

ATA COMPREHENSIVE PROPOSAL TO WGA – MARCH 21, 2019

Association of Talent Agencies (“ATA”) make the following proposal for a new Agreement to replace the Artists’ Managers’ Basic Agreement of 1976 (“AMBA”). The proposal addresses the relationship between talent agencies and their agents, and any writer client (“Writer”) 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 Agreement (“MBA”), as periodically renegotiated.

The proposal below is in contract language. ATA reserves the right to make additional or different proposals as negotiations progress.

ATA proposes as follows:

RECITALS

Whereas, WGAE is a non-profit New York corporation and WGAW is a non-profit California corporation, and both are labor organizations whose members consist of persons engaged in rendering services as writers in the fields of television or motion pictures (including OTT and other internet-delivered serial motion pictures or motion pictures), and in the sale of literary material; and

Whereas the Guild by agreement of WGAE and WGAW acts as one organization and therefore unless indicated separately in this agreement shall be referred to collectively as the Guild; and

Whereas ATA is a non-profit corporation whose membership consist of licensed talent agencies (“Agencies”) and their agents (“Agents”), for various persons, including, but to limited to, Writers; and

Whereas ATA and the Guild wish to document certain basic provisions by which subscribing Agents shall provide services to their Writer clients;

Now, therefore, the following shall be the agreement between ATA on the one hand and the Guild on the other, and shall also be an agreement with such Agents and Agencies as may subscribe hereto and by such subscription assume the obligations hereof:

AGREEMENT BETWEEN ATA AND WGA

SECTION 1 – SCOPE

This agreement, including all attachments hereto (“Agreement”), shall be limited to the Agent’s 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 a Guild collective bargaining agreement (“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, or to the Sale of literary material in a medium not covered by a Guild collective bargaining agreement.

This Agreement shall apply to the ATA and any Agency or Agent who elects to subscribe to its terms.

SECTION 2 – SUBSCRIBING TO THE AGREEMENT

An Agent or Agency seeking to subscribe to the Agreement shall be licensed and in good standing with the pertinent licensing authority(s), and shall sign a form [to be drafted] agreeing to be bound by the terms of this Agreement.

When an Agency subscribes to this Agreement, the terms of the Agreement shall be binding on the Agency and all of its individual Agents working on behalf of Writers.

Nothing herein shall require the Guild to compel its members to be represented by subscribing Agents, nor shall anything herein require any of ATA's members to becoming subscribing Agents or Agencies.

SECTION 3 – STANDING COMMITTEE

A standing committee comprised of not less than 6 members each from ATA (or ATA member Agencies) and the Guild shall be appointed to monitor compliance with this Agreement and to recommend any proposed changes, modifications, and amendments hereto. The standing committee shall meet no less than quarterly and shall provide written reports to the boards of the Guild and ATA within a reasonable time after meeting. ATA and the Guild shall meet within the same quarter after receiving any recommended changes, modifications or amendments to consider in good faith whether such recommendations should be implemented.

SECTION 4 – STANDARDS FOR AGENTS AND AGENCIES IN PROVIDING SERVICES SUBJECT TO THE AGREEMENT

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 such an offer given the totality of the circumstances.
3. At the written request of the Writer, an 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. Agency and 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 Agency or 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 sale of Agency, etc.), with appropriate precautions taken to prevent the disclosure of confidential information.¹
5. Prior to submitting 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 shall promptly notify Writer. An Agent shall not be required to disclose information the Agent or Agency is otherwise 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. An Agent shall make the disclosures required elsewhere under this Agreement.
2. In addition, an Agent shall disclose any actual conflict of interest by the Agency that employs him or her, known by the Agent and not otherwise known by such Writer or addressed in this Agreement, which a reasonable Writer would consider material in evaluating a proposed engagement or sale of rights on the Writer's behalf.
3. An Agent's concurrent representation of multiple Writers 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 are actually employed on a project.

¹ The exact exceptions can be spelled out in a final negotiated long-term agreement.

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, an 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 Agency 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 the 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 and Agency shall not be required to breach legal duties to other clients to comply with this obligation.
5. Agent shall not encourage Writer to violate any Guild rule.

D. ACCOUNTING TO CLIENT

1. All monies payable or otherwise belonging to the Writer which are received by an Agency: (i) shall be faithfully accounted for by the Agency; (ii) shall be held in trust on behalf of such Writer in a trust account until disbursed to, or at the express

written direction of, the Writer; and (iii) shall not be commingled with any monies belonging to the Agency.

2. Monies (other than monies received by the Agency in escrow or which are otherwise to be held by the Agency in accordance with any applicable agreements to which the Writer is a party or that the Agency is legally required to withhold (*e.g.*, wage garnishment or levy)) shall be paid to the Writer or his/her designee as directed by the Writer in writing as soon as reasonably practicable after receipt thereof by the Agency, provided that the Agency shall be permitted to first deduct from such monies any commission payable to the Agency by such Writer or any other monies owing from such Writer to the Agency.
3. Agent shall provide timely statements of client earnings to Writers.

E. NON-DISCRIMINATION AND DIVERSITY

1. Agent and Agency shall comply with all state and federal anti-discrimination laws in its representation of Writers.
2. Agent and Agency 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 to pose a threat to Writer's personal safety.
4. Agent shall use good faith efforts to ensure the referral of qualified diverse Writers for any open writing assignment.
5. Agency shall consult with its Agents regarding diversity as an important factor in the selection, representation, and referral of Writers. The ATA will establish a standing working group to collaborate with the Guild and other industry leaders to enhance initiatives respecting multiculturalism, diversity, and the inclusion of historically underrepresented groups, and to consider new initiatives in this regard. The working group shall advise the Guild as to the systematic efforts currently undertaken by the Agencies, and the Guild shall advise the working group respecting the work currently being undertaken by the Guild. The 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 in the Writer's selection of talent.

SECTION 5 – AGENT COMPENSATION

A. COMMISSION COMPENSATION

1. Any commission charged or collected by an Agent in consideration for procuring the employment of a Writer shall not exceed ten percent (10%) of Writer's gross compensation, including Writer's profit participation.
2. Other than as permitted by this Agreement, an Agent shall not derive any revenue or other benefit from a Writer's employment on a motion picture project, other than a percentage commission based on the Writer's compensation or fee.
3. Nothing in this provision is intended to prohibit an Agency from obtaining reimbursement from a Writer for actual out-of-pocket expenses advanced on behalf of the Writer at the Writer's request, or to prevent an Agency from receiving compensation for work performed on behalf of clients other than Writers or in areas outside the scope of this Agreement.

B. TELEVISION PACKAGE COMPENSATION

1. An Agency shall be permitted to receive compensation from persons other than a Writer in connection with a packaged television (including OTT and other internet-delivered serial motion pictures) program. If an Agency receives compensation from, or in connection with, a packaged television program computed on a basis other than a percentage of the compensation paid to the Writer client of the Agent involved with such packaged television program, then the Agent shall receive no commissions on the compensation of the Writer for that Writer's writing services or literary materials supplied to such packaged television program.
2. In the event the Agency receives compensation for a packaged television program as described in (B)(1), the Agency shall also receive no commissions on the compensation of any other Writer client of the Agency for his or her services on the packaged television program.
3. An Agent shall be permitted to procure employment for a Writer on a packaged television program so long as:
 - a. The Writer is the sole initiating element of the package, and the Writer consents to the program being packaged;
 - b. The Agent adds a Writer as an element of an existing package, and the Writer consents to participation in the packaged television program; or
 - c. The Agent adds a packageable element to an existing television program where the Agency had not previously received package compensation, 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.

4. An Agency will provide a Writer designated to be a packageable element of a packaged television program with the agreement containing the terms of the Agency's package agreement.
5. A Writer shall have the right to know all facts reasonably necessary to making an informed choice as to whether to participate in a packaged television program.
6. Prior to submitting a Writer to a packaged project (*i.e.*, a project where the Agency has already been granted a packaging fee at the time of submission), an Agent shall:
 - a. Inform the Writer of the existence of the package;
 - b. Advise the Writer that she/he may choose 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.
7. Absent the Writer's specific authorization, no Writer's agreement or pitch will be delayed due to agency package negotiations.
8. [For further discussion; WGA and ATA will work in good faith to modernize Exhibit N to the AMBA].

C. MOTION PICTURE SERVICES COMPENSATION

1. An Agency shall be permitted to perform motion picture packaging, financing, and sales services.
 - a. In the event the Agency is retained to perform these services prior to the engagement of a Writer on the motion picture project, the Agency shall fully disclose the existing packaging, financing, or sales services arrangement, including the relevant fees to the Writer, prior to the Writer's engagement;
 - b. In the event a Writer retains the Agency to perform these services, the Agency shall fully disclose the relevant fees prior to incurring them, and the Writer may choose whether to proceed with the Agency's performance of services.
 - c. In the event that a motion picture project has a Writer as an attached element (*e.g.*, like with a pitch or attached to adapt pre-existing intellectual property), where the Agency is taking the project to market before the Writer has commenced any work, the provisions of C.1.a., above shall apply.

SECTION 6 – AFFILIATE RELATIONSHIPS

1. An Agent shall be permitted to represent a Writer in connection with the engagement by or sale of rights to an affiliated entity, so long as, prior to the submission of such Writer by the Agency for such engagement or sale of rights:

- a. the Agent informs such Writer of the existence and nature of the Agency'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 sale of 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.
2. An Agent shall not be permitted to 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 Agency and affiliated entity are each in compliance with the following:
 - i. the individuals primarily involved in the day-to-day operations of the Agency are different than the individuals primarily involved in the day-to-day operations of the affiliated entity, and vice versa;
 - ii. the Agency, including any individual primarily involved in the day-to-day operations of the Agency, does not participate in any of the affiliated entity's decisions regarding the engagement of or sale of rights other than in the Agency's capacity as a representative of its clients consistent with the fiduciary duties to such clients;
 - iii. the Agency 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 Agency creates and makes available a written conflicts policy reflecting the above, and has annual training on conflicts for all employees.
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 enter into an engagement by, or sale of 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 Agency's representation of such Writer.

4. An Agency or Agent may not use the fact that a Guild investigation involves an affiliate of the Agency as a basis for its refusal to cooperate in such investigation.

SECTION 7 – RELATIONSHIP WITH GUILD

A. ATA'S OBLIGATIONS TO GUILD

1. ATA and its member agencies shall work with the Guild with the goal of developing an automated system for providing Writing earnings statements quarterly to Writers, and upon Writers' written direction, to the Guild.
2. ATA and its member agencies will work with the Guild with the goal of developing a universal payment notification/invoicing system that would provide Writers (and, upon Writer consent, the Guild) with copies of invoices relating to payment obligations in favor of Writers.
3. If requested, ATA and member Agencies will actively participate in the Guild's diversity and inclusion programs.
4. ATA will serve as a resource to assist the Guild in advance of, and in connection with, its collective bargaining negotiations.

B. GUILD'S OBLIGATIONS TO ATA

1. Guild shall encourage its members to engage diverse writers.
2. Guild and Agency shall cooperate to develop annual reporting that is shared both ways (Guild to Agency, and Agency to Guild) regarding diversity efforts and reflecting, through anonymized data, the employment history of Writers, broken down by membership in statutorily protected-classes (to the extent a Writer wishes to be identified within a protected class), represented by the Guild and Agency, respectively.

C. AGENCY AND AGENT'S OBLIGATIONS TO GUILD

1. Agent shall provide the Guild with copies of all representation agreements with Writer.
2. Upon the written request of a Writer, Agent will provide to the Guild any agreement, financial information, or other information relating to that Writer, unless it is prohibited by law or contract from doing so.

3. Upon the written request of a Writer, Agent shall provide the Guild with a copy of statements of that Writer's earnings.
4. Upon the written request of a Writer, and in the absence of any confidentiality requirements prohibiting disclosure, Agent shall provide the Guild with copies of any executed agreement (that the Agent has in his/her possession) engaging the Writer's services or acquiring the Writer's written materials.
5. Upon the written request of a Writer, Agency shall provide notice to the Guild of any uncured material breach in payment by the employer of a Writer.

SECTION 8 – 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 9 – DISPUTE RESOLUTION

- A. The following controversies between the ATA and the Guild 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 arising out of or relating to this Agreement or the obligations of the ATA or the Guild thereunder.
- B. The following controversies relating to a dispute between a Writer and a subscribing Agent or Agency 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 arising out of or relating to an Agency's performance or breach of its obligations to a Writer or the Guild under this Agreement.
 2. Any dispute arising out of or relating to an Agent's performance or breach of his or her obligations to a Writer or the Guild under this Agreement.
 3. Any claim brought by the Guild to suspend or remove an Agent from the list of subscribing Agents based on an alleged material violation of the Agreement or Rider W.
 4. Any claim brought by an Agent against a Writer pursuant to Rider W.
- C. An arbitrator or arbitrators selected to hear a dispute under this section shall resolve the entire controversy. In so doing, the arbitrator shall have authority to fashion an

appropriate remedy, which may include, to the extent described and permitted by the Rules Governing Arbitration, the award of damages, injunctive or declaratory relief, or other appropriate penalties.

- D. The decision of an arbitrator or arbitrators (except to the extent provided in the appellate procedures described in the Rules Governing Arbitration) under this section shall be final and binding, and may be confirmed in any court of competent jurisdiction.

SECTION 10 – MISCELLANEOUS PROVISIONS

- A. This Agreement shall be effective as to each subscribing Agency or Agent upon the date the Agency or Agent subscribes hereto. This Agreement shall not apply to, nor impair the right of Agency or Agent to receive compensation based on, services rendered by Agency or Agent before such effective date.
- B. 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 11 – TERM AND TERMINATION

- A. The term of the Agreement shall be four years and shall continue thereafter unless terminated by either the Guild or the ATA.
- B. Termination shall be effective 180 days after written notice of termination is delivered.
- C. In the event that either party gives timely notice of termination, the Guild and the ATA agree to negotiate in good faith for a successor agreement during the period between the notice and the effective date of the termination.
- D. A subscribing Agent shall have the right to terminate its obligations under this Agreement upon written notice to all parties. The Agent's termination shall be effective 60 days after its service of such notice.
- E. During the term, no party shall take any step that would, directly or indirectly, affect this contract, Rider W, or any relationship of the parties to this Agreement, or of any subscribing Agent or Agency and any Writer, in any way, or which may or will tend to otherwise affect any rights of the Guild, ATA, or any then subscribing Agencies or Agents to contract or deal freely with one another in connection with the subject matter of this Agreement in any way, or which will in any way subject subscribing Agents or Agencies to any discrimination or discipline other than as provided by this Agreement. This rule shall apply regardless of whether the action taken purports to be effective before or after the termination of this Agreement. Neither Guild nor ATA will evade, circumvent, or violate, or seek to do so, the provisions of this paragraph directly or indirectly, and the attempt to do so shall constitute bad faith under this Agreement.