

ARTICLE 19

Theatrical Motion Pictures, the Principal Photography of Which Commences after July 1, 1990¹⁵ and Released to Free Television

19-101 Motion Pictures Covered

As to all theatrical motion pictures, the principal photography of which commenced prior to May 1, 1960, the Guild does not and will not make any claim for compensation for the exhibition of such motion pictures on television.

The provisions of this Article relate and apply only to theatrical motion pictures:

- (a) produced by the Employer or within the provisions of Paragraph 19-111;
- (b) the principal photography of which commenced between July 1, 2008 and June 30, 2011, inclusive, which motion pictures are, either during the term hereof or at any time thereafter, released to free television; and

¹⁵ Note: With respect to theatrical motion pictures, the principal photography of which commenced after April 30, 1960, and (1) prior to May 1, 1968, see the Directors Guild Basic Agreements of 1960 and 1964; (2) between May 1, 1968 and May 1, 1973, see the Directors Guild Basic Agreement of 1968, as amended April 1, 1972; (3) between May 1, 1973 and December 31, 1977, see the Directors Guild Basic Agreement of 1973; (4) between January 1, 1978 and June 30, 1981, see the Directors Guild Basic Agreement of 1978; (5) between July 1, 1981 and June 30, 1984, see the Directors Guild of America Basic Agreement of 1981; (6) between July 1, 1984 and June 30, 1987, see the Directors Guild Basic Agreement of 1984; (7) between July 1, 1987 and June 30, 1990, see the Directors Guild Basic Agreement of 1987; (8) between July 1, 1990 and June 30, 1993, see the Directors Guild Basic Agreement of 1990; (9) between July 1, 1993 and June 30, 1996, see the Directors Guild Basic Agreement of 1993; (10) between July 1, 1996 and June 30, 1999, see the Directors Guild Basic Agreement of 1996; (11) between July 1, 1999 and June 30, 2002, see the Directors Guild Basic Agreement of 1999; (12) between July 1, 2002 and June 30, 2005, see the Directors Guild Basic Agreement of 2002; and (13) between July 1, 2005 and June 30, 2008, see the Directors Guild Basic Agreement of 2005.

- (c) produced by Employer with Directors employed by Employer under the terms of this BA or in the employ of the actual producer as described in Paragraph 19-111 (to which employment the provisions of this Article apply).

19-102 Percentage of Accountable Receipts Payable

As to each such motion picture, the Employer will pay (a) to the Directors Guild of America–Producer Pension Plan (herein referred to as the Pension Plan) an amount equal to one percent (1%) of the Employer's accountable receipts from the distribution of such motion picture on free television, computed as hereinafter provided, and (b) one percent (1%) of such accountable receipts to be paid the Director of the motion picture on a *pro rata* allocation to each Director when there is more than one Director. In the latter case, in the event of any controversy as to the *pro rata* allocation of such one percent (1%), the amount allocable to each Director shall be resolved by the Guild and each individual Director involved shall be bound thereby. The payment of the one percent (1%) to be paid to the Director or Directors shall be sent to the Guild for forwarding to such Director or Directors and compliance therewith shall constitute payment to the Director. Such two percent (2%) payment is hereinafter referred to as the "percentage payment." These payments are not subject to health and welfare or pension contributions. The above is subject to the following conditions:

19-103 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 motion picture (who may be the Employer or a distributor licensed by the Employer) from licensing the right to exhibit the motion picture on free television but shall not include:

- (a) Sums realized or held by way of deposit as security, until and unless earned, other than such sums as are non-returnable;
- (b) 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 or such other distributor, but there shall not be excluded from Distributor's gross receipts 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) Frozen foreign currency until the Employer shall either have the right to freely use such foreign currency or Employer or Distributor has the right to transmit to the United States to Employer or Distributor such foreign currency from the country or territory where it is frozen. If such currency may be utilized or transmitted as aforesaid, it shall be deemed to have been converted to United States dollars at the rate of exchange at which such currency was actually transmitted to the United States as aforesaid, or if not actually transmitted, then at the prevailing free market rate of exchange at the time such right to use or to transmit occurs.

Such gross income realized in foreign currency in any reporting period required hereunder shall be deemed to be converted to United States dollars at the prevailing market rate of exchange at the close of such reporting period, except that when such gross income has actually been transmitted to the United States, it shall be deemed converted to United States dollars at the rate of exchange at which such foreign currency was actually so transmitted.

Frozen foreign currency shall be deemed to be unblocked on the basis of "first-in, first-out" unless otherwise allocated by local foreign fiscal authorities. Allocation of such unblocked funds, as between revenue which serves as the basis of determining payments hereunder and other revenue, shall be on a proportional basis, subject to different earmarking by local foreign fiscal authorities.

If the Distributor of the motion picture does not distribute the motion picture directly to free television, but employs a subdistributor to so distribute the motion picture, then the Employer's gross shall be the worldwide total gross receipts

derived by such subdistributor from licensing the right to exhibit the motion picture on free television.

In case of an outright sale of the free television 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 free television exhibition rights and other rights, then (but only for the purpose of the computation required hereunder), the Employer shall allocate to the free television exhibition rights a fair and reasonable portion of the sales price which shall, for the purpose hereof, be the Employer's gross. In reaching such determination, Employer may consider the current market value of free television 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 submitted to arbitration as herein provided; and in the event the Arbitrator shall find that such allocation was not reasonable and fair, the Arbitrator shall determine the fair and reasonable amount to be so allocated.

If the outright sale includes free television distribution rights to more than one (1) motion picture, Employer shall likewise allocate to each motion picture a fair and reasonable portion of the sales price of the free television 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, he or she shall determine the fair and reasonable amount to be so allocated to each motion picture. Nothing with respect to the price received on the outright sale of only free television distribution rights in a single motion 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. Sums paid to any advertising agency in connection with any exhibition of a motion picture on free television shall not be included in Employer's gross.

19-104 Definition of "Accountable Receipts"

The term "accountable receipts," as used herein, means the balance of the Employer's gross after deducting an arbitrary forty percent (40%) of the Employer's gross for distribution fees and expenses; except that in the case of an outright sale of free television distribution rights, there shall be deducted only an arbitrary ten percent (10%) of the Employer's gross for sales commissions and expenses of sale.

19-105 Accrual of Employer's Obligation; Charge for Late Payments

Employer's obligation shall accrue hereunder only after accountable receipts are received by the Employer. Payment of amounts accruing hereunder shall be made quarterly on the basis of quarterly statements, as hereinafter provided.

If the Employer shall fail to make any payment provided for in this Article 19 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.

19-106 Allocation of License or Sales Fee

If any license or outright sale of exhibition rights to the motion picture on free television 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. If the Guild shall contend that the amount so allocated was not a reasonable amount, 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 a reasonable amount, the Arbitrator shall determine the reasonable amount to be so allocated.

19-107 Participating Director

If the Director's services on the motion picture are performed for the Employer on a loan-out basis, then for the purpose of this BA, the Employer shall be deemed to be the employer, and the lender shall not have any responsibility hereunder with respect to the motion picture. If there is at least one (1) participating Director subject to this BA who performs services on the motion picture, the participating Director(s) shall receive full payment of the one percent (1%) of accountable receipts and the Pension Plan shall likewise receive full payment.

19-108 Reports and Manner of Payment

- (a) Employer will furnish to the Guild written reports showing the Employer's gross received from the sale, lease, license and distribution (whether by Employer or a distributor or subdistributor to the extent Employer receives such information) of each motion picture on free television. Such reports shall be furnished quarterly during each fiscal year of the Employer.

Concurrently with the furnishing of each such report, the Employer will make the payments shown to be due by such report. All payments due the Pension Plan shall be made by check payable to the Pension Plan and all payments due the Director shall be made by check payable to the Director sent to the Guild. Each such quarterly statement shall designate the title of the motion picture involved.

- (b) A "non-returnable advance" is to be included in "Employer's gross" when the motion picture is "available" and "identifiable" and the amount of the advance payment is "ascertainable."
 - (1) The motion 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) The motion 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 the motion 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) On request, Employer shall make available to the Guild or Pension Plan all accounting statements delivered by a distributor or by a subdistributor to the Employer, but only insofar as such statements relate to the Employer's gross. The Guild or Pension Plan shall have the right, at reasonable times, to examine the books and records of Employer insofar as they relate to Employer's gross. Employer shall not be required to furnish any quarterly statement hereunder with respect to the motion picture prior to Employer's receipt of any Employer's gross with respect to the motion picture, or for any quarterly period during which no Employer's gross from the motion picture is received by the Employer.

19-109 Crediting

If a participating Director's employment agreement with the Employer requires that the Director's compensation shall be based, in whole or in part, upon, or measured by a percentage of the gross receipts or revenues derived from the distribution of the motion picture, any payment due hereunder shall be credited *pro rata* against such percentage compensation. When all or a part of a Director's compensation is a specified sum of money, including what is commonly known and referred to as a "deferment," such specified sum of money may not be credited against amounts payable by the Employer hereunder.

19-110 Employer's Acquisition of Title

If Employer was not the actual producer of the motion picture, but such motion picture was produced by a signatory to this BA, and

Employer acquires the title to the motion picture by purchase, assignment, transfer (voluntary or involuntary) or on foreclosure of a chattel mortgage or at pledgee's sale, Employer shall be obligated to pay the amounts, if any, due under this Article 19 unless such other producer has theretofore made or theretofore become obligated to make such payments to the Pension Plan and the Director. The Guild agrees that the Pension Plan and Director shall not be entitled to any payments from the Employer under this Article 19 with respect to any motion picture for which, under an agreement with the Guild, any other party has theretofore made or theretofore become obligated to make any such payments.

19-111 Mortgage, Pledge or Lien

With respect to the motion picture, Employer agrees either to:

- (a) include in any chattel mortgage, pledge or other lien or security agreement covering the motion picture, a provision made expressly for the benefit of the Pension Plan and Director, to the effect that the chattel mortgagee, pledgee, or lien or security holder agrees that if such mortgage, pledge, lien or security agreement is foreclosed, and such mortgagee, pledgee, lien or security holder thereby obtains title to the motion picture and subsequently exhibits the motion picture on free television, then in such event, after such mortgagee, pledgee, lien or security holder has recouped its loan so secured plus interest and all costs and expenses incident to foreclosure, such mortgagee, pledgee, lien or security holder will be bound by the provisions of this Article 19 with respect to payments to the Pension Plan and the Director thereafter becoming due and payable hereunder; provided, however, that nothing herein contained shall prevent such mortgagee, pledgee or lien or security holder who has acquired title to the motion picture from thereafter making a sale of the motion picture to a third party free and clear of any limitations or obligations whatsoever. Except as otherwise provided in this subparagraph (a), the rights of the Pension Plan and the Director hereunder shall be subordinate to the rights of such mortgagee, pledgee, lien or security holder; or

- (b) in the alternative, be bound by the provisions of this Article 19 with respect to additional payments to the Pension Plan and the Director, if any, due after such foreclosure shall have been made. In the event Employer elects this alternative, the provisions of subparagraph (a) above shall be inapplicable, and if the provisions referred to in subparagraph (a) above are not included in such chattel mortgage, pledge, lien or security agreement, Employer shall be deemed to have elected the alternative provided for in this subparagraph (b).

In the event of a foreclosure referred to in subparagraph (a) above, should the Employer distribute the motion picture for such mortgagee, pledgee, lien or security holder, Employer shall be bound during the period of such distribution by the provisions of this Article 19 with respect to payments due hereunder, to the same extent as the mortgagee, pledgee, lien or security holder under subparagraph (a) above. Any such payments made by the Employer as the distributor shall be credited against any obligation of the mortgagee, pledgee, lien or security holder that may be due or become due to the Pension Plan under subparagraph (a) above, it being understood that the Pension Plan shall be entitled to such payments but once.

The foregoing provisions of this Paragraph 19-112 shall not apply to any motion picture subject to any security instrument in existence on September 10, 1962.

19-112 Production, Finance, Distribution Agreement

If, after July 1, 2008, the Employer enters into a contract with a so-called "independent producer" for the production and financing of a theatrical motion picture and the distribution thereof by the Employer (such contract being hereinafter referred to as an "independent contract"), Employer will include in such independent contract an agreement on the part of the independent producer, expressly for the benefit of the Pension Plan and the Director, that the independent producer will pay, in the manner herein provided, the amounts, if any, required to be paid under the provisions of this Article 19 with respect to such motion picture.

If such agreement on the part of the independent producer be not included in any independent contract prior to the exhibition of the motion picture on free television, the Employer shall be liable and responsible for the payments, if any, required to be made under the provisions of this Article 19 with respect to such motion picture. If such agreement on the part of the independent producer is included in the independent contract prior to exhibition of the motion picture on free television, then the Employer shall not be liable or responsible in any manner or to any extent with respect to the motion picture under the provisions of this Article 19. The Employer will notify the Pension Plan of any and all such independent contracts entered into by the Employer.

19-113 Bona Fide Theatrical Release

Anything to the contrary herein notwithstanding, it is agreed that the provisions of this Article 19 apply only if the motion picture is first exhibited on free television after such motion picture has had a *bona fide* theatrical release. For such purpose, the motion picture may be regarded as having been a *bona fide* theatrical release even though it has not fully completed, or shall not have been withdrawn from, its theatrical release, and even though a motion picture may not have been released theatrically in foreign countries or territories. If the motion picture is exhibited on free television prior to the time that it has had a *bona fide* theatrical release, then the release of the motion picture to free television shall be governed by the provisions herein, but only with respect to the provisions relating to additional compensation for television reruns on free television. The provisions of this Article 19 shall not apply to the televising of trailers or advertising a motion picture by shots, etc., substantially in the nature of a trailer, or to the use of stock shots.

19-114 Continuing Obligation Beyond Term of BA

Notwithstanding the sooner termination of this BA, the parties hereto agree that the terms and conditions of this Article 19 shall apply and remain in full force and effect, and without change, to theatrical motion pictures produced by the Employer, the principal photography of which commenced between July 1, 2008 and June 30, 2011, both inclusive dates, regardless of when (either during or at any time after

the expiration of the term of this BA or of such period) such motion pictures are released to free television, and regardless of the terms or provisions of any agreement which is a modification, extension or renewal of, or substitution for, this BA.