect to any such payments.

**18-115      Networks and Television Stations**

No television network, station or advertising agency shall be required to execute any Distributor's Assumption Agreement, or Buyer's Assumption Agreement, except if it is the distributor of Such Picture in Supplemental Markets or the buyer of the Employer's Supplemental Markets rights in Such Picture, as the case may be.

**18-116      Trailers, Advertising, Stock Shots**

The provisions of this Article 18 shall not apply to the distribution or exhibition in relation to Supplemental Markets of trailers or advertising a motion picture by shots, etc., substantially in the nature of a trailer, or the use of stock shots.

**18-117      Termination of BA**

Notwithstanding the sooner termination of this BA, the parties hereto agree that the terms and conditions of this Article 18 shall apply and remain in full force and effect and without change to Such Picture produced by the Employer, the principal photography of which commenced between July 1, 2008 and June 30, 2011, both dates inclusive, regardless of when (either during or at any time after the expiration of the term of this BA or of such period) Such Pictures are released in Supplemental Markets, and regardless of the terms or provisions of any BA which is a modification, extension or renewal of or substitution for this BA.