

**XIX. Post '60 Theatrical Motion Pictures**

(a) Theatrical motion pictures produced by Producer with employees employed by Producer under a Basic Agreement, the principal photography of which commenced on or after February 1, 1960, shall be governed by the following:

Theatrical motion pictures produced by Producer with employees employed by Producer under the Basic Agreement of 1961 between these parties, the principal photography of which commenced in the period between February 1, 1960 and January 31, 1967, both dates inclusive, which motion pictures are released to free television, shall be

governed by Article XIX of such Basic Agreement of 1961; provided, however, that as to such motion pictures, the principal photography of which commenced in the period between February 1, 1965 and January 31, 1967, both dates inclusive, Section 10 of the Basic Agreement of 1965 shall apply.

Theatrical motion pictures, the principal photography of which commenced in the period between February 1, 1967 and January 31, 1969, shall be governed by Article XIX of the Basic Agreement of 1967.

Theatrical motion pictures, the principal photography of which commenced in the period between February 1, 1969 and January 31, 1973, shall be governed by Article XIX of the Basic Agreement of 1969.

Theatrical motion pictures, the principal photography of which commenced in the period between February 1, 1973 and January 31, 1976, shall be governed by Article XIX of the Basic Agreement of 1973.

Theatrical motion pictures, the principal photography of which commenced in the period between February 1, 1976 and July 31, 1979, shall be governed by Article XIX of the Basic Agreement of 1976.

Theatrical motion pictures, the principal photography of which commenced in the period between August 1, 1979 and July 31, 1982, shall be governed by Article XIX of the Basic Agreement of 1979 and the Amendment thereto.

Theatrical motion pictures, the principal photography of which commenced in the period between August 1, 1982 and July 31, 1985, shall be governed by Article XIX of the Basic Agreement of 1982.

Theatrical motion pictures, the principal photography of which commenced in the period between August 1, 1985 and July 31, 1988, shall be governed by Article XIX of the Basic Agreement of 1985.

Theatrical motion pictures, the principal photography of which commenced in the period between August 1, 1988 and July 31, 1990, shall be governed by Article XIX of the Basic Agreement of 1988.

Theatrical motion pictures, the principal photography of which commenced in the period between August 1, 1990 and July 31, 1993, shall be governed by Article XIX of the Basic Agreement of 1990.

Theatrical motion pictures, the principal photography of which commenced in the period between August 1, 1993 and July 31, 1996, shall be governed by Article XIX of the Basic Agreement of 1993.

Theatrical motion pictures, the principal photography of which commenced in the period between August 1, 1996 and July 31, 2000, shall be governed by Article XIX of the Basic Agreement of 1996.

Theatrical motion pictures, the principal photography of which commenced in the period between August 1, 2000 and July 31, 2003, shall be governed by Article XIX of the Basic Agreement of 2000.

Theatrical motion pictures, the principal photography of which commenced in the period between August 1, 2003 and July 31, 2006, shall be governed by Article XIX of the Basic Agreement of 2003.

Theatrical motion pictures, the principal photography of which commenced in the period between August 1, 2006 and July 31, 2009, shall be governed by Article XIX of the Basic Agreement of 2006.

Theatrical motion pictures, the principal photography of which commenced in the period between August 1, 2009 and July 31, 2012, shall be governed by Article XIX of the Basic Agreement of 2009.

Theatrical motion pictures, the principal photography of which commenced in the period between August 1, 2012 and July 31, 2015, shall be governed by Article XIX of the Basic Agreement of 2012.

Theatrical motion pictures, the principal photography of which commences in the period between August 1, 2015 and July 31, 2018, shall be governed by Article XIX of the Basic Agreement of 2015.

Theatrical motion pictures, the principal photography of which commences in the period between August 1, 2018 and July 31, 2021, shall be governed by Article XIX of this Agreement.

Notwithstanding the wording of the second paragraph of paragraph (a) of Article XIX of the 1973 Basic Agreement, it was the intention and understanding of the parties that the allocation of the percentage payments as provided for in paragraph (b) of said Article XIX of the 1973 Basic Agreement was to apply to accountable receipts received by Producer between February 1, 1973 and February 1, 1976 derived from the distribution on free television of all applicable theatrical motion pictures, the principal photography of which commenced after January 31, 1960, regardless of which Basic Agreement applies. Because of such

wording, however, a Producer may have allocated certain "percentage payments" in the proportion of seventy-five percent (75%) to the Motion Picture Industry Pension Plan and twenty-five percent (25%) to the Motion Picture Health and Welfare Fund, instead of fifty percent (50%) to the Pension Plan and fifty percent (50%) to the Motion Picture Industry Retiree Health and Welfare Fund. If the Producer did so allocate "percentage payments," such Producer shall insofar as it is concerned be deemed to have complied with its obligations to the applicable provisions of the 1973 Basic Agreement, but the Pension Plan shall refund to the Retiree Health and Welfare Fund one-third (1/3) of the seventy-five percent (75%) so allocated to the Pension Plan, and the Welfare Fund shall refund to the Retiree Health and Welfare Fund the whole of the twenty-five percent (25%) so allocated to the Welfare Fund.

The following provisions of this Article XIX relate and apply only to theatrical motion pictures produced by Producer with employees employed by Producer under this Agreement,<sup>6</sup> the principal photography of which commenced after July 31, 2018, which motion pictures for the first time are, either during the term hereof or at any time thereafter, released to free television. (Such motion pictures are referred to in this Article as the "motion picture" or "motion pictures.") In addition, the allocation of percentage payments provided for in subparagraph (b) of this Article XIX shall apply to all monies payable on and after August 1, 2018 for the distribution on free television of all motion pictures referred to in this subparagraph (a), regardless of which Agreement governs.

(b) (1) As to each such motion picture (other than a motion picture included in a "qualifying transaction" described in Article XXVIII.A.), the Producer will pay nine percent (9%), hereinafter referred to as the "percentage payment," of the Producer's accountable receipts from the distribution of such motion picture on free television, computed as hereinafter provided, to the Motion Picture Industry Pension and Health Plans, to be allocated as follows:

(i) First, to the defined benefit plan to fund the cost of: (A) the two (2) additional checks (*i.e.*, a 13<sup>th</sup> and 14<sup>th</sup> check) which were granted to all employees who retired prior to August 1, 2000 pursuant to the provisions of Article XIII(f)(2) of the 2000 Producer-I.A.T.S.E. Basic Agreement with any unamortized amounts remaining as

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<sup>6</sup> Employees employed under the Local #600 Amendment Agreement or the Local #871 Amendment Agreement or the Local #871 Agreement covering Script Coordinators and Writers' Room Assistants shall not be considered "employees employed by Producer under this Agreement" for purposes of subparagraph (a) of this Article XIX. Employees employed under the Local #700 Amendment Agreement shall not be considered "employees employed by Producer under this Agreement" for any purpose under this Article XIX.

of December 31, 2016 amortized over fifteen (15) years; (B) the two additional checks (*i.e.*, a 13<sup>th</sup> and 14<sup>th</sup> check) which were granted to all employees who retired prior to August 1, 2003 pursuant to the provisions of Article XIII(f)(2) of the 2003 Producer-I.A.T.S.E. Basic Agreement with any unamortized amounts remaining as of December 31, 2016 amortized over fifteen (15) years; (C) the two additional checks (*i.e.*, a 13<sup>th</sup> and 14<sup>th</sup> check) which were granted to all employees who retired prior to August 1, 2006 pursuant to the provisions of Article XIII(f)(2) of the 2006 Producer-I.A.T.S.E. Basic Agreement with any unamortized amounts remaining as of December 31, 2016 amortized over fifteen (15) years; and (D) the two additional checks (*i.e.*, a 13<sup>th</sup> and 14<sup>th</sup> check) which were granted to all employees who retired on or before August 1, 2009 pursuant to the provisions of Article XIII(f) of the 2009 Producer-I.A.T.S.E. Basic Agreement with any unamortized amounts remaining as of December 31, 2016 amortized over fifteen (15) years.

(ii) Then, next, to the Retired Employees Fund to the extent needed to fund an eight (8) month reserve.

(iii) Then, next, to the defined benefit plan to fund the cost of: (A) the two additional checks (*i.e.*, a 13<sup>th</sup> and 14<sup>th</sup> check), amortized over the fifteen (15) year period commencing January 1, 2017, granted in 2017 to all employees who retired on or before August 1, 2009 pursuant to the provisions of Article XIII.(f)(2) of the 2015 Producer-I.A.T.S.E. Basic Agreement; and (B) the two additional checks (*i.e.*, a 13<sup>th</sup> and 14<sup>th</sup> check), or one additional check (a 13<sup>th</sup> check), granted during the term of this Agreement to all employees who retired on or before August 1, 2009 pursuant to the provisions of Article XIII.(f)(2) of the 2018 Producer-I.A.T.S.E. Basic Agreement, amortized over the fifteen (15) year period commencing January 1, 2017.

(iv) Then, next, to the Active Employees Fund to the extent needed to fund a six (6) month reserve.

(v) Then, next, to the defined benefit pension plan to the extent that Supplemental Markets and New Media monies are insufficient to fund the 23% increase in the defined benefit plan granted to active employees pursuant to the provisions of Article XIII(f)(1)(i) of the 2000 Producer-I.A.T.S.E. Basic Agreement, the 15% increase in the defined benefit plan granted to active employees pursuant to the provisions of Article XIII(f)(1) of the 2003 Producer-I.A.T.S.E. Basic Agreement and the 10% increase in the defined benefit plan granted to active employees pursuant to the provisions of Article XIII.(f)(1) of the 2006 Producer-I.A.T.S.E Basic Agreement.

(vi) Then, next, to the Active Employees Fund of the Health Plan.

(vii) Then, next, to the extent that the level of reserves in the Retired Employees Fund exceeds twenty (20) months, and to the extent that the level of reserves in the Active Employees Fund exceeds twelve (12) months, reserves in excess of such amounts shall be reallocated as provided in Article XIII.A.(c)(2).

On an annual basis during the term of this Agreement, the Alliance of Motion Picture and Television Producers, the IATSE and the Chairman of the Basic Crafts (on behalf of the Basic Crafts Group) shall jointly review this allocation in conjunction with the allocation to the Motion Picture Industry Pension and Health Plans of Supplemental Markets payments. Any agreement on any reallocation of such monies mutually agreed upon by all of these parties shall become a part of this Agreement. The term "Basic Crafts Group," as used herein, refers to those unions noted in this Article XIX.(e).

Exhibit A of each of the Pension Plan, Individual Account Plan and Health Plan (and the mechanical issues addressed therein) shall be amended to express the agreements of the bargaining parties with respect to the foregoing allocation.

(2) The term "Producer's gross," as used herein, means the worldwide total gross receipts of Producer derived from the distributor of such motion picture (who may be the Producer or a distributor licensed by the Producer) from licensing the right to exhibit the motion picture on free television. If the distributor of the motion picture does not distribute the motion picture directly to free television, but employs a sub-distributor to so distribute the motion picture, then the "Producer's gross" shall be the worldwide total gross receipts derived from such sub-distributor 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 "Producer'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 Producer 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 "Producer's gross." In reaching such determination, Producer may consider the current market value of free television exhibition rights in comparable motion pictures. If the Motion Picture Industry Pension and Health Plans 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 Board of Arbitration shall find that such allocation was not reasonable and fair, it shall determine the fair and reasonable amount to be so allocated. If the outright sale includes free television distribution rights to more than one motion picture, Producer shall likewise allocate to each motion picture a fair and reasonable portion of the sales price of the free television rights and, if the Motion Picture Industry Pension and Health Plans contend that such allocation is not fair and reasonable, the question may be determined by submission to arbitration as above provided. If the Board of Arbitration shall find that such allocation was not fair and reasonable, it shall determine the fair and reasonable amount to be so allocated to each motion picture. The price received on the outright sale of only free television distribution rights in a single motion picture shall not be subject to arbitration. Sums paid to any advertising agency in connection with any exhibition of a motion picture on free television shall not be included in Producer's gross.

(3) The term "accountable receipts," as used herein, means the balance of the Producer's gross after deducting an arbitrary forty percent (40%) of the Producer'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 Producer's gross for sales commissions and expenses of sale.

(4) Producer's obligation shall accrue hereunder only after accountable receipts are received by the Producer, 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 accountable receipts. Payments of amounts accruing hereunder shall be made quarterly on the basis of quarterly statements, as hereinafter provided. Frozen foreign receipts from free television 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 the motion picture and other motion pictures distributed by the distributor in the same ratio that receipts derived from the distribution of the motion picture on free television within the foreign country bear to the total receipts derived from the distribution of the motion picture and all other motion pictures on free television 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. Producer 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 Producer. The Motion Picture Industry Pension and Health Plans shall be bound by any arrangements made in good faith by the Producer, 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 Producer may freely commingle the same with other funds of the Producer. No sums received by way of deposits or security need be included in Producer's gross until earned, but when the Producer is paid a non-returnable advance by a distributor, such advance shall be included in the Producer's gross.

(5) 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 Producer 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 Producer's gross hereunder.

(6) Such payments made hereunder to the Motion Picture Industry Pension and Health Plans are not and shall not in any manner be construed to be wages due to any individual employee, nor in any manner be liable for or subject to the debts, contracts, liabilities or torts of any employee.

(7) Within a reasonable time after the close of the calendar or fiscal quarter, but not exceeding sixty (60) calendar days, Producer will furnish to the Motion Picture Industry Pension and Health Plans written reports, as prescribed by the Motion Picture Industry Pension and Health Plans, showing the Producer's gross received from the sale, lease, license and distribution (whether by Producer or a distributor) of each such motion picture on free television. Such reports shall be furnished quarterly during each fiscal or calendar year of the Producer. Concurrently with the furnishing of each such report, the Producer will make the payments shown to be due by such report. All required payments shall be made by check payable to the order of and delivered to the Motion Picture Industry Pension and Health Plans. Each such quarterly statement shall designate the title of the motion picture involved. On request, the Producer shall make available



to the Motion Picture Industry Pension and Health Plans all accounting statements delivered by a distributor to the Producer, but only insofar as such statements relate to the Producer's gross. The Motion Picture Industry Pension and Health Plans shall have the right, at reasonable times, to examine the books and records of Producer insofar as they relate to the Producer's gross. Producer shall not be required to furnish any quarterly statement hereunder with respect to the motion picture prior to Producer's receipt of any Producer's gross with respect to the motion picture, or for any quarterly period during which no Producer's gross from the motion picture is received by the Producer.

If the Producer shall fail to make any payment provided for in this Article when and as the same becomes due and payable, it shall bear interest at the rate of one percent (1%) per month on the unpaid balance thereof commencing to accrue ten (10) business days after notice in writing to Producer from the Motion Picture Industry Pension and Health Plans of such delinquency.

(8) If the Producer shall sell, assign, transfer or otherwise dispose of the distribution rights to such motion picture on free television, or shall license the distribution rights to the motion picture on free television, Producer shall obtain from the buyer, licensee or distributor a separate agreement, made expressly for the benefit of the Motion Picture Industry Pension and Health Plans, as herein provided, requiring such buyer, licensee or distributor to comply with the provisions of this Article XIX. Such agreement shall be in substantially the following form:

"The undersigned, \_\_\_\_\_  
(insert name of buyer, licensee or distributor)  
herein for convenience referred to as the "Buyer," hereby  
agrees with \_\_\_\_\_  
(insert name of Producer)  
that all theatrical motion pictures covered by this Agreement  
are subject to the provisions of Article XIX of the "Producer-  
I.A.T.S.E. and M.P.T.A.A.C. Basic Agreement of 2018"  
relating to payments to the Motion Picture Industry Pension  
and Health Plans on release of a theatrical motion picture to  
free television; and the said buyer hereby agrees, expressly  
for the benefit of the Motion Picture Industry Pension and  
Health Plans, to abide by and perform the provisions of  
Article XIX of said Basic Agreement and make said  
payments required thereby. It is expressly understood that  
the rights of Buyer to exhibit or license the exhibition of such  
motion pictures on free television shall be subject to and  
conditioned upon the payment to the Motion Picture Industry

Pension and Health Plans as provided in Article XIX of said Basic Agreement, and it is agreed that said Motion Picture Industry Pension and Health Plans shall be respectively entitled to injunctive relief and damages against Buyer in the event such respective payments are not made.

"The undersigned agrees to keep or have access to complete records showing the income derived from the distribution of such motion pictures on free television within the entire territory for which Buyer is granted such rights and the Motion Picture Industry Pension and Health Plans shall have the right at all reasonable times to inspect such records. The undersigned shall give the Motion Picture Industry Pension and Health Plans prompt written notice of the date on which each motion picture covered hereby is first telecast on free television. An inadvertent failure to comply with said requirement of notice shall not constitute a default by the undersigned hereunder, provided such failure is cured promptly after notice thereof from the Motion Picture Industry Pension and Health Plans."

Producer agrees to give notice to the Motion Picture Industry Pension and Health Plans within thirty (30) days of each sale, transfer or license of the distribution rights to such a motion picture on free television, with the name and address of the buyer, assignee or distributor, and to deliver to the Motion Picture Industry Pension and Health Plans an executed copy of each assumption agreement entered into by the Producer. An inadvertent failure on the part of the Producer to comply with any of the provisions of this subparagraph (8) shall in no event constitute a default by the Producer hereunder or a breach of this Agreement, provided that such failure is cured promptly after notice thereof from the Motion Picture Industry Pension and Health Plans.

Upon delivery of such assumption agreement, and on condition that the Motion Picture Industry Pension and Health Plans approve in writing the financial responsibility of the buyer, Producer, or any subsequent owner obtaining the execution of such an assumption agreement, shall not be further liable to the Motion Picture Industry Pension and Health Plans for the keeping of any such records or the required payments insofar as they relate to the broadcast of the motion picture on free television, and the Motion Picture Industry Pension and Health Plans agrees to look exclusively to the party last executing such an assumption agreement for the keeping of such records and payments.

(9) With respect to such motion picture, Producer agrees either to:

(i) 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 Motion Picture Industry Pension and Health Plans to the effect that the chattel mortgagee, pledgee, 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 XIX with respect to payments to the Motion Picture Industry Pension and Health Plans thereafter becoming due and payable hereunder; provided, however, that nothing herein contained shall prevent such mortgagee, pledgee, 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 subsection (i), the rights of the Motion Picture Industry Pension and Health Plans shall be subordinate to the rights of such mortgagee, pledgee, lien or security holder; or

(ii) in the alternative, be bound by the provisions of this Article XIX with respect to payments to the Motion Picture Industry Pension and Health Plans, if any, due after such foreclosure shall have been made. In the event Producer elects this alternative, the provisions of subsection (i) above shall be inapplicable, and if the provisions referred to in subsection (i) above are not included in any such chattel mortgage, pledge, lien or security agreement, Producer shall be deemed to have elected the alternative provided for in this subsection (ii).

In the event of a foreclosure referred to in subsection (i) above, should the Producer distribute the motion picture for such mortgagee, pledgee, lien or security holder, Producer shall be bound during the period of such distribution by the provisions of this Article XIX with respect to payments due hereunder, to the same extent as the mortgagee, pledgee, lien or security holder under subsection (i) above. Any such payments made by the Producer 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 Motion Picture Industry Pension and Health Plans under subsection (i) above; it being

understood that the Motion Picture Industry Pension and Health Plans shall be entitled to such respective payments but once.

The foregoing provisions of this subparagraph (9) shall not apply to any motion picture subject to any security instrument in existence on January 31, 1965.

(10) If, after January 31, 1976, the Producer 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 Producer or for the furnishing of all the employees covered hereunder who are to be used in such theatrical motion picture (such contract being hereinafter referred to as an "independent contract"), Producer will include in such independent contract an agreement on the part of the independent producer, expressly for the benefit of the Motion Picture Industry Pension and Health Plans, that the independent producer will pay, on behalf of Producer, in the manner herein provided, the amounts, if any, required to be paid under the provisions of this Article XIX 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 Producer shall be liable and responsible for the payments, if any, required to be made under the provisions of this Article XIX 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 Producer 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 XIX. The Producer will notify the Motion Picture Industry Pension and Health Plans of any and all such independent contracts entered into by the Producer.

(c) Notwithstanding any provision in subparagraph (b) above to the contrary, the following shall govern the computation and remittance of the "percentage payment" as that term is defined in subparagraph (b) above:

(1) Definitions. For purposes of this subparagraph (c) and for no other purpose, the following terms shall have the meanings set forth below:

(i) "Production" or "produce" shall include both production and pre-production functions, but not post-production or distribution functions.

(ii) "Prorate" or "proration" shall mean the computation of the percentage payment by multiplying nine percent (9%) of accountable receipts by a fraction whose numerator consists of the total below-the-line labor cost of individuals subject to the Basic Agreement<sup>7</sup> or hired from the jurisdiction of the union locals referred to in subparagraph (e) below working on the picture (whether in production or post-production but excluding distribution -- distribution, for the purposes of this Article, shall include all laboratory work other than that performed by employees charged directly to a picture) and whose denominator consists of the total below-the-line labor cost of all individuals working on the picture in job categories referred to either in this Basic Agreement or in the other collective bargaining agreements between Producer and the West Coast Studio Locals or between Producer and the unions referred to in subparagraph (e) below (whether in production or post-production but excluding distribution -- distribution, for the purposes of this Article, shall include all laboratory work other than that performed by employees charged directly to a picture).

(iii) "Individuals subject to the Basic Agreement" and "employees employed by Producer under this Agreement"<sup>7</sup> include all persons working on the motion picture under the terms of the Basic Agreement or hired from the jurisdiction of union locals referred to in subparagraph (e) below who are hired to perform services in Los Angeles or hired in Los Angeles to perform services at a distant location whether hired by a Producer itself or employed indirectly by a Producer through loan-outs, payroll companies or comparable employing agents; provided, however, that individuals not specifically charged to the motion picture or who are included in general overhead and individuals such as projectionists, drivers and publicists engaged primarily in off-location services during the production of the motion picture are not included in the terms "made with two or more individuals subject to the Basic Agreement" or "Los Angeles production crew" as those terms are used in subparagraph (c)(3) below and are not included in either the numerator or denominator of the proration fraction described above.

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<sup>7</sup> Individuals employed under the Local #600 Amendment Agreement or the Local #871 Amendment Agreement or the Local #871 Agreement covering Script Coordinators and Writers' Room Assistants shall be considered "individuals subject to the Basic Agreement" and "employees employed by Producer under this Agreement" for purposes of subparagraph (c) and subparagraphs (f)(2)(v)(B)(1) and (2) of this Article XIX only and for no other purpose. Accordingly, when Producer is entitled to prorate hereunder, the salaries of all individuals employed under the Local #600 Amendment Agreement or the Local #871 Amendment Agreement or the Local #871 Agreement covering Script Coordinators and Writers' Room Assistants shall be included in both the numerator and the denominator of the fraction referred to in subparagraphs (c)(1)(ii) and (f)(2)(v)(B)(1) of this Article XIX.

(iv) "Foreign" means any theatrical motion picture for which twenty percent (20%) or more of the shooting days of principal photography takes place in a country other than the United States, its territories or Canada.

(v) "Domestic" means any theatrical motion picture which is not foreign.

(vi) "Los Angeles production crew," for purposes of determining whether percentage payments on domestic pictures may be prorated, shall mean persons hired from the jurisdiction of the IATSE West Coast Studio Locals<sup>8</sup> or hired from the jurisdiction of the union locals referred to in subparagraph (e) below, employed by the Producer in production.

(vii) "Entire production crew," as such term is used herein, shall mean all individuals in job categories referred to either in this Basic Agreement or in the other collective bargaining agreements between Producer and the West Coast Studio Locals or between Producer and the unions referred to in subparagraph (e) below employed by the Producer on the production of the motion picture in question.

(viii) "Other collective bargaining agreements between Producer and the West Coast Studio Locals" means only those Local Agreements subject to this Basic Agreement.

(2) Foreign Pictures. Percentage payments shall be made on a prorated basis for any foreign picture made with two or more individuals subject to the Basic Agreement.

(3) Domestic Pictures.

(i) If two or more individuals subject to the Basic Agreement are employed on a domestic picture, it will be subject to liability for percentage payments to the extent hereinafter provided.

(ii) Except as provided in subparagraph (c)(3)(iii) below, percentage payments on domestic pictures will be nine percent (9%) of accountable receipts.

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<sup>8</sup> Individuals employed under the Local #600 Amendment Agreement or the Local #871 Amendment Agreement or the Local #871 Agreement covering Script Coordinators and Writers' Room Assistants shall be considered part of the "Los Angeles production crew" for purposes of this subparagraph (c) only and not for any other purpose.

(iii) (A) Percentage payments on a domestic picture shall be made on a prorated basis if a majority of the shooting days of principal photography on the motion picture occurred outside of the following states - Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Texas, Utah, Washington and Wyoming. In the event that the IATSE determines that the proration formula set forth in this subsection (A) adversely affects Post '60s revenues, it shall have the right to terminate same, in which case proration on domestic pictures shall be governed by the provisions of subsection (B) below.

(B) Percentage payments on domestic pictures not covered by subsection (A) above or which commence principal photography more than one hundred twenty (120) days after the IATSE terminates the provisions of subsection (A) above shall be made on a prorated basis if all of the following conditions are satisfied:

(1) The Los Angeles production crew, as defined above, consists of twenty-nine (29) or fewer individuals (no more than twenty-two (22) of whom may be hired from the jurisdiction of the IATSE West Coast Studio Locals), and the salaries paid to those twenty-nine (29) or fewer individuals constitute less than fifty percent (50%) of the salaries of the entire production crew. In determining whether twenty-nine (29) or fewer individuals are employed on the picture, the following shall be excluded: make-up artists, hairdressers and costumers who are specifically required to be furnished by the Producer in accordance with the personal service contract of an actor and those individuals engaged in post-production or distribution functions, including, but not limited to, editing and looping regardless of where or when those functions are performed; and

(2) A majority of the shooting days of principal photography on the motion picture occurred outside of the following states -- Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Texas, Utah, Washington and Wyoming.

(iv) As to any domestic picture on which the Producer intends to make percentage payments on a prorated basis, an Application to Prorate shall be delivered by the Producer to the Administrator of the Pension and Health Plans on or before the date that the first percentage payment is due to the Plans from Producer. Said Application shall contain the following information: If the right to prorate is based upon the provisions of subparagraph (c)(3)(iii)(A) above, the aggregate salaries paid to the Los Angeles production crew

and the aggregate salaries paid to the entire production crew; the number of shooting days of principal photography occurring in the states listed in subparagraph (c)(3)(iii)(A) above; the total other shooting days and the states in which said other shooting days occurred. If the right to prorate is based upon the provisions of subparagraph (c)(3)(iii)(B) above, the number of individuals on the Los Angeles production crew; the number of such individuals who were hired from the jurisdiction of the IATSE West Coast Studio Locals; the number and job classifications of those individuals excluded pursuant to the provisions of subparagraph (c)(3)(iii)(B)(1) above; the aggregate salaries paid to the Los Angeles production crew and the aggregate salaries paid to the entire production crew; the number of shooting days of principal photography occurring in the states listed in subparagraph (c)(3)(iii)(B)(2) above; the total other shooting days and the states in which said other shooting days occurred. If an Application to Prorate is submitted later than the dates specified above, it will nonetheless be deemed granted if the identified picture meets said criteria; provided, however, that, if he deems it necessary, the Administrator of the Pension and Health Plans may require a Producer submitting a late Application to Prorate to allow a special audit of the percentage payments due and the Motion Picture Industry Pension and Health Plans shall be reimbursed by the Producer for all reasonable fees and expenses incurred by the Motion Picture Industry Pension and Health Plans in performing said audit.

(d) (1) Producer will furnish to the Motion Picture Industry Pension and Health Plans written reports showing the Producer's gross received from the sale, lease, license and distribution (whether by Producer or a distributor) on free television of each motion picture subject to the provisions of this Article. In the written reports filed with the Motion Picture Industry Pension and Health Plans, the Producer shall indicate whether it is prorating on each picture being reported and, if so, what proration percentage is being applied and the basis for the Producer's right to prorate -- *i.e.*, whether proration is being applied pursuant to subparagraph (c)(2) or pursuant to subparagraph (c)(3)(iii)(A) or pursuant to subparagraph (c)(3)(iii)(B) above. Such reports shall be furnished quarterly during each fiscal or calendar quarter of the Producer. Concurrently with the furnishing of each such report, the Producer will make the payments shown to be due by such report. All required payments shall be made by check payable to the order of and delivered to the Motion Picture Industry Pension and Health Plans. Each such quarterly statement shall designate the title of the motion picture involved. On request, the Producer shall make available to the Motion Picture Industry Pension and Health Plans all accounting statements delivered by a distributor to the Producer, but only insofar as such statements relate to the Producer's gross. The Motion Picture Industry Pension and Health Plans shall have the right, at reasonable



times, to examine the books and records of Producer insofar as they relate to the Producer's gross and -- as to any motion picture for which Producer assumes as Buyer the obligation to make percentage payments pursuant to subparagraph (b)(8) above -- the documents reflecting or effectuating the purchase; provided that, with respect to these latter documents, the Producer may require the persons examining them to execute reasonable agreements to respect their confidentiality. Producer shall not be required to furnish any quarterly statement hereunder with respect to the motion picture prior to Producer's receipt of any Producer's gross with respect to the motion picture, or for any quarterly period during which no Producer's gross from the motion picture is received by the Producer.

(2) For each motion picture produced by Producer which the Producer plans to prorate (whether proration is being applied pursuant to subparagraph (c)(2) or pursuant to subparagraph (c)(3) above) for three (3) years after either the date of the first quarterly report showing a percentage payment on such motion picture or the receipt by the Motion Picture Industry Pension and Health Plans of the Producer's written request for audit of the percentage payments due, Producer shall maintain and make available to the Motion Picture Industry Pension and Health Plans and their auditors the following information: the names of the employees on the Los Angeles production crew; the names of the employees on the entire production crew; the names of all individuals subject to the Basic Agreement working on the motion picture (whether in pre-production, production or post-production functions); the names of all individuals who were not subject to the Basic Agreement but who worked on the motion picture in job categories referred to either in this Basic Agreement or in the other collective bargaining agreements between Producer and the West Coast Studio Locals or between Producer and the unions referred to in subparagraph (e) below; the total below-the-line labor costs of individuals subject to the Basic Agreement (whether in pre-production, production or post-production functions); and the total below-the-line labor costs of all individuals working on the motion picture in job categories referred to either in this Basic Agreement or in the other collective bargaining agreements between Producer and the West Coast Studio Locals or between Producer and the unions referred to in subparagraph (e) below.

(3) As to any motion picture subject to subparagraph (c) above for which Producer assumes the obligation to make percentage payments pursuant to subparagraph (b)(8) above, if Producer wishes to prorate its percentage payments for such motion picture, it shall obtain the records provided for in subparagraph (d)(2) above from the producer of such motion picture.

(e) The provisions of this Article XIX were negotiated by the following unions for the benefit of the Motion Picture Industry Pension and Health Plans:

International Alliance of Theatrical Stage Employees and Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada; Studio Transportation Drivers, Local 399 of the International Brotherhood of Teamsters; Local 40 of the International Brotherhood of Electrical Workers; Local 724 of the International Hod Carriers, Building and Common Laborers Union; Local 755 of the Operative Plasterers and Cement Masons International Association of United States and Canada; and United Association of Journeymen and Apprentices of the Plumbing and Piping Industry of United States and Canada, Local 78.

Any reference in any other collective bargaining agreement (whether with one of the above unions or any other union or guild) to a "percentage payment" to the Motion Picture Industry Pension and Health Plans for the exhibition on free television of Post '60 Theatrical Motion Pictures is, and shall be deemed to be, a reference to the "percentage payment" as set forth in this Article XIX, which amount is the only amount, in the aggregate, which the Producer and all such unions have agreed upon for the benefit of the Motion Picture Industry Pension and Health Plans.

The compliance by Producer with the conditions set forth in this Article XIX likewise constitutes compliance as to all the unions.

(f) The following provisions shall apply to "feature length primarily animated motion pictures," as defined herein, produced by Producer with employees employed by Producer under this Agreement,<sup>9</sup> which motion pictures for the first time are, either during the term hereof or at any time thereafter, released to free television.

(1) Definition

A "feature length primarily animated motion picture" refers to any motion picture produced for theatrical exhibition

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<sup>9</sup> Employees employed under the Local #600 Amendment Agreement or the Local #871 Amendment Agreement or the Local #871 Agreement covering Script Coordinators and Writers' Room Assistants shall not be considered "employees employed by Producer under this Agreement" for purposes of subparagraph (f) of this Article XIX, except as indicated in the footnote to subparagraphs (f)(2)(v)(B)(1) and (f)(2)(v)(B)(2) below.

which consists primarily or exclusively of animated footage and has a continuous running time of more than thirty (30) minutes. Animated motion pictures which include live action essential to the storyline (e.g., "*Who Framed Roger Rabbit?*") are not primarily animated motion pictures (but are instead covered under subparagraphs (a) through (e) above and subparagraph (g) below if produced subject to an IATSE Basic Agreement).

(2) Contributions Required

The contributions required to be made for release of feature length primarily animated motion pictures to free television are as follows:

(i) No contributions are required to be made for any feature length primarily animated motion picture produced and/or released prior to November 1, 1992.

(ii) (A) With respect to those feature length primarily animated motion pictures designated in subparagraph (B) below, Producer shall make contributions based upon two percent (2%) of "Producer's gross," as that term is defined in subparagraph (b)(2) above. (The provisions of subparagraph (b)(3) are not applicable.)

(B) Subparagraph (ii)(A) above shall apply only to the following feature length primarily animated motion pictures:

*"Pagemaster;"*  
*"Once Upon a Forest" aka "The Endangered;"*  
*"Puff the Magic Dragon;"*  
*"We're Back;"*  
*"Cats;"* and  
*"Snowballs."*

(iii) With respect to any feature length primarily animated motion picture not covered under subparagraph (i) or (ii) above, which has its initial theatrical release on or after November 1, 1992, and which is thereafter released on free television, Producer shall make contributions based upon three and six-tenths percent (3.6%) of "Producer's gross," as that term is defined in subparagraph (b)(2) above. (The provisions of subparagraph (b)(3) are not applicable.)

(iv) The contributions required under subparagraph (f)(2)(ii) and (iii) above shall be paid to the Motion Picture Industry Pension and Health Plans, as provided in subparagraph (b)(1)

above. The parties shall have the right to reallocate such contributions as provided in subparagraph (b)(1) above.

(v) The following provisions of subparagraphs (a) through (e) and subparagraph (g) of Article XIX are applicable to feature length primarily animated motion pictures covered under this subparagraph (f):

(A) subparagraphs (b)(2), (4), (5), (6), (7), (8) and (9);

(B) The proration provision set forth in subparagraph (c) shall be modified to read as follows:

Notwithstanding any provision in subparagraph (f)(2) above, the following shall govern the computation and remittance of the payment due for the release of feature length primarily animated motion pictures to free television:

(1) If a feature length primarily animated motion picture is produced partially with employees employed by Producer under this Agreement<sup>10</sup> and partially with persons working in job categories referred to in this Basic Agreement who are not covered under this Agreement, the percentage payment required under subparagraphs (f)(2)(ii) and (iii) above shall be prorated by multiplying such percentage payment by a fraction whose numerator consists of the sum of the total below-the-line labor costs of individuals subject to the Basic Agreement working on the picture and the total below-the-line labor costs of individuals subject to The Animation Guild, Local #839 Agreement, if any, (whether such individuals are employed in production or post-production, but excluding distribution--distribution, for the purposes of this provision, shall include all laboratory work other than that performed by employees charged directly to a picture) and whose denominator consists of the sum of the total below-the-line labor costs of all individuals working on the picture in job categories referred to in this Basic Agreement and the total below-the-line labor costs of all individuals working on the picture in job categories referred to in The Animation Guild, Local #839 Agreement (whether in production or post-

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<sup>10</sup> Individuals employed under the Local #600 Amendment Agreement or the Local #871 Amendment Agreement or the Local #871 Agreement covering Script Coordinators and Writers' Room Assistants shall be considered "individuals subject to the Basic Agreement" and "employees employed by Producer under this Agreement" for purposes of subparagraph (c) and subparagraphs (f)(2)(v)(B)(1) and (2) of this Article XIX only and for no other purpose. Accordingly, when Producer is entitled to prorate hereunder, the salaries of all individuals employed under the Local #600 Amendment Agreement or the Local #871 Amendment Agreement or the Local #871 Agreement covering Script Coordinators and Writers' Room Assistants shall be included in both the numerator and the denominator of the fraction referred to in subparagraphs (c)(1)(ii) and (f)(2)(v)(B)(1) of this Article XIX.

production but excluding distribution--distribution, for the purposes of this provision, shall include all laboratory work other than that performed by employees charged directly to a picture).

(2) "Individuals subject to the Basic Agreement" and "employees employed by Producer under this Agreement"<sup>11</sup> include all persons working on the motion picture under the terms of the Basic Agreement who are hired to perform services in Los Angeles or hired in Los Angeles to perform services at a distant location, whether hired by a Producer itself or employed indirectly by a Producer through loan-outs, payroll companies or comparable employing agents; provided, however, that individuals not specifically charged to the motion picture or who are included in general overhead and individuals such as projectionists and publicists engaged primarily in off-location services during the production of the motion picture are not included in either the numerator or denominator of the proration fraction described above.

(3) As to any feature length primarily animated motion picture on which the Producer intends to make percentage payments on a prorated basis, an Application to Prorate shall be delivered by the Producer to the Administrator of the Pension and Health Plans on or before the date that the first percentage payment is due to the Plans from Producer. Said Application shall contain the following information: the aggregate salaries paid to those employees employed by Producer under the Basic Agreement; if applicable, the aggregate salaries paid to those employees employed by Producer subject to The Animation Guild, Local #839 Agreement; the total salaries paid to the entire production crew, including the salaries of employees working in job categories referred to in the Local #839 Agreement; and the job classifications of those individuals excluded because they perform distribution functions or because they are not specifically charged to the motion picture or are not included in general overhead or are engaged primarily in off-location services. If an Application to Prorate is submitted later than the date specified above, it will nonetheless be deemed granted if the identified picture meets said criteria; provided, however, that if he deems it necessary, the Administrator of the Pension and Health Plans may require a Producer

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<sup>11</sup> Individuals employed under the Local #600 Amendment Agreement or the Local #871 Amendment Agreement or the Local #871 Agreement covering Script Coordinators and Writers' Room Assistants shall be considered "individuals subject to the Basic Agreement" and "employees employed by Producer under this Agreement" for purposes of subparagraph (c) and subparagraphs (f)(2)(v)(B)(1) and (2) of this Article XIX only and for no other purpose. Accordingly, when Producer is entitled to prorate hereunder, the salaries of all individuals employed under the Local #600 Amendment Agreement or the Local #871 Amendment Agreement or the Local #871 Agreement covering Script Coordinators and Writers' Room Assistants shall be included in both the numerator and the denominator of the fraction referred to in subparagraphs (c)(1)(ii) and (f)(2)(v)(B)(1) of this Article XIX.

submitting a late Application to Prorate to allow a special audit of the percentage payments due and the Motion Picture Industry Pension and Health Plans shall be reimbursed by the Producer for all reasonable fees and expenses incurred by the Motion Picture Industry Pension and Health Plans in performing said audit.

(4) The provisions of subparagraph (d) shall apply, except that conforming changes shall be made to eliminate the references to the basis for the Producer's right to prorate and in the language relating to the nature of the information to be maintained and made available to the Motion Picture Industry Pension and Health Plans and their auditors.

(5) The provisions of subparagraph (e) shall apply.

(6) The provisions of subparagraph (g) shall apply.

(7) The parties hereto acknowledge that a resolution of the obligations of Walt Disney Pictures & Television to make Post '60s and Supplemental Markets payments on primarily animated feature length motion pictures was reached with the IATSE and the Motion Picture Industry Pension and Health Plans in June of 1992. The terms of that resolution are set forth in a Memorandum Agreement executed in June of 1992. The terms of that Memorandum Agreement supplement the provisions of this subparagraph (f); in the event of any inconsistency between said provisions, the terms of the Disney Memorandum Agreement shall control.

(g) Notwithstanding anything herein to the contrary, the parties hereby confirm the following understanding and practices of the Producers with respect to the Post '60s provisions:

(1) Article XIX does not require a percentage payment to be made with respect to motion pictures on which the only employees employed under the Basic Agreement performed post-production (including editorial) work; and

(2) Article XIX does not require percentage payments to be made with respect to motion pictures which are produced by a producer which is not signatory to the Basic Agreement (and the Basic Crafts Agreements).

(3) The Post '60s provisions apply only to theatrical motion pictures "produced by Producer with employees employed under this Agreement."<sup>12</sup> The parties have agreed that the quoted language is satisfied only if two (2) or more employees are employed on the production under either the IATSE Agreement or the Basic Crafts Agreements. This requirement is not satisfied if there is only one employee covered under the Basic Agreement and one employee covered under the Basic Crafts Agreements.

(i) The "Domestic Pictures" proration provisions of the Post '60s clause provide that certain domestic pictures are eligible for proration of Post '60s payments if, among other requirements, the Los Angeles production crew consists of twenty-nine (29) or fewer individuals (no more than twenty-two (22) of whom may be hired from the jurisdiction of the IATSE West Coast Studio Locals). In determining whether either the "29 or fewer" or "22 or fewer" requirement has been met, employees who replace other employees are not counted. For example, suppose there are seven (7) persons on the crew who fall within the Los Angeles production crew definition, including the Director of Photography. Suppose further that the Director of Photography is replaced with another person hired from the jurisdiction of Local #600. The replacement Director of Photography would not be counted in figuring whether the "29 or fewer" or "22 or fewer" standards were met.

However, the salary paid to any replacement employee under these circumstances shall be included in both the numerator and denominator.

(ii) Similarly, individuals hired from either the jurisdiction of the IATSE West Coast Studio Local Unions or from the jurisdiction of the Basic Crafts Unions who are replaced with another individual employed under the same West Coast Studio Local Agreement or Basic Crafts Agreement, respectively, shall not be counted in determining whether a motion picture has been produced by a Producer with "employees" employed under this Agreement.<sup>13</sup>

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<sup>12</sup> Employees employed under the Local #600 Amendment Agreement or the Local #871 Amendment Agreement or the Local #871 Agreement covering Script Coordinators and Writers' Room Assistants shall not be considered "employees employed under this Agreement" for purposes of subparagraph (g)(3) of this Article XIX.

<sup>13</sup> Employees employed under the Local #600 Amendment Agreement or the Local #871 Amendment Agreement or the Local #871 Agreement covering Script Coordinators and Writers' Room Assistants shall not be considered "employees employed under this Agreement" for purposes of subparagraph (g)(3) of this Article XIX.

For example, if the only individual hired from the jurisdiction of the West Coast Studio Local Unions and the Basic Crafts Unions on a particular production is an Art Director, and the Art Director is replaced on that production by another Art Director hired from the jurisdiction of Local #800, there will still be only one (1) employee hired from the jurisdiction of the IATSE on the production, with the result that the Post '60s clause is not applicable to that production.