

## ARTICLE 12

### Pension, Health and Welfare Plans

#### Section 12-100 GENERAL PROVISIONS

##### 12-101 Trust Agreements

Employer and Guild agree to accept, assume and be bound by the separate Trust Agreements establishing the "Directors Guild of America–Producer Pension Plan" and "Directors Guild–Producer Health and Welfare Plan," and all modifications, alterations and amendments made thereto. The Employer shall, upon request, be furnished a copy of said Trust Agreements by the Plan Offices.

##### 12-102 Trustees

The Employer irrevocably designates and appoints the Alliance of Motion Picture & Television Producers as its attorneys in fact for the selection, removal and substitution of Producer Plan Trustees of such Trusts. Producer Plan Trustees shall be appointed by the Alliance of Motion Picture & Television Producers, by the Network Group and the Association of Independent Commercial Producers, or other employer associations which are entitled to appoint Producer Plan Trustees under the terms of the Trust Agreements.

##### 12-103 Delinquent Contributions

The Employer specifically agrees to be bound by the provisions of the Trust Agreements referred to in this Section 12-100, relating to the payment of attorneys' fees, court costs, interest, liquidated damages and auditing costs in connection with delinquent contributions and the collection of delinquent contributions to the Plans, as they now exist and as they may be modified in the future.

**12-104**      **Arbitration**

The Trustees of the Plans are not parties to this Agreement, and are not obligated by this Agreement to arbitrate any of their rights under this Agreement; provided, however, the Guild retains the right to enforce the provisions of this Article 12.

**12-105**      **Loan-outs**

The following shall apply with respect to the payment of pension and health and welfare contributions due when an Employer borrows the services of an Employee from a domestic loan-out company, as defined herein, and such Employee renders services covered by this Agreement:

- (a) In its agreement with the loan-out company, the Employer shall separately state the compensation applicable to services covered by this BA. If other services are involved and a dispute exists over the amount to be allocated to the covered services, the Employee's "customary salary" shall be given substantial consideration in resolving the dispute.
- (b) Contributions shall be based on the amount the Employer pays the loan-out company for lending the Employee's covered services.
- (c) Agreements with loan-out companies for covered services of the loaned-out Employee shall provide that Employer shall make pension and health and welfare contributions directly to the Plans on behalf of the loan-out company.

**12-106**      **Claims Periods**

- (a) If, under any Basic Agreement prior to the 1990 Basic Agreement, a loan-out company, as defined therein, has failed to make the applicable pension and health and welfare contributions on behalf of the loaned-out Employee, Employer shall not be liable for such contributions if the loan-out company failed to pay such contributions more than six (6)

years prior to the date of commencement of the audit that gives rise to the claim (whether or not it is of the loan-out company's records or the borrowing Employer's records). The date of commencement of the audit shall be deemed to be the date of actual audit entry, but in no event later than ninety (90) days after the date of the Plans' notice of intent to audit. In the event that the Plan(s) conclude, based on an audit of the loan-out company's records, that there exists a claim for unpaid contributions, the Plan(s) or the Guild must give the borrowing Employer written notification of any such claim for unpaid contributions at the time that the loan-out company is notified of such claim. In no event will the borrowing Employer be liable for any such unpaid contributions which were due from the loan-out company more than six (6) years prior to the date that the borrowing Employer was notified of the loan-out company's failure to make the contribution.

- (b) Other claims against Employer for pension and health and welfare contributions must be brought within four (4) years from the date such contributions were due to the Health and Welfare and Pension Plans.
- (c) In the event that the auditors find a consistent pattern of delinquencies with respect to a particular Employee or loan-out company employed on a particular project, then the six (6) year or four (4) year periods referred to in subparagraphs (a) and (b) above shall be extended to allow for the assertion of additional claims with respect to the employment of such Employee or loan-out company on such project.
- (d) Any claim for contributions not brought within the six (6) year or four (4) year periods referred to in subparagraphs (a) or (b) above, or within the extended period referred to in subparagraph (c) above, shall be barred.
- (e) The time limits in this Paragraph 12-106 shall be tolled to the same extent as statutes of limitations under California law.

## **Section 12-200 PENSION PLAN**

### **12-201 Employer Contributions**

Employer agrees to contribute to the Directors Guild of America–Producer Pension Plan, with respect to each employment of an Employee upon a theatrical or television motion picture under this BA, an amount equal to five and one-half percent (5½%) of the Employee's salaries earned by such Employee. Such amounts shall be contributed to the Pension Plan as and when such salary is paid to such Employee. In the case of a personal service contract for a Producer-Director or other combination of a non-represented category and a DGA-represented category, there shall be a fair allocation of the total compensation for the directorial services rendered thereunder. Any dispute regarding such allocation may be submitted to arbitration for determination under the arbitration provisions herein.

### **12-202 Definition of Salary**

The term "salary," as used herein, means the gross salary agreed to be paid by the Employer for services of the Employees subject to this BA, including contract settlements, but shall not include:

- (a) For pension contribution purposes, salaries in excess of \$200,000 in connection with any single theatrical motion picture; for health and welfare contribution purposes, salaries of Directors in excess of \$400,000, and salaries of other Employees in excess of \$250,000, in connection with any single theatrical motion picture; (these ceilings shall also apply to a Director's salary payable under Section 11-200 for theatrical exhibition of a television film).

Solely for pension purposes, but not for health or any other purpose, when a Director is entitled to compensation in excess of \$200,000 for a single theatrical motion picture with an employment period commencing with preparation in one calendar year and ending with the delivery of the answer print in a subsequent calendar year, and when the Director will receive a salary of at least \$150,000 in the first calendar year,

the Employer shall contribute to the Plans (*i.e.*, the Supplemental Plan and the Basic Plan) five and one-half percent (5½%) of the first \$150,000 in salary paid to the Director in the first year and five and one-half percent (5½%) of the first \$50,000 in salary paid to the Director in the immediately succeeding calendar year. With regard to contributions made in the second calendar year, a separate remittance form shall accompany said contributions and said contributions shall be allocated only to the Supplemental Plan, but the Director shall receive credit in the Basic Plan as if said contributions were made to the Basic Plan.

- (b) A Director's salary (1) exceeding \$200,000 for any one television motion picture ninety (90) minutes or longer or any one multi-part closed-end series, or (2) exceeding the initial compensation actually paid for any other single television motion picture or two hundred fifty percent (250%) of applicable minimum compensation, whichever amount is greater. With respect to television motion pictures, all residual compensation shall be included until the ceiling is reached, if at all;
- (c) Vacation, severance or completion of assignment pay;
- (d) Penalties, allowances, distant location per diem, aircraft flight or underwater work allowances;
- (e) Cost of transportation or living expenses paid to or on behalf of the Employee;
- (f) Travel insurance.

**12-203      Employee Contributions**

Each Employee shall pay into such Pension Plan an amount equal to two and one-half percent (2½%) of salary, as computed above for the Employer's contributions, and such amount shall be deducted by the Employer from the salary of such Employee and paid directly to this Pension Plan on behalf of such Employee. The Employer shall notify the Guild in the event an Employee does not make his or her required contribution.

**12-204      Loan-outs**

Except as set forth in subparagraph 12-105(b) hereof, relating to loan-out companies as defined in subparagraph 17-203(e), if the Employee's services are loaned by the Employer, the amounts paid to the Employee by the Employer shall be the basis for the computation of the Employee's salary, and not the amounts received by the Employer from the borrower.

**12-205      UPM/Producer**

Employer shall make pension and health contributions on behalf of any Unit Production Manager who is also employed as a producer on a theatrical motion picture based on the salary paid for Unit Production Manager services, but in no event shall contributions be made on an amount less than \$100,000 for the picture. However, the foregoing shall not apply to a producer/Unit Production Manager who is employed solely for the purpose of preparing budgets and/or storyboards; in that case, pension and health contributions shall be based on the total salary paid for such services.

**Section 12-300      HEALTH AND WELFARE PLAN**

**12-301      Employer Contributions**

Employer shall pay to the Directors Guild–Producer Health and Welfare Plan twenty-five dollars (\$25.00) per full workweek or eight and one half percent (8½%) of the salary, as that sum is defined in Section 12-200 above, for Employees employed and paid by

Employer hereunder, whichever is the greater. Employer is to pay five dollars (\$5.00) per day or eight and one half percent (8½%) of salary, whichever is greater, for each daily Employee employed and paid by Employer hereunder. Such payments shall be subject to the same salary ceiling limitations as provided in the pension provisions.

**12-302      Loan-outs**

Except as set forth in subparagraph 12-105(b) hereof, relating to loan-out companies as defined in subparagraph 17-203(e), if the Employee's services are loaned by the Employer, the amounts paid to the Employee by the Employer shall be the basis for the computation of the Employee's salary, and not the amounts received by the Employer from the borrower.

**12-303      Contributions Not Deemed Wages**

Such contributions shall not constitute nor be deemed to be wages due to the individual Employees subject to this BA nor shall said contributions in any manner be liable for or subject to the debts, contracts, liabilities or torts of such Employees. Such contributions to the Welfare Plan referred to above shall be maintained in accordance with applicable provisions of law.

**12-304      [Deleted]**

**12-305      [Deleted]**