

# Key Provisions in a Talent Agency Agreement

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In the entertainment industry, it is fundamental for a talent to engage a competent talent agency. Many stars (or more likely, talent agents) would argue that success would never have happened if it was not for the relentless dedication and skill of the talent agent. If that talent agent is good with contracts, the talent is at an even greater advantage. In fact, Clint Eastwood, a man who needs no introduction, once said that his career took a very positive turn once he engaged a lawyer as his talent agent. This is because contracts and general pesky legalities such as permits and licenses are often at the heart of what makes a deal successful. You can spend all the time in the world discussing inspiring concepts and reading mesmerising scripts. However, if your distribution deal is too one-sided, or your endorsement contract includes an exclusivity arrangement the agent did not notice, things could get messy for the talent.

What is equally important is ensuring that, at the outset, both the talent and their agent understand their respective obligations. This way, both parties will have a more seamless relationship moving forwards. To assist you in ticking that box, we have compiled a list of the key provisions that should be present in every Talent Agency Agreement.

## Scope of representation

A talent (as they usually are) may be talented at more than one skill. For example, Lady Gaga is a talented singer, songwriter, performer and actress. On that basis, it is important for the Talent Agency Agreement to identify which talents the agent is responsible for promoting and finding work to showcase. The Agreement should also specify whether the agent is that talent's exclusive or non-exclusive agent and in what region / territory. That way, if there is any overlap in representation for that talent with another agent, the Agreement can clear up any confusion.

## Agent / Agency obligations

Depending on which side you're on, the agent should be required to take active (or reasonable) steps to:

- promote the talent and his / her services. For this to work effectively, the talent should also provide a broad right to the agent to exploit the talent's "image rights". That is, to use the talent's image and / or voice to promote him / her – which may also include sublicensing those rights to a third party.
- attempt to seek out and obtain work on behalf of the talent that is compatible with the services the talent is able to provide
- where relevant, arrange and organise castings and auditions, and provide the talent with all necessary instructions and logistical information in order to attend those castings and auditions

It is optional for the agent to be responsible for obtaining any licenses, permits or insurances on behalf of the talent that are necessary for the talent to undertake the contracted work.

The Agreement should also cover the extent to which the agent has control over the talent's business affairs. Does the agent act as the talent's power of attorney, can the agent execute documents on the talent's behalf? If so, what kind of documents? For example, does the agent only have representative control over documents specifically related to performances, endorsements, sponsorships and distribution, or can they execute any legal documents the talent is required to execute in his or her personal and / or professional life on behalf of the talent?

## **Originality of works**

The fact that works developed or provided by the talent are original is very important from both a legal and professional / reputational standpoint. The last thing an agent or a talent wants is an accusation that the talent's work is ripping off another artist's! This could have dire consequences and result in a lengthy and expensive legal battle.

For this reason, the agent should protect itself by ensuring there is a provision in the contract that the talent and the services the talent provides will not violate, misappropriate or infringe any right of publicity, right of privacy, copyright, trademark, patent or other proprietary right arising under the laws of any jurisdiction of any person or entity, and the talent should not misrepresent itself or the services it provides.

To go one step further, the talent could be required to indemnify the agency for breaches of this provision.

## **Reputational damage**

In the entertainment industry, as Taylor Swift pointed out, reputation is especially important. How you are perceived by the public majorly influences your success – including who will buy your work and who will work with you.

In exchange for the obligation on the agent to promote the talent's services and display the talent in the best (spot)light possible, the talent should acknowledge that it is representing the agent and will therefore not do anything to cause reputational damage to the agent.

This includes that the talent will not make any defamatory statement relating to the agent in public, on social media, to the press or elsewhere (which can sometimes happen in the event of a dispute).

In addition, to protect the talent, and all the juicy deals he or she has recently signed, the Agreement should contain confidentiality protections including that information that is by its nature confidential must not be disclosed by the agent to any third party.

## **Clauses Relating to Fee Payment:**

Two primary aspects need to be considered in relation to fees:

- the amount of commission that the agent expects to keep from each job
- any other fees the agent is able to be reimbursed for
- clauses that cover what happens in the event the third party who pays the agency asks for its money back (especially due to being disappointed by the talent's work). This includes when the talent cancels and when the third party cancels. To make it easy for everyone, the Agreement could contain a standard clause that the talent agrees to comply with any reasonable request made by the agent on behalf of the third party client for the talent to refund the fees (or any part of the fees) to the agent.

In most cases, the agent will collect payments from the third party client (ie the entity who has engaged or sponsored the talent) and will retain the agreed commission. The agency will pay the fee to the talent.

Commonly, the agent is also permitted to retain the following:

- reasonable costs incurred by the Agency in creating promotional material relating to the talent, such as photography, filming, film editing, printing and administration costs;
- reasonable costs incurred by the Agency arising from the inclusion of the talent on third party promotional databases relevant to the talent's profession;
- reasonable legal costs incurred by the Agency arising from any complaint or actual or threatened litigation against the Agency directly or indirectly caused by the acts or omissions of the talent.

## Governing law

Governing law is a critical clause in a Talent Agency Agreement because of possible implications under Federal Law No. 5 of 1985 (the "Civil Code"), which could include a party being required to provide compensation for breaches of or a termination of the Agreement. Due to UAE law requirements around agency such as those set out in the Civil Code, foreign law could be considered as the governing law, as could a law of free zone such as the Dubai International Financial Centre, or an international arbitration. Both parties should take care to seek appropriate legal advice when considering which governing law is applicable in the Agreement.

## Other standard clauses

Along with standard indemnities and warranties, and a liability cap, given the current climate, the Agreement should have a force majeure clause that excuses a party's liability for events that occur due to the COVID-19 pandemic or any other event that occurs outside the reasonable control of a party.

## Conclusion

Executing a Talent Agency Agreement is the first step to kicking off a talented artist's career. However, if the fundamentals are not thoroughly negotiated and properly drafted into the Agreement, the relationship between the talent and the agency could turn sour. It is for this reason that both parties should take the time to properly think through key issues at the outset so they can go on to focus on more important things – like getting the talent into the spotlight!

***For further information, please contact [Charlotte Sutcliffe](#) or [Willem Steenkamp](#).***