

## **FRANCHISE AGREEMENT**

This mutually agreed upon Franchise Agreement (“Agreement”) between Writers Guild of America, West, Inc. and Writers Guild of America, East, Inc. (collectively, “Guild” or “WGA”) and \_\_\_\_\_ (“Agent”) governs Agent’s representation of covered writers (“Writers”) engaged in the option and sale of literary material or the rendition of writing services in a field of work covered by a WGA collective bargaining agreement (“CBA”). Agent agrees to be bound by all terms and conditions contained herein, including the appended Standard Representation Agreement (“Rider W”) and Rules Governing Arbitration, which are incorporated as part of this Agreement. The works written by Writers under a Guild CBA are referred to herein as “Motion Pictures.”

### **SECTION 1 - PURPOSE AND SCOPE**

Consistent with its role as exclusive bargaining representative, the Guild is authorized by law to specify the terms set forth herein under which an agent may perform certain representational duties. The purpose of this Agreement is to ensure that Agent fulfills its fiduciary duties and to align Agent’s financial incentives with those of its writer clients.

This Agreement shall be limited to the Agent’s representation of Writers with respect to the option and sale of literary material or the rendition of writing services in a field of work covered by a Guild CBA. The provisions of the Agreement shall not apply to the Agent’s representation of a Writer with respect to the Writer’s non-writing services or other services not covered by a Guild CBA or as to which the Guild is not the exclusive bargaining representative.

### **SECTION 2 - PARTIES BOUND**

The terms of the Agreement shall be binding on the Agent and all of its individual agents, employees, partners, principals, joint venturers and shareholders. With respect to the obligations under this Agreement, Agent shall at all times remain vicariously liable for the actions taken by such individuals on its behalf or within the scope of the individuals’ employment or agency.

### **SECTION 3 - STANDARDS OF CONDUCT FOR AGENTS IN PROVIDING SERVICES**

#### **A. AGENT-WRITER RELATIONSHIP**

1. Agent shall at all times act as a fiduciary of Writer, and shall comply with all fiduciary duties imposed by statute or common law.
2. Agent’s representation of Writer shall not be detrimentally or negatively influenced by its representation of any other Writer.
3. Agent shall promptly disclose to Writer all inquiries, offers and expressions of interest regarding employment or sale or option of literary material, and shall keep Writer apprised of the status of all negotiations.
4. Agent shall maintain confidentiality with respect to Writer’s employment and financial affairs, except as otherwise provided herein or in the event Writer requests disclosure.
5. Prior to submitting Writer for employment on a project, Agent shall make a good faith effort to ascertain whether the employer or producer has secured underlying rights necessary for the assignment and shall provide Writer with all pertinent information known to Agent at the time of submission.

6. Agent shall be responsive and professional in communicating with Writer.

B. CONFLICT OF INTEREST

1. No Agent shall have more than a 10% non-controlling ownership or other financial interest in, or shall be owned by or affiliated with any entity or individual that has more than a 10% non-controlling ownership or other financial interest in, any entity or individual engaged in the production or distribution of Motion Pictures. Upon request by the Guild, Agent will provide documentation verifying any ownership or other financial interest subject to this provision.
2. Except as otherwise provided herein, no Agent shall have an ownership or other financial interest in, or shall be owned by or affiliated with any business venture that would create a conflict of interest with Agent's representation of a Writer.
3. Except as otherwise provided herein, no Agent shall derive any revenue or tangible financial benefit from a Writer's option or sale of material for or employment on a Motion Picture project, other than a percentage commission based on the Writer's compensation or fee, with the exception of gifts or gratuities that are customary and de minimis.
4. No Agent shall accept a packaging fee, or any other money or thing of value from the employer of a Writer, with the exception of gifts or gratuities that are customary and de minimis and except as permitted under Section 9 of the Agreement.
5. The following activities by an Agent shall not be deemed conflicts of interest prohibited by this Agreement:
  - a. An Agent's concurrent representation on a commission basis of multiple clients employed or submitted for employment on the same Motion Picture project. Upon request by Writer, Agent shall disclose to Writer the names of all other Writers represented by Agent who are employed on, or actively being submitted for employment on, a project. Such disclosure shall be made in writing within ten (10) business days of the Writer's request.
  - b. An Agent's representation, on a commission or fee-for-service basis of a producer (e.g., a POD) attached to a Motion Picture project, provided that such producer shall not employ, or purchase or option literary material from, any Writer on the project.
  - c. An Agent's representation, on a commission or fee-for-service basis, of the owner of or holder of rights in intellectual property on which a Motion Picture project will be based.
6. Agent shall disclose to Writer any fact or relationship creating a conflict of interest prohibited by this Agreement.

## C. AGENT COMPENSATION

1. Agent's commission shall be limited to ten percent (10%) of Writer's gross compensation, including Writer's profit participation, provided, however, that Agent shall not be entitled to receive commission on residuals or any other minimum payments to Writers for reuse of a Motion Picture under any applicable CBA (including, but not by way of limitation, supplementary or additional minimum compensation of any kind pursuant to Articles 14.G., 15., 16., 64. of the applicable WGA Theatrical and Television Basic Agreement).
2. Agent shall not circumvent limits on commissions under this Agreement by charging fees for other services, except that Agent shall be permitted to receive compensation for feature film financing, distribution, and sales services, subject to the following limitations:
  - a. In the event Writer retains Agent to perform these services, Agent shall fully disclose the relevant fees in writing prior to incurring them, and Writer may choose whether to proceed with Agent's performance of services;
  - b. In the event Agent is retained to perform such services by a party other than the Writer, Agent shall fully disclose the relevant fees, in writing to the Writer. Such disclosure shall be made at the earliest possible time. In the event that Agent's agreement to provide such services predates Writer's involvement in the project, disclosure shall be made before Writer enters into any contractual commitment for the project;
  - c. The services described in this subsection C.2 shall be permitted on films with intended budgets greater than \$30 million only with the consent of the Guild; for clarity, Guild's consent is not required for films with intended budgets of less than \$30 million. The Guild will consult with the Writer and consent will not be unreasonably denied or delayed. This Subsection 3.C.2.c. shall not apply where Agent's agreement to provide feature film financing, distribution, and sales services predates Writer's involvement in the project;
  - d. In no event shall an offer of employment or purchase of material made to a Writer be contingent on any other party agreeing to retain Agent for feature film financing, distribution, or sales services; and
  - e. On Guild's request, but no more frequently than on a semi-annual basis, Agent shall provide the Guild with a list of films involving covered Writers on which Agent is performing financing, distribution, or sales services and has secured financing, distribution, or sales. The list shall include the name of the Writer, the intended budget of the film, and the amount of fees received by Agent for performing such film financing, distribution, and sales services.
3. Agent shall provide promptly and no less frequently than quarterly to Writer and to the Guild an itemized statement showing in standardized electronic format (a) all compensation received by or on behalf of Writer; and (b) all commissions (including package fees) received by Agent related to its representation of Writer, provided compensation has been received by or on

behalf of Writer or commissions have been received by Agent related to its representation of Writer during the reporting period.

- a. Guild shall have the right to audit such statements no more frequently than once per year, with the right to audit being subject to the confidentiality requirements in subsection 3.E.2. below. The Guild's annual audit of such statements shall be limited to 25% of Agent's Writer clients, which sample shall be determined by the Guild. Where an Agent has provided feature film financing, distribution, and sales services, as described in subsection 2 above, Agent shall provide documentation of the related fees when Writer or Guild audits the Agent's commissions received by Agent related to its representation of Writer.
- b. The right to audit shall be limited to the items specified in this subsection 3 and shall not include the Agency's finances generally, the compensation and commissions of non-Writer clients, or packaging agreements entered into prior to the Effective Date of the Agreement.

#### D. NOTIFICATION TO GUILD

1. Subject to the provisions of Section E below, Agent shall provide the Guild with a copy of the agreement or a summary of essential deal terms of any agreement engaging the Writer's services or acquiring the Writer's written material no later than 10 business days after the earlier of (a) the existence of a binding contractual commitment; or (b) the commencement of Writer's writing services. Where such agreement is later amended or superseded by a long-form agreement, Agent shall also provide the Guild with a copy of the amendment or long-form agreement.
2. Agent shall provide the Guild with notice of Writer's commencement of services or delivery of literary material, or other material fact triggering compensation, by copying the Guild on any invoice relating to the payment obligations.
3. Agent shall provide the Guild with copies of all representation agreements with Writer.

#### E. CONFIDENTIALITY AND OBJECTION TO DISCLOSURE

1. Insofar as the subsections C and D above require the provision of confidential information relating to a specific Writer, the Guild shall use reasonable efforts to maintain the confidentiality of the information and such efforts shall in no event be less than the efforts the Guild uses to protect its own confidential information. The Guild shall maintain and use such information subject to its duty of fair representation, provided that nothing in this subsection D shall prohibit the Guild from aggregating the data in a manner that does not disclose the confidential information of a particular Writer and/or Agent. The Guild shall treat all information submitted by Agent with heightened security protocols and to limit access to staff with a valid Guild business need to access the information, who have received enhanced data security training, and who have signed non-disclosure agreements specific to agent-submitted data.

2. A Writer may submit a written objection (“Objection”) to the Agent concerning Agent’s disclosure to the Guild of any of the information referred to in subsections 3.C.3. and 3.D.1.-2. above. Agent shall not encourage any Writer to submit an Objection, nor require Writer to submit an Objection as a condition of representation by Agent.
3. Where a Writer has submitted an Objection, the following procedures shall apply:
  - i. Agent shall explain to Writer the nature of the disclosure requirement (including the confidentiality protections) under the Agreement and shall provide the Writer a Guild-prepared statement explaining the advantages of providing the information at issue to the Guild.
  - ii. If Writer does not withdraw the Objection within five (5) business days of submission to the Agent, Agent shall promptly provide the Guild with a copy of the Objection and promptly identify (i.e., inform the Guild of the existence of) the contract or other information being withheld on the basis of the Objection. Agent shall also immediately provide to Writer a copy of the contract or other information being withheld from the Guild on the basis of the Objection, unless Agent already provided such contract or information to Writer before Writer submitted the Objection to Agent. For the avoidance of doubt, where Writer has submitted an Objection, Agent shall not be required to provide the Guild the actual contract or other information subject to the Objection. The Agent’s obligations under this subparagraph (ii) to promptly identify to the Guild, and immediately provide to Writer a copy of, the contract or other information being withheld on the basis of the Objection shall be continuing and apply each time Agent withholds a contract or other information on the basis of the Objection.
  - iii. Agent’s obligation to provide the Guild with information subject to an Objection shall be satisfied upon Agent’s compliance with the requirements of subsections (i) and (ii) above, until such time as Writer withdraws the Objection.

F. ENFORCEMENT OF CBA AND WRITER’S INDIVIDUAL WRITING AGREEMENTS

1. Agent shall not encourage Writer to violate any provision of a CBA.
2. Agent shall zealously advocate for Writer’s best interests in all aspects of the employment relationship, including but not limited to the following:
  - a. Advising on the disadvantages of Writer’s performance of uncompensated or speculative writing services;
  - b. Advocating in favor of multiple steps in theatrical deals; and
  - c. Protecting Writer from abusive hiring practices such as sweepstakes pitching.
3. Agent shall be aware of and monitor the contractual deadline for the payment of all compensation to the Writer, and shall promptly notify the Guild in the

event a payment is late. Agent may delay notification to the Guild up to seven business days if it is actively pursuing payment.

4. Agent shall cooperate fully with the Guild in any investigation or contract enforcement action undertaken on behalf of a Writer.
5. Agent shall not encourage Writer to violate any Guild rule.

#### G. NON-DISCRIMINATION AND INCLUSION

1. Agent is committed to representing diverse Writers. Agent shall comply with any applicable state and federal anti-discrimination laws in its selection and representation of Writers.
2. Agent supports industry-wide efforts to prevent harassment and discrimination and its Writers' interest in avoiding being subjected to a hostile work environment or other forms of workplace harassment. Agent shall not schedule or refer Writer to a meeting regarding potential employment in a hotel room or other location posing a threat to Writer's personal safety.
3. Agent shall make reasonable good faith efforts to refer qualified diverse Writers for open writing assignments.
4. Agent shall consult with Writer regarding diversity as a factor in their procurement of employment.
5. Agent shall make reasonable good faith efforts to support Guild's diversity and inclusion efforts. Agent shall provide the Guild with an annual report summarizing Agent's diversity efforts, which report will remain private to the Guild only.

#### **SECTION 4 - STANDARD REPRESENTATION AGREEMENT (RIDER W)**

Appended to this Agreement as Attachment 1 is the standard representation agreement, referred to herein as "Rider W." The terms of Rider W shall be deemed to be incorporated into any representation agreement, written or oral, between Agent and Writer. Agent and Writer may negotiate additional provisions in their representation agreement, provided, however, that (A) no term or condition of such negotiated agreement shall be less favorable to Writer than the provisions of Rider W; and (B) in the event of a conflict between the negotiated agreement and Rider W, the provisions of Rider W shall prevail.

#### **SECTION 5 - DISPUTE RESOLUTION**

- A. The following controversies between the Guild and an Agent shall be resolved by a neutral arbitrator in accordance with the procedures set forth in the Rules Governing Arbitration appended as Attachment 2:
  1. Any dispute concerning the interpretation of, or the performance of any obligation under the Agreement;
  2. Any dispute concerning the interpretation of, or the performance of any obligation under, Rider W; and

3. Any claim brought by the Guild to terminate this Agreement based on an alleged material violation of this Agreement or Rider W.
- B. An arbitrator selected to hear a dispute under this section shall resolve the entire controversy that is within the scope of this Agreement. In so doing, the arbitrator shall have authority to fashion an appropriate remedy, which may include the award of damages, injunctive or declaratory relief, including suspension or termination of this Agreement. Upon a finding that the opposing party acted in bad faith, the arbitrator may also award attorneys' fees and costs to the prevailing party.
- C. The decision of an arbitrator under this section shall be final and binding except as expressly provided herein, and may be confirmed in any court of competent jurisdiction. In an action to confirm an arbitration award, the court shall apply substantive law developed under Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185. Notwithstanding the foregoing, any arbitration award terminating this Agreement and Agent's right to represent covered Writers shall be subject to *de novo* review in a court of competent jurisdiction.

## **SECTION 6 - MISCELLANEOUS PROVISIONS**

- A. This Agreement shall be effective upon the date that both parties execute it (the "Effective Date"). This Agreement shall not apply to, nor impair the right of Agent to receive compensation based on, services rendered by Agent before such Effective Date.
- B. In administering the disclosure requirements under subsections 3.C.3., 3.C.2.e., and 3.G.5. above, the Guild will take into account Agent's limited staffing and recordkeeping capacities.
- C. If any provisions of this Agreement are held to be void or unenforceable, all other provisions hereof shall remain in full force and effect.

## **SECTION 7 - TERMINATION AND RENEGOTIATION**

- A. This Agreement shall remain in effect until April 12, 2025, unless it is found to be unenforceable or is ordered terminated by an arbitrator or court of competent jurisdiction. Either the Guild or the Agent shall have the right to terminate and propose modifications to the Agreement by serving written notice on the other party at least 120 days prior to the termination date. If neither party serves timely notice of termination, the Agreement will automatically be extended for additional one-year periods, subject to the right of either party to serve a notice of termination at least 120 days prior to the termination date then in effect.
- B. Notwithstanding subsection 7.A. above, Agent shall have the right to terminate its obligations under this Agreement upon written notice to Guild. Agent's termination under this subsection 7.B. shall be effective 45 days after its service of such notice.

## **SECTION 8 – MOST FAVORED NATIONS**

In the event that after the Effective Date, Guild enters into an agreement, including any attachments, riders, or modifications, with any other agency or association representing agencies containing terms or conditions more favorable to the agency than those contained herein, Agency shall have the option of accepting any or all of the more favorable terms.

**SECTION 9—PHASE-IN OF PACKAGING FEE PROHIBITION**

From the Effective Date until December 31, 2021, nothing in this Agreement shall be deemed to prohibit Agent’s negotiation of the right to receive a fee based on package representation in lieu of a percentage commission based on client compensation. During that period, where Writer is the sole initiating element of the package, Writer shall have the right to choose if the project can be packaged by Agent. In all other circumstances, Agent shall disclose to Writer its intent to seek a packaging fee and the financial terms thereof, and Writer shall be given the choice of whether to be part of the package. Agent’s right to negotiate packaging fees shall terminate on December 31, 2021.

In the event that on December 31, 2021, the WGA has not concluded a franchise agreement with, or otherwise prohibited by court order or other legal means the receipt of packaging fees (as they are currently named, but to include any fee, regardless of label, paid by a production company or studio directly to an agency) based on the representation of Writers by, two of the four major agency competitors of \_\_\_\_\_ (i.e., WME, CAA, UTA and ICM), WGA will extend the “sunset” date under this section to ensure that \_\_\_\_\_ is not placed at a competitive disadvantage with such competitor agencies.

Agent’s agreement to make the Term of this Agreement run through April 12, 2025 is a material inducement to the Guild to extend the packaging sunset to December 31, 2021. Notwithstanding such inducement, this subparagraph is not intended to alter or amend Agent’s termination right in Section 7.B. or, if such termination right is exercised by Agent, shorten the packaging sunset clause set forth above.

**SECTION 10—OPEN COMMUNICATION**

The Guild and Agent shall use reasonable efforts to have regular communication concerning the parties’ performance of their obligations under this Agreement, and will use reasonable efforts at amicably resolving any dispute concerning the application of the terms of this Agreement. The Guild and Agent may also from time to time meet for the purpose of discussing improvements to the administration of the Agreement.

**AGREED AND ACCEPTED:**

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David J. Young  
Executive Director  
Writers Guild of America West, Inc.  
on behalf of itself and Writers Guild of America East, Inc.