

## **ATTACHMENT 2 TO FRANCHISE AGREEMENT**

### **RULES GOVERNING ARBITRATION**

The following Rules Governing Arbitration (“Rules”) govern arbitrations arising under Section 5 of the Franchise Agreement (“Agreement”) and Section 5 of the Standard Representation Agreement (“Rider W”). The Rules incorporate by reference the Agreement and Rider W, including the terms defined therein.

#### **SECTION 1 - EXCLUSIVITY**

- A. The arbitration procedures established by these Rules shall be the exclusive method for resolving any and all controversies as defined in Section 5.A. of the Agreement and Section 6.A. of Rider W.
- B. The arbitrator shall have the power to rule on his or her own jurisdiction, including any questions of procedural arbitrability and any objections with respect to the existence, scope, or validity of the arbitration agreement.
- C. The arbitrator shall also have the power to determine the existence or validity of a contract of which the arbitration clause contained in the Agreement, Rider W, or these Rules forms a part. Such an arbitration clause shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitrator that the contract is null and void shall not for that reason alone render invalid the arbitration clause.

#### **SECTION 2 - CLAIM**

- A. A complainant initiates an arbitration under these Rules by serving a Claim on the respondent. Prior to initiating a formal Claim, the party asserting the Claim shall contact the opposing party and attempt informally to resolve the dispute.
- B. A Claim seeks resolution of a controversy as defined in Section 5.A. of the Agreement or Section 6.A. of Rider W.
- C. The Claim shall be in writing and contain the following information: (i) the complainant’s name; (ii) the complainant’s address; (iii) a brief written statement of the Claim and the relief sought; and (iv) the name of the respondent.
- D. A Claim must be served on the respondent within twenty-four (24) months from the date the complainant obtained knowledge of the facts upon which the Claim is based, but no later than three years from the date of the occurrence of the facts upon which the Claim is based.
- E. Any Claim brought by an Agent against a Writer under Section 6.A. of Rider W shall concurrently be served on the Guild and the ATA. The Guild may but is not required to participate as a party in the proceeding.

#### **SECTION 3 - COUNTERCLAIM**

- A. The respondent may serve a Counterclaim on the complainant, which must be in writing and contain the same information as a Claim.

- B. A Counterclaim seeks resolution of a controversy as defined in Section 5.A. of the Agreement or Section 6.A. of Rider W.
- C. A Counterclaim must be served within twenty-four (24) months from the date the respondent obtained knowledge of the facts upon which the Counterclaim is based, but no later than three years from the date of the occurrence of the facts upon which the Counterclaim is based.
- D. Any Counterclaim brought by an Agent against a Writer shall concurrently be served on the Guild and the ATA. The Guild may but is not required to participate as a party in the proceeding.

#### **SECTION 4 - ARBITRATOR**

##### **A. AUTHORIZED LIST OF ARBITRATORS**

1. The Claim and, if applicable, the Counterclaim, shall be submitted to a sole neutral arbitrator ("Arbitrator") selected from the applicable authorized list of arbitrators ("Authorized List"):

##### **LOS ANGELES:**

- Christopher David Ruiz Cameron
- Catherine Fisk
- Fredric R. Horowitz
- Barry Winograd
- Louis Meisinger
- Greg Derin
- Carol Wittenberg
- Carlos Moreno
- Douglas Collins
- Richard I. Bloch
- Kenneth Perea
- Fred Kuperberg
- Michael Prihar

##### **NEW YORK:**

- Howard Edelman

- Susan McKenzie
- Joan Parker
- Janet Spencer
- Martin Scheinman
- Erica Garay
- Carol Wittenberg
- Carlos Moreno
- Marlene Gold
- Daniel Brent
- Michael D. Young

2. The Los Angeles Authorized List shall apply if the Writers Guild of America, West, Inc. (“WGAW”) or a WGAW-represented Writer is a party to the arbitration. The New York Authorized List shall apply if the Writers Guild of America, East, Inc. (“WGAE”) or a WGAE-represented Writer is a party to the arbitration. Where both the WGAW and WGAE (or both WGAW- and WGAE-represented Writers) are parties to the arbitration, the parties shall attempt in good faith to agree mutually which Authorized List applies, and if the parties cannot mutually agree, the Los Angeles Authorized List shall apply.
3. Only an Arbitrator from the Authorized List shall have authority to adjudicate a Claim or Counterclaim or any issue arising in connection therewith, unless the parties mutually agree on an alternate arbitrator.
4. The parties may mutually agree to modify the Authorized Lists during the term of the Agreement.

**B. ARBITRATOR SELECTION**

1. The parties shall select the Arbitrator from the applicable Authorized List within ten (10) business days of service of the Claim on the respondent. In the event the parties cannot mutually agree upon an Arbitrator from the Authorized List, the parties shall alternate in striking a name from the Authorized List until one (1) arbitrator’s name remains (“Strike Process”). The Arbitrator whose name remains shall be the Arbitrator. The complainant shall make the first strike. In the event that one of the parties fails to participate in the Strike Process, or fails to strike in order or timely, the other party may unilaterally select the Arbitrator.
2. The parties may agree in writing to extend the time period to select the Arbitrator. The extension will no longer be deemed effective if either party gives written notice to the other, in which case the parties shall select an arbitrator within ten (10) business days of service of the notice.

## **SECTION 5 - HEARING**

- A. If the WGAW or a WGAW-represented Writer is a party to the arbitration, the hearing shall be held in Los Angeles. If the WGAE or a WGAE-represented Writer is a party to the arbitration, the hearing shall be held in New York City. Where both the WGAW and WGAE (or both WGAW- and WGAE-represented Writers) are parties to the arbitration, the parties shall mutually decide whether the hearing will be held in Los Angeles or New York City.
- B. After consulting with the parties as to their availability, the Arbitrator shall order a hearing on the Claim and, if applicable, the Counterclaim. Absent extenuating circumstances, the hearing shall commence within 90 days of the selection of the arbitrator and shall conclude within 60 days after the first day of hearing.
- C. The Arbitrator shall have the authority to issue subpoenas to compel the attendance of witnesses and/or the production of documents. Subpoenas *duces tecum* may be made returnable on a specified date (no less than 20 days after service of the subpoena) before the arbitration hearing. Upon good cause shown, the Arbitrator shall have discretion to permit other pre-hearing discovery, including the taking of oral depositions.
- D. At the hearing, each party shall have the right to present any evidence that is relevant and material to the Claim or Counterclaim. The parties shall have the right to submit post-hearing briefs.
- E. The complainant has the burden of proving its Claim by a preponderance of the evidence. The respondent has the burden of proving its Counterclaim by a preponderance of the evidence.

## **SECTION 6 - DECISION**

- A. The Arbitrator shall be expected to render a written decision within 30 days of the conclusion of the hearing.
- B. The Arbitrator shall not have the jurisdiction or the authority to add to, subtract from, or alter in any way the Agreement, Rider W, or these Rules.
- C. The Arbitrator's award shall be final and binding on the parties, except as provided in Section 5.C. of the Agreement.

## **SECTION 7 - ARBITRATION COSTS**

The costs of the arbitration, including the arbitrator's fee and court reporter's fee, shall be equally split among the parties, unless the Arbitrator's award specifies otherwise.

## **SECTION 8 - LAW GOVERNING THE ARBITRATION**

- A. An arbitration governed by these Rules shall be subject to the laws of the state in which the arbitration hearing is held, unless otherwise provided in the Agreement or Rider W.
- B. Arbitrations subject to the laws of the State of California shall be held pursuant to Section 1700.45 of the California Labor Code. Accordingly, the complainant shall give reasonable written notice to the California Labor Commissioner of the time and

place of the arbitration hearing, and the Labor Commissioner or his or her authorized representative has the right to attend the arbitration hearing. Section 1700.44 of the California Labor Code. shall not govern arbitrations subject to these Rules.

#### **SECTION 9 - SERVICE**

- A. A Claim or Counterclaim must be served by certified mail or by personal delivery. All other notices or papers shall be served by email.
- B. A petition to confirm, modify, or vacate an arbitration award in any court of competent jurisdiction shall be served upon the respondent by certified mail or personal delivery.

#### **SECTION 10 – CHOICE OF REPRESENTATIVE**

For the avoidance of doubt, the parties recognize that Agent may designate the representative of its choosing in connection with any proceeding arising under the Rules.