

# THE SWETKY LITERARY AGENCY

## LITERARY AGENCY AGREEMENT

<http://www.swetkyagency.com>

Faye M. Swetky, Representative/Owner: [fayeswetky@amsaw.org](mailto:fayeswetky@amsaw.org)

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AGREEMENT ("Agreement"), dated 10/14/2017, defines the relationship between literary agent, The Swetky Literary Agency, 929 W. Sunset Blvd #21-285, St. George, UT 84770, 719-859-2211 / 435-579-5000 FAX, [swetkyagency@amsaw.org](mailto:swetkyagency@amsaw.org) ("Literary Agent"), and author/creator/developer \_\_\_\_\_ ("Author").

### 1. LITERARY AGENCY REPRESENTS AUTHOR

For the term of this agreement, Author hereby retains Literary Agent:

(a) To represent Author for the sale of all Author's works ("Represented Works"), written or to be written by Author and not covered by a prior un-agented sale or prior agency agreement, including: (1) all book-length fiction and/or nonfiction; (2) all full-length feature screenplays and/or full-length or series-length television scripts; and (3) any other writings that Author and Literary Agent may agree upon and specifically stipulate in writing, unless the agency deems the property to be unmarketable in its presented form and so notifies author of that fact via e-mail within thirty (30) days of submission to Agent. Author hereby agrees to make available to Literary Agent all above mentioned works for consideration for representation.

(b) To negotiate sales ("Represented Sales") of (1) Represented Works in the U.S., its territories, and Canada ("Domestic Sales"), if applicable, (2) Represented Works in non-domestic markets ("Foreign Sales"), and (3) derivative or secondary rights in the Represented Works (such as film, TV, recording, or other dramatic media) anywhere in the world ("Subsidiary Sales").

(c) To receive payments and royalties from all Represented Sales in perpetuity from all properties sold during the period during which the contract between Literary Agent and Author remains in force.

Author attests that during the term of this Contract Author will employ no other literary agent to represent Author and/or Author's Represented Works, and that Literary Agent has exclusive representation rights to all appropriate works as indicated above. If one or more of Author's book-length and/or full-length materials are to be EXCLUDED from this contract because they are covered by a prior agreement with another agency or have been self-published by Author, Author must list only those titles to be excluded here:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_

### 2. CONTRACTS

Literary Agent shall use best efforts to promote Author's Represented Works. No proposed Represented Sale shall be binding unless approved by Author in a signed contract ("Represented Contract"). Author may, in writing, authorize Literary Agent to sign contracts on his or her behalf.

### 3. AGENT'S COMMISSION

Literary Agent shall be entitled to a commission ("Agent's Commission") equal to fifteen (15) percent of all Domestic Sales, twenty (20) percent of all Subsidiary Sales, twenty (20) percent of all Foreign Sales, and twenty (20) percent of all Film and Television Sales. The Agent's Commission will pertain to all Represented Sales sold by

## THE SWETKY AGENCY AGREEMENT

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Literary Agent, Author, Publisher, and/or Producer/Director throughout the duration of this Agreement.

### 4. SUBSIDIARY RIGHTS

Subject to its goals, Literary Agent may engage any subsidiary or co-agent whom Literary Agent believes best represents Author in Foreign Sales and Film and Television Sales. In such case, Agent's Commission for such Represented Sales will be ten (10) percent and co-agent's commission shall be no greater than ten (10) percent.

### 5. EXPENSES BORNE BY LITERARY AGENT

From Literary Agent's Commission, Literary Agent shall pay (a) all subsidiary or split commissions required by foreign or subsidiary agents (as per Paragraph 4), and (b) such other costs including, but not limited to, telephone calls, postage expenses, shipping costs, shipping insurance expenses, printing and photocopying costs, and any other "normal" costs of conducting business as a Literary Agent. Literary Agent shall not be reimbursed for such normal costs of conducting business and need not account for them to Author. Any costs above and beyond normal costs of conducting business shall be approved in writing by both Author and Literary Agent. Literary Agent shall be reimbursed by Author for any specific expenses incurred only if agreed to in writing.

### 6. DISBURSEMENTS

On behalf of Author, Literary Agent shall collect all payments due Author under any Represented Contract ("Author's Payments") and shall, within thirty (30) days of the funds clearing, disburse the amount of such Author's Payments to Author, less any Agent's Commission and less any mutually approved expense charges.

### 7. STATEMENTS

By February 1 of each year, Literary Agent shall issue Author an annual statement showing all Author's Payments for the previous calendar year, if applicable, in the form of a 1099-MISC Royalty form in keeping with IRS requirements.

### 8. NOTICES

Literary Agent and Author shall promptly send each other copies of (a) any legal notice under any Represented Contract, (b) any important communication from any publisher under any Represented Contract, and any material correspondence.

### 9. TERM

This contract shall remain in force for a minimum of twelve (12) months from the date of acknowledgement of receipt of any and all acceptable professionally edited and formatted manuscripts and shall be automatically renewed indefinitely following that period of time, subject to the following: this contract may be terminated voluntarily for any reason with the agreement of both parties after twelve (12) months with thirty (30) days prior written notice to one another, without cause, sent via the following:

(a) via certified mail, return receipt requested, to the addresses below:

If to Literary Agent, at The Swetky Agency, 929 W. Sunset Blvd #21-285, St. George, UT 84770

If to Author, at author's address or at such address as either party may designate in writing to the other, or

(b) via E-mail. If via E-mail, notification shall be judged complete when recipient of terminating E-mail opens and responds to E-mail, acknowledging E-mail receipt and acceptance of termination by reply. Following

## THE SWETKY AGENCY AGREEMENT

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termination, Literary Agent shall continue to administer Represented Contracts in force and retain Agent's Commission on those Represented Contracts. Literary Agent may make no further sales of any Represented Works following the 30-day notification period but will be the agent of record should any Represented Works be sold prior to the expiration of said contracted period.

### 10. CONTACTS

Mail sent to Author in care of Literary Agent may be opened by the Literary Agent and dealt with, unless it is apparently of a personal nature, in which case Literary Agent shall forward it to the Author promptly. When Author is approached directly by any party interested in Author's Represented Works, Author shall inform Literary Agent immediately and refer the party to Literary Agent.

### 11. AUTHORITY

Author represents that, other than interests, rights, and powers assigned by Author to Literary Agent in this Agreement, Author retains copyright and has complete control over Represented Works. Author warrants that he/she has obtained all necessary rights and permissions for materials included in Represented Works and agrees to indemnify and hold Literary Agent harmless on matters related herein.

### 12. INTELLECTUAL PROPERTY

All ownership of the Represented Works shall remain solely with Author.

### 13. APPLICABLE LAWS

The terms of this Agreement shall be interpreted according to the laws of the State of Utah, USA. This contract may be changed only by written agreement between parties.

### 14. SEVERABILITY

If any provision of this Agreement is held unenforceable, then such provision shall be modified to reflect the parties' intentions. All remaining provisions of this Agreement shall remain in full force and effect.

### 15. RESOLUTION OF DISPUTES

In the event of contractual dispute, both Author and Literary Agent agree to submit to resolution by a mutually acceptable neutral licensed mediator. In the event that litigation is ultimately pursued relating to the subject matter of this Agreement, the non-prevailing party shall reimburse the prevailing party for all reasonable attorney's fees and costs.

### 16. NON-WAIVER

The failure by one party to require performance of any provision shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any breach, default, or of the provision itself.

### 17. AMENDMENT

This document contains the entire agreement between the parties hereto. It supersedes any prior agreement and may be amended in writing only by mutual consent.

This Agreement may not be assigned by either party without the written consent of the other.

**THE SWETKY AGENCY AGREEMENT**

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In the event that Literary Agent dies, leaves the agency business, or commits a substantial breach of this Agreement, Author or his heirs and assigns may revoke all rights granted to Literary Agent hereunder.

IN WITNESS WHEREOF, the parties have executed Agreement as of the day and year below.

**THE SWETKY AGENCY**

By (Signature) \_\_\_\_\_

Date \_\_\_\_\_

Printed Name: **Faye M. Swetky, Representative/Owner**

**AUTHOR**

By (Signature) \_\_\_\_\_

Date \_\_\_\_\_

Printed Name: \_\_\_\_\_

Author's Social Security Number or Legal Equivalent: \_\_\_\_\_

Author's Citizenship: \_\_\_\_\_