

SIDELETTER NO. 17

**SIDELETTER RE ARBITRATION OF DISPUTES CONCERNING
TRI-GUILD RESIDUALS AUDITS**

As of July 1, 2002;
Revised as of July 1, 2005;
Revised as of July 1, 2008;
Revised as of July 1, 2011

This Sideletter is entered into by and among the Writers Guild of America, west, Inc., on behalf of itself and its affiliate, Writers Guild of America, East, Inc. ("WGA"), the Directors Guild of America, Inc. and the Screen Actors Guild (collectively "Guilds"), on the one hand, and the Alliance of Motion Picture & Television Producers ("AMPTP"), on behalf of the entities it represented in the negotiation of the 2011 Writers Guild of America Theatrical and Television Basic Agreement, the Directors Guild of America, Inc. ("DGA") Basic Agreement of 2011, the DGA Freelance Live and Tape Television Agreement of 2011, the Producer-Screen Actors Guild ("SAG") Codified Basic Agreement of 2011 and the 2011 SAG Television Agreement and all predecessor agreements listed in Exhibit A hereto to which such named parties were (are) signatory, (collectively referred to as "Basic Agreements"), on the other hand.

A. MATTERS SUBJECT TO TRI-GUILD ARBITRATION

When there is unanimous agreement among the Guilds, the following matters shall be submitted to a tri-Guild arbitration:

Any dispute arising out of an audit conducted under the tri-Guild Gross Receipts Residuals Payment Monitoring Fund program concerning the interpretation or application, or alleged breach, of any residuals provisions of the Guilds' current or predecessor Basic Agreements, when such provisions are the same or substantially similar.

This tri-Guild procedure is not available when the residuals obligation(s) at issue is (are) payable, guaranteed or assumed by a "Qualified Distributor," "Qualified Buyer" and/or a "Qualified Residuals Payor," except by mutual agreement.

B. GENERAL RULES

1. Parties

- a. To the extent not inconsistent herewith, the arbitration provisions of the Guilds' Basic Agreements shall define the parties to a tri-Guild arbitration.

Individuals and their respective loan-out companies shall not be parties to proceedings under this Sideletter.

- b. The party against whom a tri-Guild arbitration is commenced is sometimes referred to herein as the respondent. Use of such term in the singular shall be deemed to include the plural.

2. Time Limits

The claim of each Guild is subject to the time limits set forth in its Basic Agreement.

3. Place of Hearing

All tri-Guild arbitrations shall be in Los Angeles, absent unanimous agreement of the parties to another situs.

The selection of the situs of the hearing room within the appropriate city shall be by mutual agreement of the Guilds and the respondent. If there is no such agreement, those parties will alternate in selecting the hearing room, with the party making the selection supplying the room at no charge to the other.

4. Award

The arbitrator may make any appropriate award to a Guild as permitted in that Guild's Basic Agreement. Such award shall be in writing and shall be limited as provided in each Guild's Basic Agreements. Subject to the provisions of those Basic Agreements, the award shall be final and binding upon the parties to the proceeding, whether participating in the proceeding or not.

5. Costs

The court reporter's per diem charges and the fee and the expenses of the arbitrator shall be borne fifty percent (50%) by the Guilds and fifty percent (50%) by the respondent. The cost of the arbitrator's copy of the transcript shall be shared seventy-five percent (75%) by the Guilds and twenty-five percent (25%) by the respondent.

6. **Notices**

- a. All written notices referred to in this Sideletter commencing a tri-Guild proceeding shall be sent to the respondent by registered or certified mail or by personal delivery. If the moving party(ies) is (are) unable to effect service in this manner, service may then be effected by first class mail, postage prepaid, to the address for service last designated in writing to each of the Guilds by the respondent, together with publication in *Daily Variety*, *The Hollywood Reporter*, *The Los Angeles Times* and *The New York Times*. All other written notices may be sent to each party by messenger, certified mail, first class mail, facsimile or any other means agreed upon by the parties.
- b. All notices sent by the Guilds to the respondent shall be sent to the address(es) designated by the respondent in writing to each of the Guilds at the time the respondent becomes signatory to each Guild's Basic Agreement. Should a signatory company change its address for the purpose of receiving notices relating to arbitration, the signatory company shall notify the Guilds of such new address, which shall then be substituted for the prior address.
- c. Unless otherwise designated by a signatory company in a written notice to the Guilds, all notices sent by the Guilds to the respondent shall be addressed to the attention of its Labor or Industrial Relations Department or, in the absence of such department, to an officer of the respondent. If the respondent maintains an office in Los Angeles, California or its vicinity, all such notices shall be sent to said office.
- d. A petition to confirm, modify or vacate, as the case may be, an arbitration award filed in any court of competent jurisdiction shall be served upon the respondent in such proceeding by registered or certified mail or by personal delivery. If the petitioner is unable to effect service in this manner, service then may be effected by first class mail, postage prepaid, to the address for service last designated in writing by the Company, together with publication in *Daily Variety*, *The Hollywood Reporter*, *The Los Angeles Times* and *The New York Times*.

7. Conduct of Proceedings

Except as set forth elsewhere herein, the arbitrator shall adopt such rules of procedure and shall conduct proceedings in such manner as he/she shall determine to be proper; provided, however, that each party to any arbitration shall be afforded a reasonable opportunity to present evidence and argument before the arbitrator.

All hearings, deliberations and proceedings of the arbitrator shall be closed to the public. Only interested parties, their representatives and witnesses may attend.

C. ARBITRATION

1. Initiation of Proceedings

a. When One or More Guilds Have Previously Served Separate Arbitration Claims and/or Grievances.

A tri-Guild arbitration shall be initiated by the Guilds by written notice setting forth the particulars of the claim. The written notice shall describe all previously served claim(s) and/or grievance(s) to be submitted to the tri-Guild proceeding. The written notice shall be sent in accord with the procedures described in Section B.6. above, within eighteen (18) months following the date of the final audit report.

The tri-Guild procedure would not be available, however, when an arbitrator has been selected to hear a claim filed separately by one of the Guilds.

b. When No Arbitration Claims Have Been Previously Served By Any Guild.

A tri-Guild arbitration shall be initiated by the Guilds by joint (*i.e.*, single) written notice setting forth the particulars of the claim, to be sent in accord with the procedures described in Section B.6. above. No grievance proceedings shall be utilized.

2. Respondent's Written Statement of Position

The respondent shall, within ten (10) business days following receipt of the notice of invocation of a tri-Guild proceeding, inform all Guilds of its representatives and serve a written statement of its position.

3. Selection of Arbitrator

The arbitrator shall be a neutral third party. The parties shall in good faith attempt to mutually agree upon an arbitrator within ten (10) business days after the respondent's receipt of the notice of invocation of a tri-Guild proceeding. Should the parties fail to so agree, the arbitrator shall be selected by the "Strike Process" as follows:

- a. The arbitrators listed in subparagraph e.(2) below shall constitute the list of arbitrators.
- b. On a respondent-by-respondent basis, the Guilds collectively and the respondent shall alternate on a case-by-case basis in first striking a name from the list of arbitrators. Thereafter, the other party shall "strike" a name from the list. The parties shall continue to alternate in striking names from the list, until one (1) arbitrator's name remains.
- c. The arbitrator whose name remains (after the Strike Process is completed) shall be the arbitrator.
- d. The "Strike Process" shall commence within two (2) business days following completion of the ten (10) business day period referred to in Section 3. above and must conclude no later than three (3) business days following completion of the ten (10) day period referred to in Section 3. above.
- e. In the event that one of the parties fails to participate in the Strike Process, or fails to strike in order and/or timely, the other party may thereupon select the arbitrator to hear the matter.
 - (1) If there is more than one respondent, then the respondent which is the real party in interest shall participate in the striking process with the Guilds. In the event that such respondents cannot agree on which of them is the real party in interest, then such respondents shall determine by lot which of them shall participate in the striking process with the Guilds.
 - (2) The authorized list of arbitrators is as follows:

Sara Adler
Howard Block
Dixon Dern
Joseph Gentile
Fredric Horowitz

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Edgar A. Jones, Jr.
Anita Christine Knowlton
Michael Rappaport
Sol Rosenthal

Additional names may be added from time to time by mutual agreement of the parties, provided that the panel shall consist of an odd number of arbitrators at all times.

4. Substitution of Arbitrators

If the arbitrator selected cannot serve, a substitute shall be selected in accordance with Section 3. above.

5. Notice of Hearing

The arbitrator or, at his/her request, one of the parties shall give written notice to the parties of the time and place of the arbitration hearing. In fixing such date, the arbitrator shall consult the parties and shall consider the time reasonably necessary for the parties to prepare their cases.

6. 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, any party may make a written request to the other to produce, on a date not later than five (5) 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.

7. Hearing

- a. The arbitrator may, upon a showing of good cause, continue the hearing. The arbitration hearing shall be continued by mutual agreement of the parties.
- b. The arbitration shall take place as noticed or continued regardless of whether one (1) or more of the parties fails to participate.

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8. **Defenses**

The respondent may assert any and all defenses available to it, including those available against only one or two Guilds.

9. **Waiver of Time Limits**

Any and all time limits in this Sideletter may be waived by the mutual consent of the parties.

10. **Confidentiality**

The parties and the arbitrator shall maintain the confidentiality of business records and/or other documents introduced at the hearing as if the provisions of Article 53.B. of the WGA Minimum Basic Agreement, Article 17-400 of the DGA Basic Agreement, Article 7.H. of the DGA Freelance Live and Tape Television Agreement and Article 6.1 of the SAG Codified Basic Agreement applied.

D. ARBITRATION OF DISPUTES WHICH INVOLVE QUESTIONS OF JURISDICTION OR ARBITRABILITY

1. **General**

An objection to jurisdiction or arbitrability shall first be determined by the arbitrator prior to proceeding with a hearing on the merits. If the arbitrator determines that there is jurisdiction and that the dispute is arbitrable, the arbitrator shall proceed to a decision on the merits; provided, however, that the party contesting arbitration or jurisdiction shall not, by proceeding to a determination of the merits of such arbitration, be deemed to have waived its position that the dispute is not arbitrable or that the arbitrator does not have jurisdiction. If the arbitrator rules he/she has no jurisdiction over the dispute or that the dispute is not arbitrable, then each party shall be free to pursue the remedies available to it.

2. **Timeliness Defense**

If the respondent alleges that the claim is time-barred under one or more of the Guilds' Agreements, such defense shall be bifurcated and heard in a separate proceeding in advance of the proceeding on the merits, absent consent of all parties to decide this defense in the same proceeding. In a bifurcated proceeding, only the parties to the Agreement under which the timeliness defense has been raised shall be parties. These parties shall select a different arbitrator to decide the timeliness defense under the procedures described above in Section C.3., unless they agree to use the same arbitrator selected to decide the merits of the tri-Guild claim. The arbitrator shall refrain from issuing a decision on the merits of any tri-

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Guild claim subject to a timeliness defense until issuance of the decision on such defense.

E. ARBITRATION EXCLUSIVE REMEDY

Arbitration under this Sideletter shall be the exclusive remedy in connection with claims hereunder against the respondent concerning the interpretation or application, or alleged breach, of any residuals provisions of the Guilds' current or predecessor Basic Agreements.

Very truly yours,

Directors Guild of America, Inc.

Screen Actors Guild

Writers Guild of America, West, Inc.,
on behalf of itself and its affiliate,
Writers Guild of America, East, Inc.

Carol A. Lombardini, President
Alliance of Motion Picture &
Television Producers, Inc.

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Exhibit A to Sideletter No. 17

WGA Collective Bargaining Agreements:

1960 Network TV Film Agreement	1971 Ext. to 1968 Live TV Agreement (Networks)
1960 Network Live TV Agreement	1971 Network Documentary Agreement
1960 Network Documentary Agreement	1973 Networks Basic Agreement
1960 Theatrical Agreement	1973 Network Documentary Agreement
1960 Screen Agreement (Universal)	1973 Theatrical & TV Agreement (AMPTP)
1960 TV Film Agreement (AMPP)	1977 Networks Basic Agreement
1960 TV Film Agreement (Independent)	1977 Network Documentary Agreement
1960 TV Film Agreement (Freelance)	1977 Theatrical & TV Agreement (AMPTP)
1963 Live TV Agreement (Networks)	1977 Theatrical & TV Agreement (8 Companies)
1963 Network Documentary Agreement	1981 Theatrical & TV Agreement (AMPTP)
1963 Screen Agreement	1985 Theatrical & TV Agreement (AMPTP)
1963 Screen Agreement (Universal)	1988 Theatrical & TV Agreement (Independent)
1965 Live TV Agreement (Networks)	1988 Theatrical & TV Agreement (Indep. Revised)
1965 Network Documentary Agreement	1988 Theatrical & TV Agreement (AMPTP)
1965 Screen Agreement (Universal)	1992 Ext. to 1988 Theatrical & TV Agreement
1966 Theatrical Agreement (Independent)	1995 Theatrical & TV Agreement (AMPTP)
1966 TV Film Agreement (Freelance)	1995 Theatrical & TV Agreement (Networks)
1967 Ext. to 1966 TV Film Agreement (Freelance)	1998 Theatrical & TV Agreement (AMPTP)
1968 Live TV Agreement (Networks)	1998 Theatrical & TV Agreement (Networks)
1968 Network Documentary Agreement	2001 Theatrical & TV Agreement (AMPTP)
1970 Network Film MBA	2001 Theatrical & TV Agreement (Networks)
1970 Theatrical & TV Agreement (AMPTP)	2004 Theatrical & TV Agreement (AMPTP)
	2004 Theatrical & TV Agreement (Networks)

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2008 Theatrical & TV Agreement (AMPTP)

2008 Theatrical & TV Agreement (Networks)

DGA Collective Bargaining Agreements:

1960 Directors Guild of America Basic Agreement
1964 Directors Guild of America Basic Agreement
1968 Directors Guild of America Basic Agreement
1973 Directors Guild of America Basic Agreement
1975 Directors Guild of America Freelance Live & Tape Television Agreement
1978 Directors Guild of America Basic Agreement
1978 Directors Guild of America Freelance Live & Tape Television Agreement
1981 Directors Guild of America Basic Agreement
1981 Directors Guild of America Freelance Live & Tape Television Agreement
1984 Directors Guild of America Basic Agreement
1984 Directors Guild of America Freelance Live & Tape Television Agreement
1987 Directors Guild of America Basic Agreement
1987 Directors Guild of America Freelance Live & Tape Television Agreement
1990 Directors Guild of America Basic Agreement
1990 Directors Guild of America Freelance Live & Tape Television Agreement
1993 Directors Guild of America Basic Agreement
1993 Directors Guild of America Freelance Live & Tape Television Agreement
1996 Directors Guild of America Basic Agreement
1996 Directors Guild of America Freelance Live & Tape Television Agreement
1999 Directors Guild of America Basic Agreement
1999 Directors Guild of America Freelance Live & Tape Television Agreement
2002 Directors Guild of America Basic Agreement
2002 Directors Guild of America Freelance Live & Tape Television Agreement
2005 Directors Guild of America Basic Agreement
2005 Directors Guild of America Freelance Live & Tape Television Agreement

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2008 Directors Guild of America Basic Agreement

2008 Directors Guild of America Freelance Live & Tape Television Agreement

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SAG Collective Bargaining Agreements:

Producer-Screen Actors Guild, Inc. Memorandum of Agreement of 1960 to the Producer-Screen Actors Guild Codified Basic Agreement of 1952 and the 1956 Supplement

1960 Screen Actors Guild Television Agreement

Producer-Screen Actors Guild, Inc. Memorandum of Agreement of 1963 to the Producer-Screen Actors Guild Codified Basic Agreement of 1952, the 1956 Supplement and the Producer-Screen Actors Guild, Inc. Memorandum of Agreement of 1960

1964 Screen Actors Guild Television Agreement

Producer-Screen Actors Guild, Inc. Memorandum of Agreement of 1965 to the Producer-Screen Actors Guild Codified Basic Agreement of 1952, the 1956 Supplement, the Producer-Screen Actors Guild, Inc. Memorandum of Agreement of 1960 and the Producer-Screen Actors Guild, Inc. Memorandum of Agreement of 1963

Producer-Screen Actors Guild Codified Basic Agreement of 1967

1967 Screen Actors Guild Television Agreement

1971 Supplement to the Producer-Screen Actors Guild Codified Basic Agreement of 1967

1971 Screen Actors Guild Television Agreement

Producer-Screen Actors Guild Memorandum of Agreement of 1974 to the Producer-Screen Actors Guild Codified Basic Agreement of 1967 and the 1971 Supplement and the 1971 Screen Actors Guild Television Agreement

1974 Screen Actors Guild Television Agreement

Producer-Screen Actors Guild Codified Basic Agreement of 1977

1977 Screen Actors Guild Television Agreement

1980 Supplement to the Producer-Screen Actors Guild Codified Basic Agreement of 1977 and 1977 Screen Actors Guild Television Agreement

1983 Memorandum of Agreement between AMPTP and Screen Actors Guild, Inc. to the Producer-Screen Actors Guild Codified Basic Agreement of 1977, the 1977 Screen Actors Guild Television Agreement and the 1980 Supplement

Producer-Screen Actors Guild Codified Basic Agreement of 1986

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1986 Screen Actors Guild Television Agreement

1986 Memorandum of Agreement between Independent Producers and Screen Actors Guild to the Producer-Screen Actors Guild Codified Basic Agreement of 1977, the 1977 Screen Actors Guild Television Agreement, the 1980 Supplement and the 1983 Memorandum of Agreement between AMPTP and Screen Actors Guild, Inc.

Producer-Screen Actors Guild Codified Basic Agreement of 1989

1989 Screen Actors Guild Television Agreement

Screen Actors Guild Codified Basic Agreement of 1989 for Independent Producers

Producer-Screen Actors Guild Codified Basic Agreement of 1992

1992 Screen Actors Guild Television Agreement

1992 Memorandum of Agreement between Independent Motion Picture and Television Producers and Screen Actors Guild to the Screen Actors Guild Codified Basic Agreement of 1989 for Independent Producers and the Screen Actors Guild Television Agreement of 1989 for Independent Producers

Producer-Screen Actors Guild Codified Basic Agreement of 1995

1995 Screen Actors Guild Television Agreement

Screen Actors Guild Codified Basic Agreement of 1995 for Independent Producers

Screen Actors Guild Television Agreement of 1995 for Independent Producers

Producer-Screen Actors Guild Codified Basic Agreement of 1998

1998 Screen Actors Guild Television Agreement

Screen Actors Guild Codified Basic Agreement of 1998 for Independent Producers

Screen Actors Guild Television Agreement of 1998 for Independent Producers

Producer-Screen Actors Guild Codified Basic Agreement of 2001 (including the Extension Agreement effective as of July 1, 2004)

2001 Screen Actors Guild Television Agreement (including the Extension Agreement effective as of July 1, 2004)

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Screen Actors Guild Codified Basic Agreement of 2001 for Independent Producers (including the Extension Agreement effective as of July 1, 2004)

Screen Actors Guild Television Agreement of 2001 for Independent Producers (including the Extension Agreement effective as of July 1, 2004)

Producer-Screen Actors Guild Codified Basic Agreement of 2005

2005 Screen Actors Guild Television Agreement

Screen Actors Guild Codified Basic Agreement of 2005 for Independent Producers

Screen Actors Guild Television Agreement of 2005 for Independent Producers

Screen Actors Guild Codified Basic Agreement of 2009 for Independent Producers

Screen Actors Guild Television Agreement of 2009 for Independent Producers

Producer - Screen Actors Guild Codified Basic Agreement of 2009

2009 Screen Actors Guild Television Agreement