

## AGENCY STANDARDS FOR CLIENT REPRESENTATION

Association of Talent Agents (“ATA”) has adopted the following Standards and Practices (“Standards”) with respect to all writer clients represented by the Writers’ Guild of America—East (“WGAE”) and Writers’ Guild of America West (“WGAW,” and collectively with WGAE, the “Guild”) in the fields of work covered by the Writers Guild of America Theatrical and Television Basic Standards (“MBA”), as periodically renegotiated (“Writer”).

These Standards shall apply to all ATA member agents or agencies who adopt these Standards (“Agents”). These Standards shall apply to representation of Writers with respect to the option and license, sale or other disposition (hereinafter “Sale”) of literary material or the rendition of writing services in a field of work covered by the MBA, and shall be enforceable against all Agents providing representation services to Writers.

### SECTION 1 – STANDARDS FOR AGENTS IN PROVIDING SERVICES TO WRITERS

#### A. AGENT-WRITER RELATIONSHIP

1. Agent shall at all times during the representation of a Writer act as a fiduciary of Writer, and shall comply with all fiduciary duties imposed on the Agent by statute or common law.
2. Agent shall promptly disclose to Writer all bona-fide offers regarding employment or Sale of literary material, unless the Writer has advised, or the Agent knows with reasonable certainty, that the Writer would not consider or be able to accept such an offer given the totality of the circumstances.
3. At the written request of the Writer, Agent shall, as soon as reasonably practicable, following such request:
  - a. provide the Writer, in writing, information stating what active submissions the Agent has made on the Writer’s behalf within the past six months;
  - b. inform the Writer of the status of all negotiations made on behalf of the Writer within the past six months; and
  - c. provide the Writer with a copy of all executed written agreements (to the extent such agreements are in Agent’s possession) with respect to the engagement of or sale of rights by such client.
4. Agent shall use commercially reasonable efforts to maintain the confidentiality of its client’s confidential information, and such efforts shall in no event be less than the efforts the Agent uses to maintain its own confidential information. This duty shall be subject to customary and necessary exceptions (*e.g.*, Writer authorizes disclosure, disclosure is required by law, disclosure is required in connection with a banking transaction or with the sale, financing, or recapitalization of an agency, etc.), with appropriate precautions taken to prevent the disclosure of confidential information.

5. Prior to submitting a Writer for employment on a project, Agent shall notify Writer if the Agent knows the employer or producer has not yet secured underlying rights necessary for the employer or producer to produce the project (*i.e.*, there is no signed agreement and/or the chain of title has not been cleared). If the Agent learns after submitting Writer for employment on a project that the employer or producer had not secured underlying rights, he or she shall promptly notify Writer, unless the Agent has actual knowledge that the Writer is already aware of such information. An Agent shall not be required to disclose information the Agent otherwise is required to keep confidential (*e.g.*, confidential information belonging to another client) in order to comply with this provision.
6. Agent shall be responsive and professional in communicating with Writer.

#### B. DISCLOSURE OF POTENTIAL CONFLICTS OF INTEREST

1. Agent shall make the disclosures required elsewhere under these Standards.
2. In addition, Agent shall disclose any actual conflict of interest by a talent agency that employs him or her, known by Agent and not otherwise known by such Writer or addressed in these Standards, which a reasonable Writer would consider material in evaluating a proposed engagement or sale of rights on the Writer's behalf.
3. Agent's concurrent representation of multiple Writers and/or a Writer and other clients (*e.g.*, a director, actor, or producer) employed or submitted for employment on the same project shall not be deemed a conflict of interest prohibited by this agreement. Upon request by a Writer, Agent shall disclose to the Writer the names of other clients represented by Agent who actually are employed on a project.

#### C. ENFORCEMENT OF CBA AND WRITER'S INDIVIDUAL WRITING AGREEMENTS

1. Agent shall not encourage Writer to violate any provision of a CBA.
2. During the course of negotiations for potential engagement or sale of rights, Agent shall represent the Writer's best interests and shall use reasonable efforts to:
  - a. timely obtain compensation for the Writer for all services performed by the Writer;
  - b. advise the Writer of the disadvantages of performing uncompensated or speculative services; and
  - c. advise the Writer if the Agent knows of any unlawful hiring or other employment practices by the person or entity engaging the Writer, that reasonably could be expected to materially and adversely affect the Writer or that Writer's interests.

3. Once engagement or Sale of literary rights has been procured for a Writer, an Agent shall use reasonable efforts to:
  - a. monitor the contractual deadline for the payment of compensation to the Writer in connection therewith;
  - b. notify the Writer as soon as reasonably practicable after discovery of any material uncured default in the timing or amount of such payment;
  - c. notify the counterparty of any such default as soon as reasonably practicable following a request therefor by the Writer; and
  - d. timely advise the Writer of his or her right to inform the Guild of any such uncured material breach (and provide such notice to the Guild if the Writer, in writing, requests Agent do so).
4. Agent shall cooperate fully with the Guild in any investigation or contract enforcement action undertaken on behalf of a Writer, provided the Writer consents. Agent shall not be required to breach legal duties to other clients to comply with this obligation.
5. Upon a Writer client's written request, Agent shall provide to the Guild: (a) Writer's agreements for engagement of work or Sale of literary rights (to the extent in Agent's possession); (b) copies of all financial statements sent by Agent to Writer; and (c) any other confidential material of Writer in Agent's possession that Writer desires to share with the Guild.

#### D. ACCOUNTING TO CLIENT

1. All monies payable or otherwise belonging to the Writer which are received by Agent: (i) shall be faithfully accounted for by the Agent; (ii) shall be held in trust on behalf of such Writer in a trust account until disbursed to, or at the express written direction or authorization of, the Writer; and (iii) shall not be commingled with any monies belonging to Agent.
2. Monies (other than monies received by Agent in escrow or which are otherwise to be held by Agent in accordance with any applicable agreements to which the Writer is a party or that Agent is legally required to withhold (*e.g.*, wage garnishment or levy)) shall be paid to the Writer or his/her designee as directed or authorized by the Writer in writing as soon as reasonably practicable after receipt thereof by Agent, provided that Agent shall be permitted to first deduct from such monies any commission payable to Agent by such Writer or any other monies owing from such Writer to the Agent.
3. If Agent receives or transmits Writer client earnings, Agent shall provide timely statements of client earnings to Writer. Upon Writer's written request, Agent shall provide a summary of earnings.

## E. NON-DISCRIMINATION AND INCLUSION

1. Agent shall comply with all applicable anti-discrimination laws in its representation of Writers.
2. Agent shall not refuse to represent any Writer on the basis of such Writer's membership in a protected class, including, but not limited to, race, color, religion, creed, national origin, sex, sexual orientation, gender identification, marital status, military or veteran status, disability or medical condition.
3. Agent shall not, without prior disclosure to Writer, procure any employment where there is a reasonable basis to believe that the Writer will be 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 reasonably believed by Agent to pose a threat to Writer's personal safety.
4. Agent shall use good faith efforts to ensure the referral of qualified historically underrepresented Writers for any open writing assignment.
5. An Agent who is a talent agency shall educate its employees who represent Writers regarding diversity and inclusion as an important factor in the selection, representation, and referral of Writers. ATA will establish a standing working group to collaborate with industry leaders to enhance initiatives respecting multiculturalism, diversity, and the inclusion of historically underrepresented groups, and to consider new initiatives in this regard. ATA membership shall provide meaningful financial and human resources in support of such working group's efforts and this collaboration.
6. Agent shall consult with Writers who are in a position to engage other talent (*e.g.*, showrunners) regarding diversity as a factor to be considered in the Writer's selection of talent.

## **SECTION 2 – TELEVISION AND MOTION PICTURE DISCLOSURE BEST PRACTICES**

### A. TELEVISION PACKAGING BEST PRACTICES

1. An Agent may procure employment for a Writer on a packaged television program in the following circumstances:
  - a. The Writer and the Writer's ideas and material are the sole initiating element of the package, and the Writer consents to the program being packaged; or
  - b. Agent adds a Writer as an element to an existing package, and the Writer consents to participation in the packaged television program; or

- c. Agent adds a packageable element to an existing television program where the Agent had not previously secured a package, and the Agent informs all Writer clients staffed on the television program of the new package as soon as reasonably practicable after the package is in place.
2. Agent will, upon request, provide a Writer designated to be a packageable element of a packaged television program with the material terms of the agreement containing the terms of the Agent's package agreement.
3. A Writer shall have the right to know all facts known by the Agent that are reasonably necessary for the Writer to make an informed choice as to whether to participate in a packaged television program.
4. Prior to submitting a Writer to a project where the Agent has already been granted a packaging fee at the time of submission, Agent shall:
  - a. Inform the Writer of the existence of the package;
  - b. Advise the Writer that she/he may choose whether to be submitted to the packaged project; and
  - c. Receive the Writer's consent to proceed with such submission, but only after informing the Writer of the foregoing.
5. Absent the Writer's specific authorization, no Writer's agreement or pitch will be delayed due to agency package negotiations.

#### B. MOTION PICTURE SERVICES BEST PRACTICES

1. In the event a Writer retains an Agent to perform motion picture consulting, financing, and sales services, the Agent shall fully disclose the relevant fees prior to commencing such services, and the Writer may choose whether to proceed with the Agent's performance of services.
2. In instances where Agent is retained to provide services by someone other than the Writer described below (*e.g.*, a third-party producer, financier, production company, or another Writer), Agent shall make the following disclosures to its Writer clients in the following circumstances.
  - a. In the event Agent is retained (by someone other than Writer) to perform these services prior to the engagement of Writer on the motion picture project, the Agent shall fully disclose to the Writer the existing consulting, financing, or sales services arrangement, including the relevant fees payable to the Agent.
  - b. In the event Agent is retained (by someone other than Writer) on a project and Agent represents a Writer on the project as an attached element (*e.g.*, a pitch created by Writer prior to the commencement of writing services, or if a Writer is attached to adapt pre-existing intellectual property, or a pre-existing script

owned or controlled by a third party), where the Agent is taking the project to market before the Writer has commenced any work, the provisions of 2.B.2.a., above shall apply.

### **SECTION 3 – AFFILIATE RELATIONSHIPS BEST PRACTICES**

1. Agent may represent a Writer in connection with the engagement by or sale of rights to an affiliated entity, and shall do the following, prior to the submission of such Writer by Agent for such engagement or sale of rights:
  - a. the Agent informs such Writer of the existence and nature of the Agent's relationship with such affiliated entity;
  - b. the Agent advises such Writer that the Writer has no obligation to be submitted to, or accept engagement by, or undertake to sell rights to, such affiliated entity;
  - c. the Agent advises the Writer of his or her right to have the material or services offered to other bona-fide production entities simultaneously with offering the material or services to the affiliate;
  - d. the Agent advises the Writer that the Writer may seek independent counsel in connection with the applicable project, at any point in the process prior to the Writer entering a transaction with an affiliate; and
  - e. the Writer, after being informed of the foregoing, gives consent to such submission, engagement, or sale transaction.
  
2. Agent shall not represent a Writer in connection with the engagement by or sale of rights to an affiliated entity unless:
  - a. the Agent reasonably believes that such engagement or sale of rights is in the best interests of such Writer;
  - b. the terms of such engagement or sale of rights are negotiated in good faith and on an arm's-length basis;
  - c. the Agent and its affiliated entity are each in compliance with the following:
    - i. the individuals primarily involved in the day-to-day operations of the Agent are different than the individuals primarily involved in the day-to-day operations of the affiliated entity, and vice versa;
    - ii. the Agent, including any individual primarily involved in the day-to-day operations of the Agent, does not participate in any of the affiliated entity's decisions regarding the engagement of or sale of rights other than in the Agent's capacity as a representative of its clients consistent with the fiduciary duties to such clients;

- iii. the Agent maintains the confidentiality of its clients' confidential information from such affiliated entity, in the same manner it maintains the confidentiality of such information from an unaffiliated entity; and
  - iv. the Agent creates and makes available a written conflicts policy reflecting the above, and has annual training on conflicts for all employees representing Writers.
3. No Writer shall be required (formally or informally) to work with an Agent's affiliates. In the event that a Writer advises the Writer's Agent that the Writer does not want to be submitted to, or be engaged by, or sell rights to, an affiliated entity, the Agent shall follow the Writer's directive, and such election by the Writer shall have no detrimental impact on the Agent's representation of such Writer.
4. Agent may not use the fact that a Guild investigation involves an affiliate of the Agent as a basis for its refusal to cooperate in such investigation.

#### **SECTION 4 – DISPUTE RESOLUTION**

- A. At the Writer's election, and unless superseded by a written agreement between Writer and Agent, all disputes and controversies of every kind and nature whatsoever between the Agent and Writer arising out of, or in connection with, Agent's representation of Writer (the "Agency Relationship"), including but not limited to commission disputes, shall be submitted in a timely manner to final and binding arbitration before a single arbitrator in \_\_\_\_\_ (fill in location, *e.g.*, Los Angeles), regardless of whether either party has terminated or purported to terminate the Agency Relationship. Said arbitration shall be in accordance with rules of the arbitration provisions of JAMS. Agent and Writer shall attempt to mutually agree on an arbitrator within 30 days after either party first notifies the other in writing that it intends to invoke the arbitration procedures and they will utilize rules of the JAMS procedures for selection of an arbitrator only if the parties fail to mutually agree. Any award rendered by the arbitrator may be entered in any court having jurisdiction thereof.
- B. AGENT WAIVES THE RIGHT TO A TRIAL BY JURY IN CONNECTION WITH ANY SUCH CONTROVERSY OR CLAIM. In the event Writer elects arbitration pursuant to this Section, WRITER ALSO WAIVES THE RIGHT TO A TRIAL BY JURY IN CONNECTION WITH ANY SUCH CONTROVERSY OR CLAIM.

#### **SECTION 5 – MODIFICATION**

These Standards shall apply to all Writer-Agent relationships unless and until amended by the ATA or superseded by an agreement between the Guild and the ATA. Nothing herein shall preclude an Agent from adopting additional protections for Writers.