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Agreement between Association of Talent Agents and Directors Guild of America, Inc. of January 1, 1977 (as restated January 1, 2004)

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**AGREEMENT BETWEEN ASSOCIATION OF TALENT AGENTS and
DIRECTORS GUILD OF AMERICA, INC.**

of January 1, 1977 (as restated January 1, 2004)

This agreement is made by and between **DIRECTORS GUILD OF AMERICA, INC.** ("DGA"), a California corporation whose membership consists of persons engaged in rendering services as directors in the motion picture and television industry (hereinafter "Directors"), and the **ASSOCIATION OF TALENT AGENTS** ("ATA"), a California non-profit corporation whose membership consists of persons or corporations engaged in the occupation of talent agent for various artists, including but not limited to Directors in the motion picture and television industry.

WHEREAS, DGA and ATA consider it desirable that a Code of Fair Practice be promulgated which will (a) establish, as a minimum, certain practices in the relationship between agents proposing to act or acting for DGA members rendering or seeking to render services as Directors; (b) eliminate other practices now deemed undesirable in the agency relationship between agents and such members; and (c) introduce a uniform procedure in the agency relationship. To this end DGA and ATA have jointly prepared the form marked Rider "D", which shall be attached to, and made a part of existing or future agency contracts between DGA members and agents becoming signatories to this agreement with respect to services to be rendered by said DGA members as Directors. A copy of said Rider "D" is attached hereto.

Now THEREFORE, the parties do hereby agree as follows:

1. **BINDING AGREEMENT:**

This Agreement shall be binding on all agents who execute a letter of adherence hereto, who shall be collectively and individually referred to herein as "Agent," "Agency" or "Signatory Agent."

2. **TERM:**

The term of the agreement shall be a period of not less than four and one-half ($4\frac{1}{2}$) years from and after January 1, 1977. Either party may serve six months' notice of termination at any time on and after January 1, 1981, accompanied by proposed provisions desired by the party serving the notice.

3. **APPLICATION TO EXISTING AGREEMENTS:**

The rights and obligations of the signatory agents will be governed by this agreement from and after the effective date referred to above, provided that to the extent the agent had any greater rights under the prior agreement for contracts negotiated for or entered into by the Director prior to the effective date hereof, then such rights on the part of the agent shall be governed by the prior agreement.

4. **TERM OF REPRESENTATION AGREEMENT:**

An original representation agreement between an Agent and Director shall be for a maximum period of two years. As to any agency agreement entered into by the Director with an Agent consecutively after the original or any renewal agreement, the term thereof may be a maximum of 3 years. Nothing herein contained shall require any Director to sign for the maximum term permitted hereunder.

5. **FILING OF COPIES:**

A. Agent will furnish DGA with a complete Director client list promptly after becoming signatory to this Agreement.

B. Agent will furnish DGA with copies of each new or renewal agency agreement (including Rider "D"), including modifications thereof executed hereafter by any member of DGA. Agency agreements shall be handled by the DGA in a confidential manner and not made available to members [except that a Director may obtain from DGA a copy of his agency agreement]. DGA can give out information regarding a Director being represented by a specific agent but not the expiration date of the agency agreement.

C. If Agent and Director modify Rider "D," (1) DGA will approve all modifications which benefit the Director and, (2) with respect to modifications which do not benefit the Director, DGA's consent and waiver shall be required. DGA's approval, consent or waiver shall be deemed granted if DGA does not object within 10 days after the modification is filed with DGA.

D. DGA may waive the modification filing requirement hereinabove set forth, in which event the agency contract filed with DGA shall be marked to reflect that there is a modification which has not been filed with DGA as a result of the waiver.

E. Agent will submit to DGA semiannually lists of Director clients.

F. Agent will make its Director client list available to any Director client or prospective Director client upon request.

6. **MAXIMUM COMMISSION:**

No Director may pay commission in excess of 10% to all agents with respect to any engagement unless prior agreement of DGA is obtained.

7. **COMMISSIONS ON RESIDUALS:**

Agent will not be entitled to collect any commission which reduces the Director's payment below minimum with respect to television residuals or payments on account of television use of feature motion pictures or use of such films by means of cassettes or pay television or the like.

8. **NO DOUBLE COMMISSIONS:**

The provision of Paragraph 5 of Rider "D", relating to double commissions are incorporated herein.

9. **CONTINUITY OF MANAGEMENT:**

Rider "D" will provide for the maximum number of agents who may be shown in the continuity of management clause as follows:

A. The large Agencies, International Creative Management, William Morris Agency, and other agencies approved by DGA in this classification, may name two persons and Director may name two persons for a total of four. Only one of the two named by the Agency may be administrative or executive employee of the agency, and the death, discharge, or unavailability of any three will give the Director the right to terminate.

B. Agencies employing more than three agents but not in the classification provided for in subparagraph A of this paragraph 9 may list two persons, one designated by the Director, one by the Agency. The death, discharge or unavailability of both persons will give the Director the right to terminate.

C. Agencies employing three agents or less: Agent shall choose one person and Director may, if he wishes, appoint one person to be named. If the person designated by the Agency leaves or is unavailable, the Director may terminate.

Each name selected by a Director pursuant to the above provisions shall be selected after reasonable advice from and consultation with the Agent to determine the availability and suitability of the person named by the Director. It shall not be deemed a violation of this Agreement if there is a bona fide dispute as to the availability or suitability of the agent or agents selected by the Director. Further, absent such disputes, in the event a Director fails to insert a name or names as hereinabove provided after having the opportunity to do so, the Agent may fill in the name or names for the Director.

In all cases, if the person or persons nominated by Director leave the Agency, the Director may nominate a replacement and if the person or persons nominated by the Agency leave the Agency, the Agency may nominate a replacement. The Director shall be notified by Agent where (1) a person named leaves the Agency or is unavailable for other than illness, (2) a named person is transferred to another office or agency, or (3) a named person is given a 6 months leave of absence.

10. **TERMINATION OF RIDER “D”:**

A. The Director shall have the right to terminate the agency agreement if there is a merger by reason of which Director’s present Agency is merged with an agency which Director has previously discharged. Such right shall expire 60 days following notice to Director, with a copy to DGA, of such merger.

B. The Director shall also have the right to terminate if he is with an Agency which merges with a larger agency or by reason of merger becomes a large agency (as defined in Paragraph 9 A hereof). Such right shall be exercised within the sixty (60) day period following notice to Director, with a copy to DGA, of such merger.

C. The Director shall have the right to terminate as provided and subject to the conditions set forth in Paragraph 3 of Rider “D.”

11. **COMMISSION UPON TERMINATION:**

A. An Agency which is terminated by a Director having a right to do so can continue to collect commissions on deals entered into or substantially negotiated prior to such termination but not on improvements negotiated after such termination. Agent shall be entitled to commissions on direct and indirect renewals, substitutions, replacements, extensions or modifications of contracts, negotiated prior to the termination or expiration of the agency agreement. In no event will the terminated Agency be entitled to receive commissions in excess of the amount that would have been paid under the contract as negotiated at the time of termination but this provision shall not apply to agency agreements which are wrongfully terminated.

To be entitled to the payment of compensation after termination of the agency contract, Agent shall be obligated to serve the Director and perform obligations with respect to any employment contract and to extensions or renewals of said employment contract or to any employment requiring the services of the Director on which such compensation is based.

B. Contracts in existence at the time of termination of an agency agreement which the Director had the right to terminate shall be commissionable to the terminated Agent only to the extent of the compensation and/or participation negotiated by such terminated Agent. If the new agent shall renegotiate such existing contract, he shall be entitled to commission on any excess.

12. **DEAL MEMO:**

Unless Agent receives a copy of the deal memo provided for by the DGA Collective Bargaining Agreement from the employer promptly after a deal is made, Agent will submit to DGA a simple deal memo setting forth the name of the Director, employer, project and start date. There will be no penalty if Agent fails to do so.

13. **COLLECTION OF COMPENSATION:**

Where Agent has received a check authorization from the Director, Agent shall be obligated to use its best efforts to collect monies due the Director. Whether an Agent has exercised his best efforts shall be subject to arbitration. If the Arbitrator(s) determines Agent has failed to exercise best efforts, the Arbitrator(s) may hold (a) that the Director's commission obligation may be reduced, but by not more than 50% of the total commission obligation and (b) that the Director may terminate his agency contract.

14. **COLLECTION COSTS:**

A. Agent shall have an affirmative duty to aid in the collection of monies due the Director client and any action instituted by the client for the collection of monies.

B. Audit costs to determine the accuracy of accounting may be deducted before computing commissions on contingent compensation. This is in addition to deductions for legal fees, expenses, and court costs, as set forth in Rider "D."

15. **ACCOUNTING FOR MONIES:**

Agent agrees to remit to a Director client all monies collected as promptly as possible and in no event later than five business days after receipt of payment from the employer. A failure to do so, except for good and sufficient reasons, will result in a warning to Agent except that the warning need not be given if the charge of late payment is based on fraud. Thereafter a failure to make payment to a client within five business days unless there are good and sufficient reasons for not doing so may, within DGA's discretion, result in the filing of an arbitration under disciplinary proceedings in which the Director's contract with the Agent may be terminated. If the Arbitrator(s) should find that failure to promptly pay over monies to a client by an Agent constitutes fraud, the Arbitrator(s) may fine the Agent or suspend his franchise for a period of time or terminate the franchise of the Agent.

16. **DGA BY-LAWS AND COLLECTIVE BARGAINING AGREEMENTS:**

If any proposed agreement or offer is in violation of any of the terms of the DGA collective bargaining agreement or any Guild by-laws, of which Agent has been notified in writing, it shall be the obligation of Agent to notify the Director to that effect. Agent will not proceed to close or negotiate any such deal without the specific direction of the Director client to that effect.

17. **PACKAGE PROGRAMS:**

A. No Director shall be required to execute a so-called "package" agreement as a condition to representation of the Director by Agent.

B. In connection with any agreement executed by a member of DGA, which provides payment of package commissions to Agents, said agreement will also provide that Agent will provide, inter alia, no less than the following services:

(1) Agent shall be contractually committed in substance to make available his services in assisting his producer client in bringing together key elements of the package program with the purpose of creating a product for sale and to be contractually committed to make available his services in assisting in the negotiating of agreements in connection therewith.

(2) Agent shall be contractually committed in substance to make available his services to advise and consult with the producer client as to the creation and/or development and/or production of the package program as such matters relate to the licensing or sale thereof.

(3) Agent shall be contractually committed in substance to make available his services in connection with soliciting and negotiating agreements with respect to the sale or exploitation of the package program and shall render advice with respect thereto.

It shall be a violation of this Agreement for any Agent to seek or obtain a package commission as part of the negotiation of employment for a Director. However, the foregoing sentence shall not be applicable where Agent shall have previously agreed to represent the package program within the meaning of these regulations.

18. **CLIENT FILE:**

Agent will make available to the Director client on request for review by such Director, on the premises of the Agent, the entire file relating to the Director, and all offers of employment received, together with all notes and references to employment solicited on behalf of the Director client by Agent and contained in such Director's files.

19. **COOPERATIVE COMMITTEE:**

A Cooperative Committee, consisting of an equal number of Agency and Director representatives, to be agreed upon, shall meet from time to time at the request of either party to discuss, investigate and make recommendations as to the solution of problems arising in the construction, interpretation and administration of this Agreement, and as to any abuses or grievances affecting Agent-Director relationships generally and for which no remedy is provided for in this Agreement.

20. **DUTIES AND OBLIGATIONS OF AN AGENT:**

A. To use all reasonable efforts to procure employment for the Director.

B. To advise and counsel the Director in connection with or relating to his employment or professional career.

C. To negotiate terms and conditions of the Director's employment.

D. To be available to the Director during reasonable hours subject to absence of the agent on agency activities outside of the office, reasonable absences due to illness or reasonable vacation periods. In the event the agent is unavailable as a result of illness and/or vacation for an unreasonable period of time the agent will provide a substitute person to service the Director.

- E. To present all offers of employment to the Director unless specifically instructed otherwise.
- F. To be truthful in statements to the Director.
- G. To consider only the interests of the Director in any dealings for the Director and not take into account the interests of the agent.
- H. To refrain from communicating to others information relating to the affairs of the Director which the Director has requested not to be communicated except that there will be no such prohibition with respect to the agent's testimony in court, arbitration, before a government body or an official or accredited representative of a government body.

21. **ARBITRATION/DISPUTES:**

The following rules of procedure govern arbitrations between the parties hereto, including signatory agents, and/or between any member or members of DGA who have an agency contract or contracts with a member or members of ATA and/or with any signatory agent or agents:

A. **Jurisdiction of Arbitrators**

(1) **Matters Arbitrable Between DIRECTOR and AGENT**

All disputes and controversies of every kind and nature whatsoever (whether arising from assertions of fraud, mistake, or on account of other alleged defect in the inception of the contract or from any source at all arising prior to or after the termination or expiration of the contract) between the Director and the Agent arising out of or in connection with the contract, as to the existence of the contract, its validity, constructions, performance, non-performance, operation, breach, continuance or termination, shall be submitted to arbitration in accordance with the laws of the State of California as more specifically herein provided or the laws of the State or City of New York, as the case may be.

(2) **Matters Arbitrable Between DGA and AGENT**

In the event of any controversy between any of the parties hereto, including signatory agents, concerning performance or construction of this agreement, such controversy shall be set forth in writing delivered to the other party or parties to such controversy by the person initiating such proceeding. The parties shall attempt to adjust such controversy within a reasonable time after such written notice. If such controversy is not amicably adjusted within a reasonable time, either party may submit such controversy to arbitration in accordance with the procedure set forth herein.

B. **Arbitration Secretary**

ATA and DGA shall from time to time each designate one person to act, jointly, as Arbitration Secretary. The Arbitration Secretary shall formulate the rules of procedure to govern arbitrations hereunder, which rules shall be subject to joint approval by DGA and ATA. Such rules may be amended and changed from time to time with the joint consent of DGA and ATA.

(1) In the event of any dispute between the ATA and DGA arbitration secretaries, Sol Rosenthal, Esquire shall act as the Arbitration Secretary in the specific arbitration in which such a dispute occurs. In the event that Sol Rosenthal is unable for any reason to act as the Arbitration Secretary, then Kenneth Ziffren, Esquire shall act as the Arbitration Secretary. In the event that Kenneth Ziffren is unable for any reason to act as the Arbitration Secretary, then the ATA and DGA arbitration secretaries shall agree upon a disinterested party to act as the Arbitration Secretary.

(2) On notice to ATA, DGA may designate another person to act in place of its arbitration secretary, either temporarily or permanently, as the notice may state. On notice to DGA, ATA may designate another person to act in place of its arbitration secretary, either temporarily or permanently, as the notice may state. Any person acting as Arbitration Secretary may disqualify himself in any proceeding; and either ATA or DGA which designated such person shall forthwith designate a substitute to act in his stead.

(3) The office of the Arbitration Secretary shall be located at the offices of the Directors Guild, whose address is: 7920 Sunset Boulevard, Los Angeles, California 90046.

C. **Arbitration Steps**

(1) **First Step of Arbitration**

(a) **Complaint**

Any person (herein called Complainant) may start an arbitration by filing his complaint with the Arbitration Secretary. This complaint must:

- (i) be in writing and one original and six copies thereof must be furnished;
- (ii) state the name of the person or persons with whom arbitration is sought (hereinafter called Respondent). If more than one Respondent is named, extra copies of the complaint must be filed for each extra Respondent;
- (iii) contain a brief written statement of the claim;
- (iv) state the name and address of the person chosen by Complainant as his arbitrator and indicate the arbitrator's acceptance of the appointment.

(b) **Service of Complaint**

The Arbitration Secretary, within a reasonable time but in no event longer than FIFTEEN days after the filing of the Complaint, shall cause to be sent a copy thereof to each Respondent.

(2) **Second Step**

(a) **Answer**

Within ten days after receiving the complaint, Respondent must file an answer with the Arbitration Secretary. This answer must:

- (i) be in writing and one original and six copies must be filed;
- (ii) identify the portions of the complaint which are denied, and state facts which constitute the answer or any counterclaim or cross complaint;

(iii) name all persons who shall be joined as parties to the arbitration. For each person named in addition to those Respondents named in the complaint, the Respondent shall furnish the Arbitration Secretary with an extra copy of both the complaint and the answer;

(iv) state the name and address of the person chosen by Respondent for his arbitrator, and indicate the arbitrator's acceptance of the appointment.

(b) Service of Answer

Within a reasonable time, but in no event more than THIRTY days after the filing of the answer, the Arbitration Secretary shall cause to be sent a copy of the answer to all Complainants.

(3) Third Step of Arbitration – Selection of Arbitrator

(a) Within FIFTEEN days after the answer naming the Arbitrator for Respondent has been served on the Arbitrator for Complainant, the two named Arbitrators shall submit in writing to the Arbitration Secretary the name of a third Arbitrator chosen by them and found willing to serve. The three Arbitrators shall constitute the Arbitration Tribunal.

(b) If within said time the Arbitrators first chosen are unable to agree upon the third Arbitrator, the Arbitration Secretary shall submit simultaneously to each party to the arbitration an identical list of the names of not fewer than three persons chosen jointly by ATA and DGA. Each party to the arbitration shall have five days in which to examine the list, indicate any person therein to whom he objects, and notify the Arbitration Secretary in writing of his choice and the order of his preference. If any party fails to make a reply within the time specified, all persons on the list are to be deemed acceptable to him.

From among the persons who have been approved by both parties, and wherever possible, in accordance with the designated order of mutual preference, if any, the Arbitration Secretary shall invite an Arbitrator to serve. If the parties fail to agree on any person within the time allotted, or if those approved are unable or unwilling to act, or if for any other reason the appointment of the third Arbitrator cannot be made from the submitted list, then Sol Rosenthal or if he is unavailable to serve for any reason, Kenneth Ziffren, shall submit to the Arbitration Secretary not less than three and not more than six names, each name inscribed on a separate piece of paper and the Arbitration Secretary shall place the pieces of paper containing the names in a receptacle and draw one name therefrom, and the person whose name is drawn shall be the third Arbitrator if he is willing to serve.

(4) Fourth Step of Arbitration - Arbitration Hearing and Decision

(a) Notice of Hearing

(i) Within FIVE days following the selection of the third Arbitrator, the Arbitrators shall notify the Arbitration Secretary of a time, which shall not be more than fifteen days thereafter, for a hearing.

(ii) The Arbitration Secretary shall notify each party to the arbitration of the time and place of hearing.

(iii) With respect to arbitrations in California, the Arbitration Secretary shall give the Labor Commissioner reasonable notice of the time and place of the hearing, and the Labor Commissioner or his authorized representative shall have the right to attend the arbitration hearing.

(iv) Each party may, FIVE days prior to the hearing date, file a memorandum of facts with the Arbitrators, provided a copy thereof is simultaneously sent in triplicate to the Arbitration Secretary and one copy thereof is sent to each party to the arbitration.

(b) Hearing

(i) The Arbitrators shall select a chairman to preside at the hearing. Each party to the arbitration shall be given an opportunity to be heard.

Proceedings shall be entirely informal and the Arbitration Tribunal shall have the power to control the time allotted to each party and the rules of procedure for the hearing. Technical rules of evidence may be waived at the discretion of the Tribunal.

(ii) With respect to arbitrations in California, the arbitration shall be pursuant to Section 1700.45 of the Labor Code of the State of California (however, Section 1700.44 of the Labor Code shall not govern controversies hereunder)

(iii) Representatives of DGA and ATA shall have the right to attend all hearings.

(c) Decision

(i) The Arbitration Tribunal shall render its decision in writing signed by all or a majority of the Arbitrators.

(ii) With respect to arbitrations between DGA and Agent, if the Arbitration Tribunal shall find that a signatory agent has committed a breach of this Agreement as claimed by DGA, DGA may remove such signatory agent from its list of signatory agents; provided however that the Arbitration Tribunal may in its decision specify such conditions as the signatory agent must comply with in order to be reinstated or retained on the list of signatory agents; the Arbitration Tribunal's failure to specify conditions for reinstatement shall constitute a determination that the Agent may not be reinstated without the joint written consent of ATA and DGA. Both ATA and DGA shall be entitled to participate in any such arbitration proceeding. If a signatory agent is removed from the list of signatory agents, such action not of itself be cause for termination of agency contracts between such signatory agent and DGA members; but the pendency or determination of any such arbitration shall not prevent or impede any arbitration or other proceeding between the DGA member and such signatory agent relating to the same or other subject matter.

(iii) All awards shall be final and neither DGA, any Director member of DGA, ATA, nor any signatory agent who is party to an arbitration shall have any recourse to the courts, save and except for the sole purpose of :

(A) having the award confirmed by law; or

(B) objecting to such proposed confirmation on the grounds permitted by law.

(iv) No determination is an award unless it is in writing, signed by at least two Arbitrators, if the case is heard by a three-member Arbitration Tribunal. A dissenting member may state in the award the fact of his dissent and may, in a separate writing, state his grounds therefor.

At least four originals of the award shall be filed with the Arbitration Secretary who shall forthwith cause one to be delivered to the Claimant, or if there be more than one Claimant, then to each of them, and on to the Respondent or to each of them; provided however where there is more than one Claimant or more than one Respondent, an additional original of the award shall be filed with the Arbitration Secretary for each additional party. An award is not final until it has been mailed or sent to all of the parties to the arbitration. When an award becomes final the Arbitration Tribunal shall, except for the purpose of taxing costs pursuant to Paragraph D, (7) below, cease to have any further authority without the written consent of all parties and ex officio parties, to withdraw, recall or alter the award or to do any further act or thing as Arbitrators in the said arbitration.

(v) The award should, insofar as is consonant with justice, dispose of the entire controversy on the merits.

(vi) Awards of the Arbitration Tribunal may be confirmed in accordance with applicable law.

D. **General Rules**

(1) All proceedings, documents, statements and awards relevant to any part of the arbitration and made during the course of the arbitration shall be absolutely privileged as to any party to the proceeding.

(2) Any service of notice or documents required under these rules may be made by mail or by personal delivery. If by mail, delivery will be deemed to be made on the day following posting in the United States mails. If notice is sent by telegram, delivery will be deemed to be made on the day such telegram is delivered to the telegraph office.

(3) All parties to an arbitration shall make every effort to prevent any delay in reaching a final decision on the controversy.

(4) For good cause presented, the Arbitration Secretary shall have the authority to grant an extension for a reasonable time.

(5) If a shorthand reporter or a stenographic transcript is desired by a party, he shall furnish and pay for the same and the cost may not be charged to any other party in the award.

(6) If an indispensable witness cannot be made to attend or testify, or if the indispensable evidence cannot by reason of the Tribunal's lack of compulsory process, be made available to the Tribunal, then

(a) the Tribunal may at its discretion receive a deposition from the witness or a copy of the evidence; or

(b) the parties may agree

- (i) That the witness would testify to stated facts; or
- (ii) On a description of the unavailable evidence; or
- (iii) If neither of the methods of substitution provided in (i) or (ii) hereof is available or would serve the interests of justice, and the Tribunal concludes, after a hearing in an arbitration between a member of DGA and a subscribing agent (but not in an arbitration between DGA and ATA), that serious injustice would result from an award on the merits, by reason of its lack of adequate compulsory process, it may suspend a hearing or may make an order dismissing the arbitration without prejudice to the rights of the parties to pursue any other remedy in court or otherwise and without prejudice to instituting another arbitration proceeding on the same controversy.

(7) Each party shall bear his own expense of an arbitration. The award may include costs or expenses, or some part of them, and may provide for taxing costs or expenses in a supplementary proceeding and by a supplementary award.

Attorney's fees may not be included in an award as costs. No costs or attorney's fees shall be taxed against either DGA or ATA in any proceeding.

(8) No Arbitrator and neither DGA nor ATA shall be responsible for any papers or other exhibits brought into any arbitration. No party, ATA, DGA or Arbitrator shall be chargeable in any action or proceeding at law or otherwise, with the duty of maintaining records of any proceeding; the Arbitration Secretary will however, but without liability therefor, endeavor to maintain until six months after an award shall become final, a complete set of copies of all papers delivered to the Arbitration Secretary. Any Party or his attorney shall have the right to inspect such records.

E. **Conflicting Claims**

In the event conflicting claims are made against any member of DGA by signatory agents, the member may deposit the monies claimed with the Arbitration Tribunal, stating that conflicting claims are made against him, naming the claimants, and agreeing that the monies so deposited with the Arbitration Tribunal selected as hereinbefore provided, may be disposed of between the conflicting claimants in accordance with the ruling of the Arbitration Tribunal. The Arbitration Tribunal shall then be selected by the persons named in the proceeding as making conflicting claims, and the Arbitration Secretary shall designate which are the respondent or respondents.

The arbitration proceedings shall then proceed with the claimant and respondent as the real parties in interest; and unless the claimant or respondent claims a sum larger than the amount deposited, the member of DGA shall be discharged of any claim described in the complaint or answer. If no money be claimed, the same procedure may be followed without deposit. If either signatory agent asserts other claims against the member, the arbitration shall proceed as in other cases. Further, notwithstanding any provisions hereinabove an Agent may not represent a Director if the Director repudiates the Agent and refuses to have the Agent act as his representative.

22. **RECOGNITION:**

This Agreement is entered into for the benefit of members of DGA, both present and future, and for the benefit of members of ATA, both present and future, and all other agents which become signatories to this Agreement. Each signatory agent agrees that in dealing with DGA members, the attached Rider "D" shall be and is hereby made part of all agency contracts between a signatory agent and a DGA member covering his services as a Director whether such agency contract is in existence on the date the agent becomes a signatory to this Agreement or thereafter.

23. **MISCELLANEOUS:**

It is agreed that (except in conformity with an arbitration award pursuant to paragraph 21 hereof) neither DGA nor ATA, as an organization or by a combination of any or all of the members of either organization, operating through any instrumentality of such organization, will pass any rule, establish any policy, enact any by-law or make any order or take any step, official or unofficial, which will affect the business relationship of signatory agents with DGA members in connection with the rendition of services as Directors, or which will in any way subject signatory agents to any discrimination whatever in dealing with DGA members prior to the effective date of termination of this agreement as herein provided. Nothing herein shall impose any obligation on DGA or ATA to refrain from notifying its respective members of the subject of disagreement, if any, during the course of negotiation or of the delivery of any termination notice and its effective date. Nothing herein contained shall require DGA to compel its members to be represented by signatory agents nor shall anything herein contained require any ATA members to become signatory agents.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the first day of January, 1977 as restated January 1, 2004.

ASSOCIATION OF TALENT AGENTS

By: /s/ Karen Stuart
Karen Stuart
Executive Director

DIRECTORS GUILD OF AMERICA, INC.

By: /s/ Jay D. Roth
Jay D. Roth
National Executive Director

RIDER "D"
TO AGENCY CONTRACT BETWEEN

_____ and _____
(Referred to herein as "Director") (Referred to herein as "Agent")

APPROVED BY DIRECTORS GUILD OF AMERICA, INC.

The provisions of this Rider "D" are applicable only to agency contracts covering the rendition of services of a member of the Directors Guild of America, Inc. (referred to herein as "DGA"), as a Director in the motion picture and television industry. In case of conflict between the agency contract and the provisions of this Rider "D" and the Agreement between the Association of Talent Agents ("ATA") and Directors Guild of America of **January 1, 1977 (as restated January 1, 2004)**, the conflict shall be resolved in favor of those provisions more favorable to the member. It is, however, understood that nothing in this Rider "D" shall prevent any DGA member from negotiating with and obtaining from the agent better conditions and/or terms than those provided herein.

1. **MAXIMUM COMMISSION:**

No Director may pay commission in excess of 10% to all Agents with respect to any engagement unless prior agreement of DGA is obtained.

Agent will not be entitled to collect any commission which reduces the Director's payment below minimum with respect to television residuals or payments on account of television use of feature motion pictures or use of such films by means of cassettes or paid television or the like.

2. **CONTINUITY OF MANAGEMENT:**

The name or names of at least one and not more than four persons active in the business of the Agent must be inserted herein, as provided in A, B or C below, otherwise this agreement shall not be valid.

A. The large agencies, International Creative Management, William Morris Agency, and other agencies approved by DGA in this classification, may name two persons and Director may name two persons for a total of four. Only one of the two named by the Agency may be an administrative or executive employee of the Agency, and the death, discharge, or unavailability of any three will give the Director the right to terminate.

B. Agencies employing more than three agents but not in the classification provided for in subparagraph A of this paragraph 2 may list two persons, one designated by the Director, one by Agency. The death, discharge or unavailability of both persons will give the Director the right to terminate.

C. Agencies employing three agents or less - Agent shall choose one person and Director may, if he wishes, appoint one person to be named. If the person designated by the Agency leaves or is unavailable, the Director may terminate.

Each name inserted by a Director pursuant to the above provisions shall be selected after reasonable advice from and consultation with the Agent to determine the availability and suitability of the person named by the Director. It shall not be deemed a violation of these Regulations if there is a bona fide dispute as to the availability or suitability of the Agent or Agents selected by the Director. Further, absent such dispute, in the event a Director fails to insert a name or names as herein above provided after having the opportunity to do so, the Agent may fill in the name or names for the Director.

In all cases, if the person or persons nominated by Director leaves the Agency, the Director may nominate a replacement and if a person or persons nominated by the Agency leaves the Agency, the Agency may nominate a replacement. The Director shall be notified by Agent where (1) a person named leaves the Agency or is unavailable other than for illness, (2) a named person is transferred to another office or agency, or (3) a named person is given a 6 months leave of absence.

Upon the happening of an event giving Director a right of termination as provided in A., B., or C. above, Agent shall notify promptly the Director in writing of his right to terminate. In said notice Agent may name a person or persons in substitution of a person or persons previously nominated by Agent who shall be deemed named in this paragraph if the Director does not elect to terminate hereunder. Upon receipt of such notice from the Agent, the Director may elect to terminate the employment of the Agent hereunder by notice in writing to that effect to be given no later than fifteen (15) days after receipt by Director of such notice from Agent.

Failure of the Director to exercise the right to terminate within the time provided shall be deemed a waiver of such right and the agency contract shall continue in full force and effect with the persons named in the notice from the Agent deemed substituted in the place of the persons who have become inactive.

3. **90 DAY CLAUSE:**

If during any period of ninety (90) consecutive days immediately preceding the giving of notice of termination herein described, the Director (1) fails to be employed or (2) fails to receive a bona fide offer then either Director or Agent may terminate the employment of Agent hereunder by giving written notice of termination to the other party, subject to the following terms and provisions:

A. Periods of layoff, suspension or leave of absence under any contract under which the Director is employed shall be deemed to be periods of employment.

B. In computing said period of ninety (90) consecutive days there shall be excluded any period or periods (1) during which the Director is engaged in a field in the entertainment industry in which the Director is not represented by the Agent or (2) during which the Director is not ready, able, willing and available to render his services. The Director's refusal unreasonably to be available for interviews may be evidence of his not being available to render services.

C. Actual employment of or contracts or bona fide offers for the employment of the Director in any field whatever in which the Director is represented by the Agent shall be deemed to be employment. If the Director has been employed or has had contracts or bona fide offers for employment in any field in which Director is represented by Agent the Director may not terminate so long as Director is entitled to an amount equal to his last compensation at a pro rata equivalent to 3 weeks of services.

D. If the Director is represented by the Agent in connection with the sale, lease, license or other disposition of literary material or package shows and the Director receives or is entitled to receive guaranteed compensation for the sale, lease, license or other disposition of literary material or package shows during the period of ninety (90) days in question, the Director may not terminate.

E. The Director may not exercise the right of termination, if at the time he attempts to do so, he is under a written contract or contracts which guarantee the Director employment as a Director in the motion picture industry for a period of time during a period of one hundred eighty (180) days immediately after the expiration of the ninety (90) day period in question, which employment when added to the number of days the Director has been employed as a Director in the motion picture industry during the period of ninety (90) days in question shall equal nine (9) weeks' employment.

F. If prior to the expiration of the aforementioned ninety (90) day period Agent shall obtain for the Director and the Director shall accept a contract or contracts for the rendition of Director's services in any field in which the Agent represents the Director during the one hundred eighty (180) days next following the expiration of such ninety (90) day period, and if the total guaranteed compensation payable to the Director during such one hundred eighty (180) day period under such contract or contracts shall be \$45,000 or more, the Director shall not have the right to terminate hereunder.

G. An offer shall be deemed "bona fide" hereunder if the terms are consistent with those presented to Directors of similar stature and experience for similar assignments or if the terms approximate terms accepted by the Director for similar assignments within the previous year. An offer of employment for services in fields not within the jurisdiction of DGA shall not be deemed bona fide if such offer is at a compensation rate less than the applicable minimum salary prescribed by DGA in the then current industry wide DGA collective bargaining agreement. The foregoing is not to be construed, however, as meaning that an offer in a non-DGA field at DGA applicable minimum salary necessarily constitutes a bona fide offer, it being understood that the determination of whether any such offer is bona fide depends upon a consideration of all the relevant facts and circumstances pertaining to and existing at the time the offer is made.

4. **COMMISSION UPON TERMINATION OR EXPIRATION:**

A. Agency which is terminated by a Director having a right to do so after expiration can continue to collect commissions on deals entered into or substantially negotiated prior to such termination or expiration but not on improvements negotiated after such termination. In no event will the terminated agency be entitled to receive commissions in excess of the amount that would have been paid under the contract as negotiated at the time of termination but this provision shall not apply to agency agreements wrongfully terminated. If the new Agent shall renegotiate such existing contract, he shall be entitled to commission on any excess in amount of such contract.

B. Agency shall be entitled to commission on direct or indirect renewals, substitutions, replacements, extensions or modifications of contracts referred to in A above except as specifically provided herein.

C. The Agent is obligated unless specifically otherwise requested by the Director to service the Director hereunder but only with respect to such contracts.

5. **NO DOUBLE COMMISSIONS:**

A. If, during the term of an agency contract between an Agent and a producer or an owner of motion pictures or television programs (referred to herein as "owner-client") under which the Agent is engaged by the owner-client as the owner-client's package agent for a particular photoplay or series of photoplays, a Director is employed as a Director in connection with any such photoplay or television series as to which Agent is paid as package agent and the Director's said employment is covered by an agency contract between the Director and the Agent then:

(1) The Agent may not charge or collect any commission whatsoever on the compensation which the Director receives from said owner-client for the Director's said employment in connection with any such photoplay;

(2) Prior to consummating any agreement between the Director and such owner-client the Agent shall notify the Director of the Agent's relationship with such owner-client; and

(3) The Director may, at his election, seek independent counsel or the advice of the DGA prior to entering into a contract with such owner-client.

B. If a Director is employed as a Director in connection with a photoplay which photoplay, at the time the Director is so employed, will, as and when produced, be owned by the Agent and said employment is covered by an agency contract between the Director and the Agent then the Agent's obligation to the Director with respect to such photoplay shall be the same as that recited in subparagraph A. above with respect to the Director's employment in connection with a photoplay owned by an owner-client and the Director shall be entitled to the same benefits set forth in subdivisions (1), (2) and (3) of said subparagraph A.

C. If the Agent is interested as a stockholder or similar security holder, profit sharer, or otherwise in corporations or enterprises engaged in the production of motion pictures and television programs, and a Director is employed as a Director in connection with a photoplay owned or produced by any such corporation or enterprise and the Director's said employment is covered by an agency contract between the Director and the Agent then the Agent's obligation to the Director with respect to such photoplay shall be the same as that recited in subparagraph A. above with respect to Director's employment in connection with a photoplay owned by an owner-client and the Director shall be entitled to the same benefits set forth in subdivisions (1), (2) and (3) of said subparagraph A provided, however, that the Director shall not be entitled to the benefits set forth in said subdivisions (1), (2) and (3) under the following circumstances:

(a) If the interest of the Agent is represented by the ownership of securities which are traded on any stock exchange;

(b) If the interest of the Agent constitutes an ownership in such corporation or enterprise, or in the profits or proceeds thereof, acquired by the Agent as commissions for the representation of such corporation or enterprise (other than set forth in subparagraph A above) in connection with the corporation's or enterprise's activities and such interest does not exceed in the aggregate ten per cent (10%) of such ownership interest, as the case may be;

(c) If the interest of the Agent in such corporation or enterprise is acquired from one or more clients of such Agent or as a nominee of such client or clients and such interest does not exceed in the aggregate ten per cent (10%) of the total amount owned by such client or clients of the Agent in such corporation or enterprise.

The provisions of this Paragraph 5 shall not be applicable in any respect to the distribution activities of an Agent who may engage in the distribution of motion pictures and television programs. The term "distribution" as used in the preceding sentence means the same or substantially the same relationship now in existence between a distributor and a producer or owner of photoplays for the sale, lease, license or rental of such photoplays by the distributor in the television and/or theatrical motion picture industries.

6. **BARRING:**

Director and Agent recognize that Agent in the pursuance of Agent's duties may be barred from doing business with certain employers. Such barring shall not be grounds for termination hereof by the Director. If the Agent is barred, then upon request of the Director, the Agent will submit to Director the name of a subscribing agent comparable in standing to the Agent who will act as substitute agent with the employer who has barred the Agent during the period the Agent is barred. The Director may object to the proposed substitute agent in which event the Agent will submit the name of a second proposed substitute agent comparable in standing to the Agent to whom the Director may also object. If the Director objects to the second substitute agent the Agent agrees to submit the name of a proposed third substitute agent. If the Director objects to the proposed third agent then Agent may:

- A. Submit other proposed substitute agents until a substitute agent acceptable to Director is obtained or;
- B. Submit the dispute regarding any rejected proposed substitute agent to arbitration in accordance with the provisions in Paragraph 7 hereof. If any arbitration decision rejects a proposed substitute agent then either of the procedures referred to in A. and B. shall be repeated until an acceptable substitute agent is obtained.

The Agent agrees to act in good faith in naming proposed substitute agents and the Director agrees to act in good faith in making any objections.

7. **ARBITRATION:**

All disputes and controversies of every kind and nature whatsoever (whether arising from assertion of fraud, mistake, or on account of any other alleged defect in the inception of this contract or from any source at all or arising prior to or after the termination or expiration of this contract) between the Director and the Agent arising out of or in connection with this contract as to the existence of this contract, its validity, construction, performance, nonperformance, operation, breach, continuance or termination, shall be submitted to arbitration in accordance with the rules set forth in the Agreement between the ATA and DGA.

ATA and DGA shall from time to time, by agreement designate a person or persons to act as Arbitration Secretary. The Arbitration Secretary shall formulate the rules of procedure to govern arbitrations hereunder, which rules shall be subject to the joint approval of DGA and ATA. Such rules may be amended and changed from time to time with the joint consent of DGA and ATA.

With respect to agency contracts entered in the State of California, the arbitration shall be pursuant to Section 1700.45 of the Labor Code of the State of California. The Arbitration Secretary shall give the Labor Commissioner reasonable notice of the time and place of all arbitration hearings, and the Labor Commissioner or his authorized representative shall have the right to attend all arbitration hearings. Section 1700.44 of the Labor Code shall not govern controversies hereunder.

8. **ASSIGNABILITY:**

The agency contract may not be transferred or assigned by Agent without the consent in writing of the Director, except as follows:

- A. If the Agent is an individual, the contract may be transferred to a corporation, which corporation must assume and agree to be bound by the agency contract within thirty (30) days after such transfer.
- B. If the Agent is an individual who becomes a member of a partnership the contract may be

transferred to such partnership, which must assume and agree to be bound by the agency contract within thirty (30) days after such transfer.

C. If the Agent is a partnership which transfers the business to a corporation the agency contract may be transferred to such corporation which must assume and agree to be bound by the agency contract within thirty (30) days after the transfer.

D. If the Agent is a corporation and the corporation is liquidated the contract may be transferred as an asset in liquidation to the stockholders, and the dissolution of the corporation shall not terminate the agency contract provided that the majority of the stockholders receiving the contract in liquidation assume and agree to be bound by the agency contract within thirty (30) days after transfer.

E. If the Agent is a partnership and one or more of the partners dies or withdraws or the partnership is for any other reason dissolved, the agency contract shall not be terminated provided the surviving partners or one of them assumes and agrees to be bound by the agency contract within thirty (30) days after the death or withdrawal of the partner or the dissolution of the partnership.

F. Subject to the applicable provisions of subparagraphs G. and H. of this paragraph, Agent may assign the agency contract to any corporation or enterprise with which agent may be merged or consolidated or to any parent, affiliated or subsidiary company or to any person, firm or corporation which may acquire all or substantially all of Agent's assets, provided the assignee assumes and agrees to be bound by the agency contract within thirty (30) days after any such assignment.

G. The Director shall have the right to terminate the agency agreement if there is a merger by reason of which Director's present agency is merged with an agency which Director has discharged. Such right shall expire sixty (60) days following notice to Director, with copy to DGA, of such merger.

H. Director shall also have the right to terminate if he is with an agency which merges with a larger agency (as defined in Paragraph 2 A. hereof). Such right shall be exercised within the sixty (60) day period following notice to Director, with copy to DGA, of such merger.

During any thirty (30) day period referred to in subparagraphs A. through F. above, the Director shall be entitled to substantially the same general type of agency services received by him prior to the commencement of such thirty (30) day period, and any such assignment shall not affect in any manner any of the rights granted to Director pursuant to the provisions of Paragraph 2 hereof. Upon any assignee of the agency contract assuming and agreeing to be bound thereby, a novation shall result unless the Director shall have exercised his right to terminate and the assignor agent shall be released from all of his obligations thereunder.

The transfer of stock ownership in a corporate agent, whether voluntary or involuntary, shall not be deemed an assignment of the agency contract by the Agent and such transfer of ownership shall not affect the validity of agency contracts with such corporate agent.

9. ACCOUNTING:

Agent shall not collect monies belonging to Director unless the Agent has first obtained from Director a written revocable instrument, separate from this rider and the agency contract to which it is attached, authorizing Agent to do so. All monies belonging to the Director when received by the Agent shall be faithfully accounted for by the Agent and promptly paid over within five (5) business days after receipt from employer to the Director or as directed by the Director in a writing separate from the agency contract. Monies belonging to the Director shall not be commingled with monies belonging to the Agent, but shall be segregated and kept in separate accounts which may be known as "clients' account" or "trust account" or an account similar in nature. The Agent may have

one or more of such accounts and may commingle monies of other clients with the monies of the Director in such accounts.

10. **SETTLEMENT OF DIRECTOR'S EMPLOYMENT CONTRACT:**

Any monies or other consideration received by the Director, or by anyone on his behalf, in connection with any termination of any employment or contract of employment of the Director upon which the Agent would otherwise be entitled to receive commission, or in connection with the settlement of any such employment or contract of employment, or any litigation arising out of any such employment or contract of employment, shall also be monies in connection with which the Agent is entitled to the aforesaid percentage; provided, however, the Director shall be entitled to deduct attorney's fees, audit costs to determine accuracy of accounting, expenses and court costs before computing the amount upon which the Agent is entitled to his percentage.

11. **LENDING (LOAN OUT) CORPORATION:**

The scope of Rider "D" shall encompass the services of agents to corporations which lend the services of members of DGA. Such representation shall be subject to the same limits and carried out under all of the same conditions as a representation of members of DGA directly.

12. **DEFINITIONS:**

A. Directors Guild of America, Inc., is a California corporation whose membership is composed of persons engaged in the profession of directing or rendering services as Directors or Assistant Directors in the motion picture and television industry.

B. Association of Talent Agents is a California corporation whose membership consists of persons engaged in the business of acting as artists' talent agents for various persons including, but not limited to Directors.

C. If the party contracting with Agent in the attached agency contract is described therein as "artist" then, insofar as the provisions of this rider apply to said agency contract the term "artist" as used in said agency contract is referred to in this rider as the "Director". If in the attached agency contract the parties are identified in the first and second persons then, insofar as the provisions of this rider apply to said agency contract, the first person shall mean the Director and the second person shall mean the Agent.

D. The word "Agent," as used herein and in the agency contract to which this rider is attached, means "Talent Agency" as defined in Section 1700.4 of the Labor Code of the State of California.

E. A "signatory agent" is an Agent who agrees with DGA to make this Rider "D" applicable to agency contracts with members of DGA.

F. "Minimum provisions" is defined to mean the provisions set forth in this Rider "D" dealing with the specific subject matters therein set forth. Rider "D" is not intended to and does not affect any provisions of the agency contract relating to subject matters other than those set forth in Rider "D".

G. The phrase "motion picture industry" or "motion picture and television industry," for the purpose hereof shall mean the production of all types of motion pictures on film, tape or any other medium of any gauge or size or type in connection with which a Director renders services as an employee within the jurisdiction of the Directors Guild of America, Inc. ("DGA"), whether such motion pictures are produced primarily for distribution and exhibition by means of television (paid or free) or in theaters, or exhibition by other devices now known or yet to be devised so long as DGA continues to remain the sole collective bargaining agent for such directorial services.

The Director and Agent hereby agree to the foregoing.

Agent

Director

Dated

THIS AGENT IS LICENSED BY THE LABOR COMMISSIONER OF THE STATE OF CALIFORNIA

This rider to an agency contract has been approved as to form by the Labor Commissioner of the State of California on MAY 1, 1978. This rider has been approved as to form and contents by the Directors Guild of America, Inc.