

**ARTICLE 7**  
**MISCELLANEOUS PROVISIONS**

7-101      HAZARDOUS WORK ALLOWANCE

- (A) Members of the bargaining unit will not be required to jeopardize their working opportunities by having to perform work that is considered hazardous. However, should a bargaining unit member elect to perform work that is considered hazardous, adequate insurance and extra compensation will be provided, as outlined in Paragraph (C) of this Article 7-101. If a difference of opinion arises as to whether an assignment is hazardous, the same shall be settled between the Producer and the Guild.
- (B) The Producer shall provide suitable wearing apparel for abnormally cold or wet work.
- (C) The following allowances shall be paid if bargaining unit members agree to perform services on aerial flights, whether in an established commercial airline or private plane: \$150.00 per flight, but a maximum of \$300.00 per day. When flying in "combat zones," or submarine diving or other underwater diving, or shooting on any high speed camera platform on land or on water, the same allowances shall be paid. In the event any of the above services are performed, the Producer shall cover the Employee for the duration of the assignment by a personal accident insurance policy, insuring against death and/or dismemberment in the amount of \$500,000.00 payable to the beneficiary designated by the Employee and providing for a weekly indemnity of \$500.00 in the event of total disability, as such term is commonly understood in the insurance field, for a period of fifty two (52) weeks. A copy of a document evidencing such insurance shall be filed with the DGA.
- (D) It is understood that the allowances herein provided shall not be payable where the Employee is merely traveling by plane for purpose of being transported from one place to another even though he/she may, during the course of flight, perform work such as checking, reading, transcribing notes or the like.
- (E) When a Director, UPM, 1<sup>st</sup> AD or 2<sup>nd</sup> AD requires hospitalization while employed by the Employer, the nature and place of hospitalization shall be reported to the Guild as soon as possible.
- (F) It shall be the responsibility of the Employer to insure that optimum safety standards are maintained and that no unsafe equipment, procedures or

practices are allowed on the set or work site. Guild Employees shall cooperate with the Employer to maintain optimum safety procedures at all times.

7-102

#### STRIKES AND PICKET LINES

- (A) Notwithstanding anything to the contrary contained herein, in the event of any strike by any other union or by the Guild concerning members or matters not covered by this Agreement, the bargaining unit members covered by this Agreement shall not be required to perform duties not ordinarily performed by them prior to said strike.
- (B) The Producer will not discipline any bargaining unit member because of his/her refusal as an individual to cross any duly authorized picket line not in violation of this Agreement against the Producer.
- (C) The Guild agrees that during the term of this Agreement, it will not call or engage in or assist in any strike, slowdown or stoppage against the Producer by the Employees, provided, however, that if a valid and enforceable award in an arbitration is rendered and the Producer fails to challenge same by judicial procedure reasonably promptly, but not later than ten (10) days after mailing of the award by registered mail, and fails to comply therewith, then the Guild shall be free to withhold the services of its members, and the prohibition against strikes, slowdown or a stoppage herein set forth shall be of no further force and effect; provided further that the parties hereto agree to support the right of the Guild to withhold service pursuant to Article 1-301 (E) of this Agreement. The Guild agrees that it will use its best efforts in good faith to require Employees to perform their services for the Producer hereunder. Should any such strike, slowdown or stoppage occur, the Guild's sole obligation shall be, within twenty-four (24) hours after receipt of written notice thereof from the Producer, to use its best efforts to terminate the strike, slowdown or stoppage.
- (D) The Producer agrees that it will not order, authorize or ratify a lockout against the Employees during the life of this Agreement. Should any lockout occur, the Producer's sole obligation shall be, within twenty-four (24) hours after receipt of written notice thereof from the Guild, to terminate the lockout and re-employ the Employees. Upon failure of the Producer to do so within said twenty-four (24) hour period, the Guild, at its option, may treat the matter as a dispute under Article 2.

- (E) Notwithstanding any "No Strike" clause herein, failure on the part of the Producer to file the employment reports referred to herein shall be deemed, after reasonable notice by certified mail to the Producer, a breach of the contract sufficient for the Guild to withhold the services of the person or persons for whom reports have not been filed until this procedure is fully complied with.

7-103

#### HOLD HARMLESS

The Employer shall save the Director, UPM, 1<sup>st</sup> AD or 2<sup>nd</sup> AD, as the case may be, harmless from liability and necessary costs, including reasonable attorney's fees resulting from any injury to, or loss or damage suffered by any person, including any member of the cast or crew or any bystander, occurring in the photographing of a motion picture he/she directs or assists in directing, or in connection with which he/she renders services as a Director, UPM 1<sup>st</sup> AD or 2<sup>nd</sup> AD, as the case may be, provided, however, and subject to the conditions that:

- (A) This Article shall not apply in any instance in which such injury, loss or damage is the result of or caused by, in whole or in part, the gross negligence or willful misconduct of such Director, UPM, 1<sup>st</sup> AD or 2<sup>nd</sup> AD, as the case may be;
- (B) Immediately upon such Director's, UPM's, 1<sup>st</sup> AD's or 2<sup>nd</sup> AD's, as the case may be, or his/her representative's being informed of any claim or litigation, he/she shall notify the Employer of every demand, notice, summons, complaint or other process received by him/her or his/her representative; and
- (C) The Director, UPM, 1<sup>st</sup> AD or 2<sup>nd</sup> AD, as the case may be, shall cooperate fully in the defense of the claim or action, including the attending of hearings and trials, securing and giving evidence, and obtaining the attendance of witnesses.

7-104

#### SUBCONTRACTING

- (A) The Producer shall not subcontract any of the work or services over which the Guild has jurisdiction hereunder to anyone during the term of this Agreement, except to an Employer who employs Employees in categories covered by this Agreement under wages and economic benefits comparable to this Agreement or other DGA Agreements.
- (B) In the event a Producer (hereinafter "Primary Producer") subcontracts to any signatory Producer (hereinafter "Secondary Producer") any of the

work or services over which the Guild has jurisdiction hereunder, all monies received by the Secondary Producer for the performance of Guild work or services shall be subject to the contributions called for in this Agreement regarding Pension and Health Plans and Training Trust Funds. The Primary Producer shall submit directly to the respective Plans the above mentioned Pension, Health and Training Trust contributions.

- (C) In no event shall subcontracting release the Primary Producer from the responsibility to provide and maintain the minimum terms and conditions called for in this Agreement.
- (D) When formal negotiations following a commitment for employment are conducted in the United States under the auspices of the Producer for the employment of a Director, UPM, 1<sup>st</sup> AD or 2<sup>nd</sup> AD by a non-signatory producer, then Producer shall promptly notify the Guild of such negotiations.

7-105

#### PRODUCERS BOUND BY THIS AGREEMENT

- (A) This Agreement shall be binding upon the Producer signatory hereto, upon its non-signatory subsidiaries and affiliates engaged in the production of television commercials and upon all parties who, by reason of mergers, consolidation, reorganization, sale, assignment or the like, or by operation of law, shall succeed to become entitled to a substantial part of the business of the signatory Producer.
- (B) When a non-signatory producer contracts with a signatory Producer to finance or produce a television commercial and the signatory Producer fails to give notice to the Guild within ten (10) days, excluding Saturdays, Sundays or holidays, after the opening of the production account for such television commercial, that it is not to be covered by this Agreement, then the signatory Producer shall be obligated hereunder with respect to that commercial.

7-106

#### LATE PAYMENTS/BOND

To secure payment in full of wages and pension and health contributions, The Guild may, in its reasonable discretion, whenever it considers that a signatory Producer has not adequately established its ability to meet its financial obligations, require that a performance bond be posted in an amount sufficient for that purpose. If required, such performance bond shall cover not only obligations for wages and pension and health contributions, but also a reasonable amount for counsel fees and other litigation expenses which might be incurred in the event

the default of the signatory makes it necessary to institute suit for recovery. In the alternative, the Guild may, in its reasonable discretion, require a signatory Producer to provide a payroll guarantee for the scheduled number of shoot days to a recognized payroll company.

7-107

#### CONFORMITY TO LAW-SAVING CLAUSE

- (A) If any provision or the enforcement or performance of any provision of this Agreement is or shall at any time be contrary to law, then such provision shall not be applicable or enforced, or performed except to the extent permitted by law. If at any time thereafter such provision, or its enforcement, or performance, shall no longer conflict with the law, then it shall be deemed restored in full force and effect as if it had never been in conflict with the law.
- (B) If any provision of this Agreement or the application of such provision to any person or circumstances shall be held invalid, the remainder of this Agreement or the application of such provisions to other persons or circumstances shall not be affected thereby.

7-108

#### NO DISCRIMINATION

- (A) In accordance with applicable federal, state and local law, neither the Producer nor the Guild will discriminate on the basis of race, sex, sexual orientation, religion, color, national origin, physical handicap or Guild membership against any Employee or person qualified for employment under the term of this Agreement.
- (B) The Producers shall work diligently and make good faith efforts and the Guild shall cooperate with the Producers to increase the number of working racial and ethnic minority and women Directors, Unit Production Managers and Assistant Directors; provided, however, no Producer shall be required to employ any individual.
- (C) To further the goals and objectives of Paragraph (B), on or before July 1, 2016, the AICP will establish and maintain a Diversity Program designed to expand employment opportunities for racial and ethnic minority and women Directors. Effective November 29, 2015, each Producer will contribute an amount equal to 0.15% of salary as defined in Article 3-104 for each Director, Unit Production Manager, and Assistant Director to finance the Diversity Program. The parties agree that the Producer contributions required under this Paragraph (C) shall be remitted to the DGA Commercial Contract Administration Trust ("Trust"), the entity that

employs the Commercial Qualifications Administrator (“CQA”) described in Article 6-300 of the Agreement, in the same manner as contributions to the CQA under Articles 6-303 (B) and 6-101 (B) are remitted. The Trust will hold the amounts in a segregated, interest bearing account for uses and the benefit of the Diversity Program.

- (D) Recognizing that the commercial production industry has a unique creative culture, the Diversity Program will establish minimum criteria. The Diversity Program will give good faith consideration to following criteria:
  - (i) Outreach to under-represented minorities and women with potential for success in the Diversity Program;
  - (ii) Foster relationships between program participants, Executive Producers at commercial production companies and where appropriate other production related executives in the commercial production industry;
  - and
  - (iii) Shadowing, mentoring and other directorial opportunities (which may include “Spec Spots”) for program participants.
- (E) The parties further agree that the Diversity Program is intended to supplement the development of the program participants and is not required to provide full-time training or employment to program participants during their participation in the Diversity Program.
- (F) High level production executives at AICP production companies, representatives of the AICP and representatives of the DGA shall meet to discuss efforts to promote diversity in the hiring of DGA-represented classifications. Initially, the main purpose of each meeting will be to ensure regular communication which will enable development, support and improvement of the Diversity Program. The parties will also establish criteria to evaluate the success of the Diversity Program. During the first year of the Agreement, a meeting will be held once every six months. Thereafter, a meeting will be held at least once per year. Additional meetings may be scheduled by mutual agreement of the AICP and the Guild.
- (G) In addition to meetings set forth in 7-108 (F), representatives of the DGA and the AICP Advisory Board, including the administrator of the Diversity

Program, shall meet three times annually, if practicable, to discuss progress of the Program and explore opportunities for the Parties to support further development and expansion of the Program.

- (H) Should an Arbitrator determine the Producers failed to comply with the provisions of Article 7-108 (B), the AICP failed to comply with the provisions of Article 7-108 (D) or (F), or the Guild failed to comply with the provisions of Article 7-108 (B) or (F), the Arbitrator's remedy shall be limited to ordering compliance with the applicable provision. In the event of subsequent failures to comply with Article 7-108 (D) or (F), the Arbitrator may order further remedies which may include the assessment of damages.

#### 7-109 MINIMUM TERMS AND CONDITIONS

Nothing in this Agreement shall prevent any member of the bargaining unit from negotiating with and obtaining from the Producer better conditions and/or terms of employment than those provided for in this Agreement. The terms herein provided are minimum and not maximum.

#### 7-110 MANAGEMENT RIGHTS

- (A) The supervision of the working force, the right to employ, hire, suspend, discharge, layoff, etc. is vested exclusively in the Producer provided, however, that such authority will not be used to derogate from or impair the rights of Directors as set forth in this Agreement.
- (B) Subject to the limitations contained herein, the Guild recognizes that the Producer has the responsibility to control the operations of his/her company, to determine the number of Directors required, the locations of production, the sources, materials and supplies and the dispositions of its productions, and that all rights of management are reserved to and retained by the Producer.

#### 7-111 NON-COMMERCIAL PRODUCTIONS

- (A) The terms and conditions of employment for paragraphs (i) and (ii) below shall be governed by the DGA Basic Agreement and when productions in these categories are made, the Producer, with respect thereto shall be bound in all respects by said Basic Agreement.
  - i. The direction of feature motion pictures, or TV motion pictures, or other motion pictures expressly made or used for entertainment

purposes shall herein be referred to as "theatrical or television motion pictures."

- ii. The direction of any non-fiction motion picture or motion picture segment of a news or informational nature (i.e., not intended primarily as entertainment), which has a narrative sequence, whether planned or photographed at random - whether sound or silent - whether or not scripted - whether containing stock footage or footage shot by others, so long as it is assembled for telecast, shall herein be known and referred to as "Non-Fiction Television Production."

(B) The terms and conditions of employment for paragraphs (i) and (ii) below, shall be governed by the DGA Industrial and Government Supplement of 2009 (see Exhibit D) When a production in these categories is made, the Producer, with respect to such production, may elect to be bound in all respects by said Supplement by signing and providing a copy of Exhibit D to the Guild prior to the start of production.

- i. The direction of all plotted and/or scripted, staged or dramatic situations, sound or silent, but not intended for theatrical or TV release, and known in the industry as industrial, sales or any other sponsored motion picture shall herein be referred to as "Non-Theatrical Production."
- ii. Government, Non-scripted, Documentary and Classroom Productions. This category shall include:
  - (1) The direction of material which requires no staging of scripted and/or plotted situations, but recording existing actions or processes which are normally in progress, known in the motion picture industry as "nuts and bolts."
  - (2) Any motion picture which is produced for any government agency or any branch of the Armed Services.
  - (3) Any production of a non-theatrical nature for use in schools and not intended for TV or theatrical release and not carrying any trademark, logo or any sponsor's message or identification whatsoever.

**AICP Companies: see Paragraph 6 (B) of the AICP Sideletter.**



7-112

#### EMPLOYMENT ON 'LIVE & TAPE' COMMERCIALS

An Employee who performs any of the duties of a Director set forth in Article 2, Section A of the DGA Freelance Live and Tape Television Agreement ("FLTTA") on a commercial shall receive no less than the applicable minimum salary for a twelve hour day as set forth in Sideletter 2 of the FLTTA for each day of employment. All other terms and conditions of employment shall be the terms and conditions applicable to Directors under the NCA, except that Paragraph 1 of the AICP Sideletter will not apply to Directors performing FLTTA Article 2, Section A duties only.

For the avoidance of confusion, the Director of a commercial who performs the duties set forth in Article 1-301 of the NCA, but also performs duties by FLTTA Article 2, Section A incidental to his or her primary assignment, shall continue to be covered in full by the terms of the NCA and AICP Sideletter.

An Employee who performs any of the duties of an Associate Director or Stage Manager set forth in FLTTA Article 2, Sections B & C on a commercial shall receive no less than the applicable minimum salary for a twelve hour day as set forth in FLTTA Article 10, Part 2, Sections A & B for each day of employment. Additional Stage Managers shall receive no less than the Second Assistant Director minimum salary set forth in Article 5-201 of the NCA for each day of employment. All other terms and conditions of employment shall be the terms and conditions applicable to Assistant Directors under the NCA, except that Associate Directors and Stage Managers shall not be required to be on a Commercial Qualification List. Associate Directors and Stage Managers must meet employment criteria set forth in FLTTA Article 10, Part 3, Section A.

7-113

#### STUDY COMMITTEE

The parties shall form a study committee composed of an equal number of representatives of the AICP and the DGA (not to exceed 8) to study criteria and guidelines in light of industry and OSHA safety standards for use in the television commercial production industry.

7-114

#### PRODUCTION SERVICES

The Guild shall give good faith consideration to an Employer's request to provide production services, as that term is commonly understood in the commercial industry, to non-signatory foreign production companies producing commercials intended solely for foreign markets outside the United States and Canada. In such situations, the Employer shall employ First and Second Assistant Directors as set forth in this Agreement.

7-115 NON-DISCLOSURE AGREEMENTS

Employees may be required to sign the Non-Disclosure Agreement set forth in Exhibit “J”. Such Agreements shall be for the exclusive purpose of ensuring confidentiality, and shall neither limit an Employee’s ability to perform covered duties, nor grant any party the right to utilize the Employee’s voice, likeness, actions and statements in any audio, video, or photographic display or other recording.

Nothing herein shall preclude any party from contracting separately with an Employee for the right to utilize his or her voice, likeness, actions and statements in audio, video, or photographic displays or other recordings.

7-116 WAIVER OF NEW YORK CITY EARNED SICK TIME ACT

In consideration of the fact Employees employed under this Agreement are entitled to contributions for pension and health plan coverage, vacation pay, and premium pay, including for work on holidays and on Employees’ sixth and seventh day of work in a workweek, the Guild expressly waives the application of the New York City Earned Sick Time Act of 2013 to all Employees employed under this Agreement.

7-117 TERMINATION OF SIGNATORY STATUS

Except as provided in Article 7-114, if the Guild determines that the Producer is not exercising operational control over the production of a commercial in the United States as a *bonafide* Producer, the Guild may, in addition to other remedies available under the terms of this Agreement, terminate the Producer’s signatory status pursuant to the expedited arbitration procedures of the American Arbitration Association, such hearing to begin no later than thirty (30) days from service of the Notice of Arbitration.

For the purposes of this section, indications of operational control include the following: (i) the Producer is the common law employer of the Director and Assistant Director(s) (which may include their loan-out companies as defined in Article 3-103 (C)), (ii) the Producer has agreements with the stages and/or locations where production is scheduled, and (iii) the Producer establishes and controls the budget.

The Employer has the burden of proof to establish that the Employer is a *bonafide* Producer. The Arbitrator’s authority under this Expedited Arbitration Procedure is limited to the sole question of whether the Guild’s determination under Article 7-117 of this Agreement, that an Employer is not the *bonafide* Producer of a

commercial, was unjustified. The Arbitrator shall have no power to award monetary damages, injunctive relief, or any other remedy under this Expedited Arbitration Procedure.

## **ARTICLE 8**

### **LOW BUDGET COMMERCIALS**

#### **8-100 LOW BUDGET COMMERCIALS**

On a Low Budget commercial, salaries for Directors and other DGA-represented Employees shall be individually negotiated. Pension and Health contributions for Directors shall be paid on total gross compensation as defined in Article 3-104 or the minimum rates of pay set forth in Article 4 of this Agreement, whichever is greater. Pension and Health contributions for UPMs and Assistant Directors shall be paid on the minimum rates of pay set forth in Article 5 of this Agreement.

A Low Budget commercial is defined as a commercial whose total costs as set forth on the AICP Film Production Cost Summary do not exceed \$75,000 for a one-day shoot, or \$150,000 for a two-day shoot or \$225,000 for a three-day shoot. No single day's costs may exceed \$75,000.

Producer shall submit to the Guild, no later than thirty (30) days after the last shoot day, the AICP Film Production Cost Summary. Upon request, the Producer will submit verification of the final budget for such commercial. The Guild shall have the right to audit records relating to the cost of the commercial.

**AICP Companies: See Paragraph 9 of the AICP Sideletter.**

#### **8-200 LOW BUDGET NON-TRADITIONAL COMMERCIALS**

In addition to the provisions contained in Article 8-100, the following additional provisions shall apply to low budget commercials that do not use traditional production methods.

- A. A low budget non-traditional commercial, as defined in this Article 8-200, is a commercial that does not use traditional production methods and whose costs do not exceed \$50,000 on any single shoot day and whose total production costs do not exceed \$500,000 for an advertising campaign.
- B. Not less than forty-eight (48) hours before the first day of production, the Producer shall provide, if available, the Guild with a copy of (i) the budget as awarded by the agency or client, (ii) production schedule, and (iii)