

OPTION AGREEMENT

Date

Name

Re: (Project) \_\_\_\_\_

Dear Sirs,

This letter shall confirm the terms and conditions of the agreement between \_\_\_\_\_ the "Producer"), and \_\_\_\_\_ (the "Seller") with respect to the original screenplay commissioned by Seller and currently entitled "\_\_\_\_\_" (which together with the title, themes, contests, plot, plot structure, characters, including but not limited to the content of all previous drafts or previous revisions, whether or not currently included in the current draft or revision of the original screenplay, and all other versions and derivations thereof, is herein called the "Property").

**RECITALS**

- A. WHEREAS, Seller commissioned Property as a work for Hire;
- B. WHEREAS, Seller has secured a valid written contract to commission and control the Property in its entirety, and has timely and legally exercised all options under the agreement, and by the Terms, said Agreement is assignable by the Seller;
- C. WHEREAS the Producer desires to acquire all of the interests of the Seller in the Property, including the worldwide copyright thereto;
- D. WHEREAS each party to the agreement agrees, stipulate and warrant to all other parties that the above recitals are true and correct;

In exchange of the mutual promises exchanged herein, the validity and sufficiency of which is hereby stipulated, the parties therefore agree as follows:

**1.Option**

A) Seller hereby grants the Producer the exclusive and irrevocable Option (the "Option") to purchase all rights, title, interest in and to, and ownership of the Property, free and clear from any other third party claims and hindrances, including the worldwide copyright thereof, including all renewals and extensions of copyright in any country or territory of the world. Said right shall include but shall not be limited to all motion picture, television and customary allied and ancillary rights throughout the world in the Property, said rights which are more particularly described in paragraph (5) (A) below.

B) The period during which the option may be exercised (the "Option Period") shall commence on the complete execution of the document by all parties and shall expire 180 days from said date.

C) The Option shall be exercised, if at all, by written Notice from Producer to Seller at any time on or before the expiration of the Option period, as it may be extended and negotiated in good faith between Producer, and Seller.

## **2. Purchase Price**

The purchase price for the complete worldwide copyright to the Property including all renewals and extensions thereof in any country or territory in the World, including but not limited to all motion picture, television, allied and ancillary right in and to the property shall be the sum of THREE HUNDRED AND SEVENTY FIVE THOUSAND (\$ 375,000 USD) and shall be paid to Seller within thirty (30) calendar days of the exercising this option as stated in item "1C" above.

## **3. Net profits**

Producer agrees to pay Seller an amount equal to five percent (5%) of one hundred percent (100%) of Producer's net profits (as the term is commonly used in the motion picture industry), if any, derived from the film. Net profits shall be defined, computed, accounted for and paid to Seller pursuant to Producer's standard net profit definition, which definition shall be subject to good faith negotiation within the parameters of those and conditions customarily accorded persons of Seller's stature in the motion picture industry.

## **4. Credit and Fees**

Seller will receive a single card, opening credits, "Executive Producer" to be afforded \_\_\_\_\_ and "Producer" to be afforded \_\_\_\_\_. \_\_\_\_\_ shall receive an Executive Producer fee of THREE HUNDRED AND TWENTY FIVE THOUSAND (\$325,000 USD) and \_\_\_\_\_ shall receive a Producer fee of THREE HUNDRED THOUSAND (\$300,000 USD) to be paid during the normal course of production along with all other producers.

## **5. Rights**

A) On payment of the purchase price, any all copyrights or other rights owned or controlled by Seller in the Property shall be sold assigned and transferred to Producer. Thereafter Seller agrees that Producer shall be the sole and exclusive owner of all of the rights contained in the Property, all motion picture, television and allied rights in and to the Property, including, without limitation, the copyrights and all other rights to all characters and character names as portrayed in the

Property, all theatrical motion picture, television motion picture, television series, theatrical and television sequels and remakes, stage, radio, amusement park rides, comic books, CD ROM, microfilm, microfiche, or any other data base retrieval system now known or hereafter devised, all merchandising rights, music, soundtrack & music publishing rights, videocassette, video disc and promotional and advertising rights, in all languages, in all media now known or hereafter devised, throughout the universe and right to create derivative works of the Property in any and all media, now known or later developed, and all other subsidiary and allied rights, without exception, and shall have the exclusive right, in perpetuity, to distribute and otherwise deal with the picture, including marketing rights, worldwide in any form and in any and all media by which sight and sound may be reproduced, the method of which is now known, or developed in the future.

B) Notwithstanding the above, Seller will be entitled to, and Producer agrees to pay, additional rights payments for theatrical remakes and sequels, television movies-of-the-week, mini-series or series (as these terms are commonly understood in the motion picture industry, according to the schedule here below. Seller will be solely responsible for any additional rights payments due Writer per WGA guidelines:

- (i) for a theatrical remake, one-third (1/3) of the purchase price as computed under paragraph 2 above and one-third (1/3) of the percentage points of net profits as computed under paragraph 3 above;
- (ii) for a theatrical sequel, one-half (1/2) of the purchase price as computed under paragraph 2 above and one-half (1/2) of the percentage points of net profits as computed under paragraph 3 above.;
- (iii) for a television movie of the week or mini-series, five thousand dollars (\$5,000) per hour, with a ceiling of Fifty Thousand Dollars (\$50,000);
- (iv) for prime-time network television series,
  - (a) per episode having a duration of one half-hour or less, One Thousand Two Hundred Fifty Dollars (\$1250),
  - (b) per episode having a duration of more than one half-hour but no more than one hour, One Thousand Seven Hundred Fifty Dollars (\$1750),
  - (c) per episode having a duration of more than one hour, Two Thousand Dollars (\$2,000)
- (v) for a television series either off-network or out of prime-time, or for programs produced for first-run syndication, or pay television, one half (1/2) of sums defined in paragraph 5 (iv) above.

## **6. Warranties**

A) Seller represents, warrants and agrees as follows:

(i) Seller has the full right, power and legal authority, and required assignment documentation to enter into this agreement and fully and freely grant each and all of the rights herein granted;

(ii) The Property and Seller's contributions to the Property are and shall be original with Seller in all respects and no incident therein or part thereof has been or shall be taken from or based upon any other literary, dramatic or musical work, motion picture or television program;

(iii) The full use and exploitation of Property and screenplay will not in any way infringe upon or violate any right of any nature whatsoever of any third party including, without limitation, copyrights, trademarks, trade names, the right of privacy, the right of publicity and the right to be free from defamation;

(iv) No motion picture, television, radio dramatic or other version of the Property and/or screenplay has heretofore been made, produced or performed;

(v) The Property and screenplay are not in the public domain in any country in the world which provides for copyright or similar protection;

(vi) There is no claim, litigation or other proceeding threatened pending or outstanding by any person, entity, firm or corporation which might in any way prejudice any of the rights granted or to be granted hereunder; and

(vii) Seller has not assigned, licensed, hypothecated or encumbered in any manner any of the rights granted or to be granted hereunder and shall not do so during option period or, if the option is exercised thereafter.

B) Seller shall defend, indemnify and hold Producer and Producer's successor's, licensees and assigns harmless from any loss, cost, damage, liability or expense (including attorney's fees) arising out of or in connection with any third party claim inconsistent with Seller or Writer's representations and warranties herein or any breach by Seller of its respective representations, warranties and agreements herein.

C) Producer shall defend, indemnify and hold Seller harmless from any loss, cost, damage, liability or expense (including reasonable attorney's fees) arising out of or in connection with any material added to the property and/or screenplay by Producer or by any third party at Producer's direction.

## **7. Reversion**

If the option is not exercised by the end of the option period, unless extended by the agreement of the parties, all rights in and to the property revert back to Seller, subject to a lien to secure to Producer its right to be reimbursed for all of its payments applicable to the purchase price made to Seller, together with interest thereon calculated at one point over \_\_\_\_\_ prime from date of payment, if and when the property is set up elsewhere for production, payable on the first day of principle photography.

## **8. Assignment**

Producer may freely assign and transfer this agreement or all or any part of its parts hereunder to any person, firm or corporation, without limitation. This agreement shall be binding upon and inure to the benefit of the parties hereto and their successors, representatives and assigns forever. In the event that such an assignment by Producer is to a major or mini-major motion picture studio, as those terms are customarily understood in the motion picture business, Seller agrees that Producer shall be relieved of all of its obligations to Seller hereunder to the extent they are assumed by the assignee or transferee. While Seller may assign his right to receive any revenues due hereunder, he may not delegate or assign any duties hereunder without prior written consent of Producer.

## **9. Relief**

Seller agrees that in the event of a breach of this agreement by Producer, the damage, if any, caused Seller thereby is not irreparable or sufficient to entitle Seller to injunctive or any other equitable relief, plus Seller agrees that Seller and rights and remedies shall be limited to an action at law. In the event of any breach claimed by any party hereto, said breach shall not be actionable nor any suit filed unless written notice of the breach is given to the party claimed to be in breach, by certified mail or any other method of delivery requiring proof of signature, and not including notice by fax or e-mail, and the party claimed to be in breach has failed to remedy or cure said breach within 30 days of actual receipt of said notice.

## **10. General**

A) The balance of terms, if any, shall be Producer's terms and conditions, subject to mutually agreed changes based upon good faith negotiation between Producer, and Seller.

B) This agreement shall be governed by and subject to the laws of the State of California. The Parties stipulate that in the event of any dispute regarding this agreement that venue and jurisdiction shall be with The American Arbitration Association in California, who will arbitrate any dispute arising over this agreement as is appropriate with regards to the nature of the dispute.

C) The rights and remedies of the parties as specified by this agreement are not to the exclusion of each other or of any other rights or remedies of the parties. Either party may decline to exercise one or more of its rights and remedies as it may deem appropriate without jeopardizing any other of its rights or remedies, and all of each party's rights and remedies shall survive the expiration of the term of this agreement.

D) The invalidity or unenforceability of any provision of this agreement shall not affect the enforceability of any other provision. This agreement contains the entire

understanding of the parties to the agreement. No other oral or written agreement, unless expressly referred to herein are of any force or effect. No change or modification of this agreement shall be binding unless in writing and signed by the party against whom enforcement is sought. A waiver by any party any provision of this agreement in any instance shall not be deemed a waiver of that provision in the future. All remedies rights, undertakings and obligations contained in this agreement shall be cumulative and none of them shall limit any other remedy, right or undertaking.

E) Writer understands and recognizes that the motion picture business is a speculative business and that success cannot be guaranteed. Seller agrees that the judgement of Producer, its successors and assigns with respect to matters affecting the production, filming, distribution, exhibition, sale and exploitation of the Property shall be binding upon. Nothing in this agreement shall obligate Producer to make, sell, license or distribute works produced or derived from the Property except as otherwise provided herein

F) Should it be necessary for any party to retain an attorney to enforce the terms of this agreement, the prevailing party in any litigation arising out of this agreement shall be entitled to recover it's costs including a reasonable attorney's fee from the losing party.

G) The headings contained herein are intended for convenience only and shall not be of any effect in construing the terms of this agreement. This agreement shall not be binding until it's full execution by all parties to the agreement.

H) Notice shall be deemed given and received by Seller by sending the notice by U.S. certified mail or any other method of delivery requiring proof of signature, to Seller at the following address: \_\_\_\_\_.

Notice shall be deemed given and received by Producer by sending the notice U.S. certified mail or any other method of delivery requiring proof of signature to Producer at the following address:\_\_\_\_\_.

I) This agreement shall not be effective until it's full execution by all parties hereto. Seller agrees to execute at Producer's request any and all additional documents or instruments, including but not limited to copyright assignments, and to do any and all things necessary or desirable to effectuate the purposes of this agreement. If Seller fails to do anything necessary or desirable to effectuate the purposes of this agreement, Seller hereby appoints Producer as their lawful attorney in fact, with the right, but not the obligation, to do any such things in Seller name or behalf, but for Producer's benefit, which said appointment shall be coupled with an interest.

J) In the event of any fire, flood, earthquake, or public disaster, strike, labor dispute or unrest, any act of God, any act of any foreign state, terrorist attack or any other act beyond Producer's control which would excuse, hamper or delay Producer's

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performance as a matter of law, then the option period provided herein shall be extended during the period of such delay or prevention.

K) By signing each party indicates that it has had the right to have this agreement reviewed by and independent counsel of their own choosing or has voluntarily waived the right do so.

Please indicate your understanding and acceptance of the fore-going terms and conditions by your signature below.

AGREED AND ACCEPTED:

(“Producer”)

\_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_, Its President

(“Seller”)

\_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_, Its President