

XXVIII. Supplemental Markets

(a) The provisions of this Article relate and apply only to motion pictures produced by Producer during the term hereof and subject to this Agreement:

(1) The principal photography of which commenced on or after August 1, 2021, which motion pictures are, either during the term hereof or at any time thereafter, released in Supplemental Markets (as defined below); and

(2) Produced with employees employed by Producer under this Agreement.¹⁴

¹⁴ 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 XXVIII. Employees employed

(3) Definition

The term "Supplemental Markets," as used in this Agreement, means only: The exhibition of motion pictures by means of cassettes (to the limited extent provided in subparagraph (i) of this paragraph (3)), or pay television, as those terms are hereafter defined in this paragraph (3), and the exhibition of television motion pictures on any commercial carrier such as commercial airlines, trains, ships and buses (referred to herein as "in-flight").

(i) Cassettes:

For the purposes of this Article, a cassette is any audio-visual device, including without limitation, cassette, cartridge, phonogram or other similar audio-visual device now known or hereafter devised, containing a motion picture (recorded on film, disc, tapes or other material) and designed for replay through a television receiver or comparable device. The sale or rental of cassettes for replay through a television receiver or comparable device in the home or in closed-circuit use, such as in hotel rooms, constitutes "Supplemental Markets."

(ii) Pay Television

The term "Pay Television," as used in this Article, shall mean exhibition on a home-type television screen by means of telecast, cable, closed circuit, satellite to home or CATV when a majority of licensed systems meet the following tests:

(a) a separate channel is provided for which the subscriber pays a separate fee (which fee is a substantial charge relative to other charges made to the subscriber) for that channel; and/or

(b) the subscriber pays for the motion picture or motion pictures selected (except that a motion picture or motion pictures selected for which only a token charge is made shall not be considered pay television); and/or

(c) the subscriber pays a fee for an encoded telecast, which fee is a substantial charge relative to other fees paid for encoded telecasts.

The foregoing tests cover those types of services and systems which exist in the industry today and are commonly understood in the industry today to be pay television services or systems.

under the Local #700 Amendment Agreement shall not be considered "employees employed by Producer under this Agreement" for any purpose under this Article XXVIII.

The term "pay television," as used in this Article, shall also include the exhibition of motion pictures through a television receiver or comparable device by means of telecast, cable, closed circuit, satellite or CATV for which the viewing audience (whether by the individual viewer or by the hotel, motel, hospital or other accommodation where the viewer is) pays to receive the program by making a separate payment for such specific program. Exhibition in theaters or comparable places by such means is theatrical exhibition and shall not be considered pay television.

The term "Supplemental Markets" does not include the exhibition of a motion picture by cassette or otherwise over a television broadcast station or in theatrical exhibition, and for this purpose "theatrical exhibition" includes the educational market, the exhibition of theatrical motion pictures on any commercial carrier (referred to herein as "in-flight"), such as commercial airlines, trains, ships and buses, and other uses which have been traditionally considered theatrical exhibition of theatrical motion pictures, other than the specific home use hereinabove defined as the "Supplemental Markets" for cassettes.

Whenever reference is made in this Agreement to pay television, such reference shall be deemed to include only those uses of motion pictures as to which a charge is actually made to the subscriber for the program viewed, or for which the subscriber has the option, by additional payment, to receive special programming over one or more special channels. When no program charge or special channel charge is made to the subscriber in addition to the general charge, the transmission of motion pictures by telecast, cable, closed circuit, satellite or CATV is free television exhibition for the purposes of this Agreement, and such exhibition shall not be considered Supplemental Markets exhibition.

The Producers have agreed to the inclusion of "pay television" in the "Supplemental Markets" because, under the present pattern of distribution of motion pictures, "pay television" is supplemental to the primary market. The Producers reserve the right in future negotiations to contend that the pattern of release has changed so that "pay television" is no longer a Supplemental Market but constitutes or is a part of the primary market of distribution of motion pictures, and that, therefore, no additional payment pursuant to this Article XXVIII should be made with respect to the release of motion pictures (including those covered by this Agreement) in said market. Nothing herein shall limit the scope of negotiations on said subject. Furthermore, if the Producers in their collective bargaining agreement with the Directors Guild of America, Writers Guild of America or Screen Actors Guild-American Federation of Television and Radio Artists negotiate a provision treating pay-per-view exhibitions as part of the primary

market, rather than supplemental markets, then such provision shall automatically be deemed included hereunder, based on a comparable formula as may have been applied in such DGA, WGA or SAG-AFTRA Agreement.

(b) (1) As to such motion pictures distributed in Supplemental Markets other than by means of cassettes (other than a motion picture included in a "qualifying transaction" described in Article XXVIII.A.), the following shall apply:

(i) The Producer will pay five and four-tenths percent (5.4%) (hereinafter referred to as the "percentage payment") of the "Producer's gross" received therefrom, computed as hereinafter provided.

(ii) The term "Producer's gross," as used herein, means the worldwide total gross receipts derived by the distributor of the motion picture (who may be the Producer or a distributor licensed by the Producer) from licensing the right to exhibit the motion picture in Supplemental Markets other than by means of cassettes and including, in the case of a "foreign territorial sale" by the Producer, the income received from such sale by Producer but not the income received by "purchaser" or the "licensee."

(2) As to such motion pictures distributed in Supplemental Markets by means of cassettes (other than a motion picture included in a "qualifying transaction" described in Article XXVIII.A.), the following shall apply:

(i) The Producer will pay six and seventy-five hundredths percent (6.75%) of the "Producer's gross," as defined below, until the Producer's gross equals one million dollars (\$1,000,000). Thereafter, Producer shall pay eight and one-tenth percent (8.1%) of "Producer's gross" in excess of one million dollars (\$1,000,000).

(ii) If the Producer is the Distributor or the Distributor is owned by or affiliated with the Producer, the "Producer's gross" derived from the distribution of such motion pictures by cassettes shall be twenty percent (20%) of the worldwide wholesale receipts derived by the Distributor. In such cases, if the Distributor is also the retailer, a reasonable allocation of the retail gross receipts shall be made as between the Distributor as distributor and the Distributor as retailer, and twenty percent (20%) of the former only shall be deemed to be "Producer's gross." The reasonableness of such allocation shall be subject to arbitration and, in such arbitration, generally prevailing trade practices in the cassette industry with respect to dealings between non-related companies shall be relevant evidence.

If the Distributor is not the Producer and is not owned by or affiliated with the Producer, the "Producer's gross" shall be one hundred percent (100%) of the fees received by the Producer from licensing the right to distribute such motion picture by cassettes.

(3) The Producer's gross shall not include:

(i) Sums realized or held by way of deposit, as security, until and unless earned, other than such sums as are non-returnable;

(ii) Rebates, credits or repayments for cassettes returned (and, in this connection, the Producer shall have the right to set up a reasonable reserve for returns);

(iii) Sums required to be paid or withheld as taxes, in the nature of turnover taxes, sales taxes or similar taxes based on the actual receipts of such motion picture or on any monies to be remitted to or by the Producer, but there shall not be excluded from Producer's gross any net income tax, franchise tax or excess profit tax or similar tax payable by the Producer or such distributor on its net income or for the privilege of doing business;

(iv) Frozen foreign currency until the Producer shall either have the right to freely use such foreign currency, or Producer has the right to transmit to the United States such foreign currency from the country or territory where it is frozen. If such currency may be utilized or transmitted as aforesaid, it shall be deemed to have been converted to United States dollars at the rate of exchange at which said currency was actually transmitted to the United States as aforesaid, or, if not actually transmitted, then at the prevailing free market rate of exchange at the time such right to use or to transmit occurs. Frozen foreign currency shall be deemed to be unblocked on the basis of "first-in, first-out" unless otherwise allocated by local foreign fiscal authorities. Allocation of such unblocked funds as between revenue which serves as the basis of determining payments hereunder and other revenue shall be on a proportional basis, subject to different earmarking by local foreign fiscal authorities.

(v) Sums paid to any advertising agency in connection with any exhibition of a motion picture in Supplemental Markets.

(4) Such monies shall be paid to the Motion Picture Industry Pension and Health Plans and shall be allocated as follows:

(i) First, to the Pension Plan to fund the difference between (A) the "actuarially-required" contributions for the

year, taking into account benefit increases and five (5) year vesting, and (B) the expected contributions for the Pension Plan year, subject to specified actuarial methods, provided that there are sufficient funds in the Active Employees Fund of the Health Plan to maintain benefits and a six (6) month reserve;

(ii) Then, next, to the Retired Employees Fund of the Health Plan to the extent needed to fund an eight (8) month reserve;

(iii) Then, next, to the Pension Plan to the extent that Post '60s monies (as provided in Article XIX.(b)(1)(iii) of this Agreement) are insufficient to fund (A) the cost of the two additional checks (*i.e.*, a 13th and 14th check) granted 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; (B) the cost of the two additional checks (*i.e.*, a 13th and 14th check) granted 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; and (C) the cost of the two additional checks (*i.e.*, a 13th and 14th check), or one additional check (a 13th check), granted to all employees who retired on or before August 1, 2009 pursuant to the provisions of Article XIII.(f)(2) of this Agreement;

(iv) Then, next, to fund the Active Employees Fund of the Health Plan;

(v) 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).

Notwithstanding anything to the contrary in subparagraph (a) above, such allocation shall apply to monies payable on and after August 1, 2021 for the distribution of motion pictures in Supplemental Markets, regardless of which Basic Agreement applies.

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 a review of the allocation of Post '60s monies. Any agreement on any reallocation of such monies mutually agreed upon shall become a part of this Agreement. The term "Basic Crafts Group," as used herein, refers to those unions noted in this Article XXVIII.(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.

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

(6) Allocation of Producer's Gross

If any agreement for distribution in the Supplemental Market includes more than one motion picture, or includes both Supplemental Market rights and other rights, the Producer shall make a reasonable allocation for the purpose of determining payments due hereunder. If the Motion Picture Industry Pension and Health Plans contend that such allocation is not reasonable, then such claim shall be submitted to arbitration.

(7) Producer's obligation shall accrue hereunder only after "Producer's gross" is received by the Producer. Payments of amounts accruing hereunder shall be made quarterly on the basis of quarterly statements, as hereinafter provided. 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 "Producer's gross." 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 arrangement 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.

(8) If any license or outright sale of exhibition rights to the motion picture in Supplemental Markets 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.

(9) 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.

(10) 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 showing the Producer's gross received from the sale, lease, license and distribution (whether by Producer or a distributor) of each such motion picture in such Supplemental Markets. Such reports shall be furnished quarterly for 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 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 Health Plan 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.

The parties agree that they will work through the auspices of the Motion Picture Industry Pension and Health Plans to implement reporting of Supplemental Markets income by medium, as soon as it is feasible to do so.

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.

(11) If the Producer shall sell, assign, transfer or otherwise dispose of the distribution rights to such motion picture in such Supplemental Markets, or shall license the distribution rights to the motion picture in such Supplemental Markets, 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, requiring such buyer, licensee or distributor to comply with the provisions of this Article XXVIII. 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 motion pictures covered by this Agreement are subject to the provisions of Article XXVIII of the 'Producer-I.A.T.S.E. and M.P.T.A.A.C. Basic Agreement of 2021' relating to payments to the Motion Picture Industry Pension and Health Plans on release of a motion picture to Supplemental Markets 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 said Basic Agreement and make said payments required thereby. It is expressly understood and agreed that the rights of Buyer to exhibit or license the exhibition of such motion picture in such Supplemental Markets shall be subject to and conditioned upon the payment to the Motion Picture Industry Pension and Health Plans, as provided in Article XXVIII of said Basic Agreement, and it is agreed that said Motion Picture Industry Pension and Health Plans shall be entitled to injunctive relief and damages against Buyer in the event such 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 in such Supplemental Markets 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 released in such Supplemental Markets. An inadvertent failure to comply with said requirement of notice shall not constitute a default by the undersigned hereunder, provided such default 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 for Supplemental Markets, 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 (11) 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 payment required hereunder insofar as they relate to the exhibition of the motion picture in Supplemental Markets, and the Motion Picture Industry Pension and Health Plans agree to look exclusively to the party last executing such an assumption agreement for the keeping of such records, payment and compliance with credit obligations.

(12) 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 in Supplemental Markets, 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 XXVIII with respect to payments to the Motion Picture Industry Pension and Health Plans thereafter becoming due and payable thereunder; provided, however, that nothing herein contained shall prevent such mortgagee, pledgee, lien or security holder who has acquired title to the photoplay 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 hereunder 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 XXVIII 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 XXVIII 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 payments but once.

The foregoing provisions of this subparagraph (12) shall not apply to any motion picture subject to any security instrument in existence on the effective date of this Agreement.

(13) If, after the effective date of this Agreement, 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 (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, in the manner herein provided, the amounts, if any, required to be paid under the provisions of this Article XXVIII 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 in the Supplemental Markets, the Producer shall be liable and responsible for the payments, if any, required to be made under the provisions of this Article XXVIII 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 in the Supplemental Markets, 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 XXVIII. The Producer will notify the Motion Picture Industry Pension and Health Plans of any and all such independent contracts entered into by the Producer.

(14) If Producer increases the present Supplemental Markets "percentage payments" amount of "Schedule of Payments" in any other collective bargaining agreement to which the Producer is or becomes a party (*e.g.*, actors), then the five and four-tenths percent (5.4%) percentage payment, the six and seventy-five hundredths percent (6.75%) percentage payment and the eight and one-tenth percent (8.1%) percentage payment provided above in this Supplemental Markets provision shall be correspondingly increased.

(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 five and four-tenths percent (5.4%) or six and seventy-five hundredths percent (6.75%) or eight and one-tenth percent (8.1%), whichever is applicable, of "Producer's gross" by a fraction whose numerator consists of the total below-the-line labor cost of individuals subject to the Basic Agreement¹⁵ or hired from the jurisdiction of the union locals referred to in subparagraph (e) below working on the picture (whether in production

¹⁵ Individuals employed under the Local #600 Amendment Agreement or the Local #871 Amendment Agreement (but not 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)(C)(1) and (2) of this Article XXVIII 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 (but not 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)(C)(1) of this Article XXVIII. For clarification, the salaries of all individuals employed under the Local #871 Agreement covering Script Coordinators and Writers' Room Assistants shall not be included in the numerator or denominator when the Producer is entitled to prorate hereunder.

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"¹⁶ 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.

(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.

¹⁶ Individuals employed under the Local #600 Amendment Agreement or the Local #871 Amendment Agreement (but not 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)(C)(1) and (2) of this Article XXVIII 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 (but not 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)(C)(1) of this Article XXVIII. For clarification, the salaries of all individuals employed under the Local #871 Agreement covering Script Coordinators and Writers' Room Assistants shall not be included in the numerator or denominator when the Producer is entitled to prorate hereunder.

(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 Locals¹⁷ 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: (A) percentage payments on domestic pictures distributed in Supplemental Markets other than by means of cassettes will be five and four-tenths percent (5.4%) of "Producer's gross;" and (B) percentage payments on domestic pictures distributed in Supplemental Markets by means of cassettes will be six and seventy-five hundredths percent (6.75%) on the first one million dollars of "Producer's gross," as that term is defined in subparagraph (b)(2)(ii) of this Article XXVIII, and eight and one-tenth percent (8.1%) of "Producer's gross" in excess of one million dollars.

¹⁷ 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 Supplemental Markets 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 subparagraph (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; 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) in Supplemental Markets 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)(11) 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 annual period during which no Producer's gross from the motion picture is received by the Producer.

(2) For each motion picture produced by Producer on 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 annual 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)(11) 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 XXVIII 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 Plan and/or Motion Picture Industry Health Plan with respect to the exhibition of motion pictures in Supplemental Markets" is and shall be deemed to be a reference to the "percentage payment" as set forth in this Article XXVIII, 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 with respect to the exhibition of motion pictures in Supplemental Markets.

The compliance by Producer with the conditions set forth in this Article XXVIII 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,¹⁸ which motion pictures for the first time are, either during the term hereof or at any time thereafter, released in Supplemental Markets, as defined in subparagraph (a)(3) above.

(1) Definition

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

¹⁸ Employees employed under the Local #600 Amendment Agreement or the Local #871 Amendment Agreement (but not 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 XXVIII, except as indicated in the footnote to subparagraphs (f)(2)(v)(C)(1) and (f)(2)(v)(C)(2) below. Employees employed under the Local #871 Agreement covering Script Coordinators and Writers' Room Assistants shall not be considered "employees employed by Producer under this Agreement" for any purpose under this Article XIX.

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 in Supplemental Markets are as follows:

(i) No contributions are required to be made on 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 the following:

(1) for distribution in Supplemental Markets other than by means of cassettes, two percent (2%) of "Producer's gross," as that term is defined in subparagraphs (b)(1)(ii) and (b)(3) above; and

(2) for distribution in Supplemental Markets by means of cassettes, 2.25% of "Producer's gross," as that term is defined in subparagraphs (b)(2)(ii) and (b)(3) above, until the Producer's gross equals one million dollars (\$1,000,000) and, thereafter, upon 2.75% of "Producer's gross."

(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 in Supplemental Markets, Producer shall make contributions based upon:

(A) for distribution in Supplemental Markets other by means of cassettes, three and six-tenths percent (3.6%) of "Producer's gross," as that term is defined in subparagraphs (b)(1)(ii) and (b)(3) above; and

(B) for distribution in Supplemental Markets by means of cassettes, four and five-tenths percent (4.5%) of "Producer's gross," as that term is defined in subparagraphs (b)(2)(ii) and (b)(3) above, until the Producer's gross equals one million dollars (\$1,000,000) and, thereafter, upon five and four-tenths percent (5.4%) of "Producer's gross."

(iv) The contributions required under subparagraph (f)(2)(ii) and (iii) above shall be paid to the Motion Picture Industry Pension and Health Plans. The parties shall have the right to reallocate such contributions as provided in subparagraph (b)(4) above.

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

(A) subparagraph (a)(3);

(B) subparagraphs (b)(1)(ii), (b)(2)(ii), (b)(3), (b)(4), (b)(5), (b)(6), (b)(7), (b)(8), (b)(9), (b)(10), (b)(11) and (b)(12);

(C) 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 payment due for release of feature length primarily animated motion pictures in Supplemental Markets:

(1) If a feature length primarily animated motion picture is produced partially with employees employed by Producer under this Agreement¹⁹ and partially with persons working

¹⁹ Individuals employed under the Local #600 Amendment Agreement or the Local #871 Amendment Agreement (but not 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)(C)(1) and (2) of this Article XXVIII 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 (but not 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)(C)(1) of this Article XXVIII. For clarification, the salaries of all individuals employed under the Local #871 Agreement covering Script Coordinators and Writers' Room Assistants shall not be included in the numerator or denominator when the Producer is entitled to prorate hereunder.

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-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"²⁰ 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

²⁰ Individuals employed under the Local #600 Amendment Agreement or the Local #871 Amendment Agreement (but not 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)(C)(1) and (2) of this Article XXVIII 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 (but not 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)(C)(1) of this Article XXVIII. For clarification, the salaries of all individuals employed under the Local #871 Agreement covering Script Coordinators and Writers' Room Assistants shall not be included in the numerator or denominator when the Producer is entitled to prorate hereunder.

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 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 Motion Picture and Industry 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 and Industry Pension and Health Plans shall be reimbursed by the Producer for all reasonable fees and expenses incurred 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 and Industry Pension and Health Plans and their auditors.

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

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

(3) The parties acknowledge and agree that no Supplemental Markets payments are due for the release in Supplemental Markets of primarily animated motion pictures which do not meet the definition of a "feature length primarily animated motion picture" in subparagraph (f)(1) above. For example, no payments are due for the release in Supplemental Markets of primarily animated motion pictures produced for free television, pay television/videocassettes or basic cable.

(4) 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 Supplemental Markets provisions:

(1) Article XXVIII 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 XXVIII 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 Supplemental Markets provisions apply only to motion pictures "produced by Producer with employees employed under this Agreement."²¹ 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.

(4) (i) The "Domestic Pictures" proration provision of the Supplemental Markets clause provides that certain domestic pictures are eligible for proration of Supplemental Markets 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.

²¹ 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 XXVIII.

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.

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 Supplemental Markets clause is not applicable to that production.

(h) If any other Union or Guild negotiates, as part of its collective bargaining agreement with the AMPTP, residuals on product for iPods or similar devices, the Producers will meet with the IATSE to negotiate an appropriate residual formula.