

LITERARY MANAGEMENT AGREEMENT DRAFT

AGREEMENT made as of the ____ day of _____ 2010, by and between _____, a corporation, whose address is (hereinafter called “Manager”) and _____ (hereinafter called “Writer”), whose address is _____, with respect to an animated screenplay presently entitled “Property” (hereinafter called the “Property”).

WITNESSETH:

WHEREAS, Writer wishes to obtain advice, guidance, counsel and direction in the sale and disposition of the Property and;

WHEREAS, Manager, by reason of Manager’s contacts, experience and background is qualified to render such advice, guidance, counsel and direction to Writer;

NOW, THEREFORE, in consideration of the terms, conditions, covenants and provisions herein as well as the mutual promises herein and other good and valuable consideration, it is agreed and understood as follows:

1. AUTHOR. Writer is the sole proprietor of a certain story presently entitled “Property” which was created and written by Author, who is the legal author (“Author”) of the Property.

2. WRITER’S REPRESENTATIONS. Writer represents to Manager that: (i) Writer has the right to enter into this Agreement; (ii) Writer has not heretofore made nor will hereafter make any commitment in conflict with the terms of this Agreement; (iii) the Property is not subject to any prior agreement which may interfere with a publisher’s or studio’s copyright interest, and (iv) the Property has not been previously published in book or film form.

3. ENGAGEMENT. Writer hereby engages Manager to provide managerial services to Writer as Writer’s sole and exclusive representative with respect to literary sale, option, publishing agreement and/or a production of Property in the United States of America and anywhere in the world. Said authority shall include and be limited to publication, serialization, syndication, condensation, audio, book club, graphic novels, television, motion picture, documentary rights, electronic rights of every kind, either presently existing or that come into existence during the term of this Agreement, internet rights and magazine rights during the full terms of Author’s copyright and all reprints thereof, which sale, option, publishing agreement and/or production agreement shall be subject to Writer’s sole discretionary right of approval.

Comment [GLM1]: Anywhere in the world?? Is this right?

4. NON-EXCLUSIVE. Writer recognizes that Manager is in the literary management and editorial development and motion picture and television production

business generally. Manager shall have the right to render services to others, even though their properties may be competitive with Writer's, except that Manager shall, at its discretion, have the absolute right to represent properties that may be competitive or are of a similar genre or that contain themes that may be construed as similar to Property.

5. **MANAGEMENT SERVICES.** Manager accepts this engagement, and undertakes to advise and consult with Writer, and to exert best efforts on Writer's behalf to negotiate to final agreement a sale, option, publishing agreement and/or production agreement of rights in the Property, including, without limitation, (i) editorial oversight in connection with the services to be provided to Writer under paragraph 10 hereof, (ii) rendering the Property marketable in accordance with standards and practices within the motion picture industry, and (iii) subsequent presentation of the Property within the motion picture and publishing industries, in order that the Property may be developed into a motion picture through private investment or by a studio/ production company or into a literary work. Writer retains the absolute and discretionary right to agree to any deal offered to Writer via Manager on behalf of a third party.

The preferred disposition of the Property shall be through private investment or through execution of a movie production or distribution agreement. To that end, Manager shall use its best efforts to obtain the commitment of a major US Hollywood or Independent film production studio ("Studio") to distribute with respect to the Property.

Manager shall provide Writer with updates at least every two weeks as to Manager's efforts under this Agreement.

6. **TERM.** This Agreement shall commence upon the date set forth above and shall continue for a period of one year from that date (the "Term"). Thereafter, this Agreement shall continue in effect on a month to month basis, provided that either party may terminate this Agreement after expiration of the Term upon written notice to the other in accordance with the provisions of paragraph 15 hereof. No such notice may be given prior to twelve (12) months from the date of this Agreement. Notwithstanding the foregoing, if, at that date, good faith negotiations with a buyer(s) is/(are) in progress, then Manager's engagement with respect to the Property may be terminated only in the event such negotiations are concluded without the sale or disposition of the Property within in nine (9) months after notice of termination.

In the event Writer rejects any offer from a buyer for the Property, and if for the two year period occurring immediately after such rejection or termination, Writer should enter into an agreement with such buyer for the Property, then the Manager shall be entitled to its compensation as set forth herein.

7. **FEE FOR SERVICES.** In consideration of this Agreement and as compensation for the management services described herein, Writer agrees to pay a commission to Manager and Writer hereby assigns to Manager (which assignment is intended, during the term of this Agreement, to be an irrevocable assignment coupled with an interest) a sum equal to Fifteen Percent (15%) of all such monies generated by the domestic,

Twenty-Five Percent (25%) by the foreign, publishing of the Property during the Term. Notwithstanding the foregoing, monies received after expiration of the Term from the sale of the Property sold during the Term shall be subject to the provisions of this paragraph 7.

Comment [GLM2]: Rich/Joe – where does this percentage come from? Does this come off the top, or is it a percentage of the producer's share of total revenue?

If this Agreement is terminated for breach or according to its terms without sale, option, publishing agreement and/or production agreement with respect to the Property, the assignment of interest shall automatically be revoked by operation of law retroactive to the date of this Agreement, and Manager shall have no further right, title or interest in and to the Property.

Manager shall have no right to sell, divest, assign for the benefit of creditors or otherwise encumber the Property.

This Agreement shall be binding on any person taking title to the Property from Writer because of gift, bequest, death or other form of transfer other than the sale and disposition of the Property to an unrelated third party in an arm's length transaction.

If, during the Term hereof, Writer shall elect to employ any agent, or other such person to assist Writer in the sale or other disposition of the Property, Writer shall, in good faith, consult with Manager in such selection. In no event shall any amount paid or payable to any such person in any way reduce the amount due Manager under this Agreement.

Notwithstanding anything to the contrary contained herein, in the event Writer obtains solely through its own efforts a production agreement with a US Studio, Manager's fee under this paragraph 7 shall be reduced to Five Percent (5%).

Except as specifically provided with respect to Writer's Lifeline in paragraph 12 below, all of Manager's normal costs and expenses associated with performing this Agreement shall be for its own account. The parties agree that all extraordinary out of pocket costs and expenses under this Agreement, such as any business trips to Florida or elsewhere that are necessary or are required by Writer, must be pre-paid by Writer.

8. **WARRANTIES & REPRESENTATIONS OF MANAGER.** Manager represents and warrants that it has the skill, judgment and capacity to render the services set forth herein.

Manager shall have no authority to contract with third parties without Writer's prior written approval. Writer shall indemnify Manager against any liability, loss, damage, cost or expense (including reasonable attorneys' fees) incurred by reason of a third-party claim arising from Writer's breach of this Agreement or Writer's negligent or intentionally wrongful conduct thereunder. Writer shall have no authority to contract with third parties on behalf of Manager. Manager shall indemnify Writer against any liability, loss, damage, cost or expense (including reasonable attorneys' fees) incurred by reason of a third-party claim arising from Manager's breach of this Agreement or Manager's negligent or intentionally wrongful conduct hereunder.

9. **MUTUAL COVENANT.** Writer and Manager hereby covenant and agree that during the term of this Agreement, neither of them shall do anything or enter into any agreement or commitment which may in any manner conflict, interfere with or breach the terms and conditions of this Agreement.

10. **ATTORNEYS FEES AND COSTS.** In the event legal action is required to enforce this agreement, the prevailing party shall be entitled to an award of costs and reasonable attorneys fees.

11. **PRODUCING AND FUNDING RIGHTS.** Writer shall share production rights and credit with Manager, as follows: _____. Writer will make best efforts to secure private equity funding for completion of the Property.

Alternatively, Writer and Manager may approach a US Studio that is acceptable to both parties under this Agreement, in which case the same producer credit and positions apply.

Manager may in its discretion negotiate separately between itself and any such US Studio it introduces for Manager to share production fees, rights and credit under the auspices of the US Studio's production agreement with Writer, and Writer shall consent to such agreement, so long as it is consistent with the terms of this Agreement. In that event, Manager's rights to compensation shall be solely based on the separate agreement between it and Studio.

Under this Agreement, Manager and Writer have agreed to secure the credit of Co-Executive Producer, accompanied by the agreed upon co-executive producer's fee for _____. Final terms regarding production rights and credits shall be reserved for negotiations pursuant to a separate production agreement among Manager, Writer and any relevant US Studio.

12. **BREACH OF AGREEMENT AND CURE.** No breach of this Agreement by Manager or Writer shall be deemed to have occurred unless either Manager or Writer shall notify the other, in writing of the alleged breach, and the breaching party fails to remedy the breach by notifying the alleging party in writing within Fifteen (15) business days after receipt of such notice. If, after receipt of such notice of beach, either party alleges that a breach still exists, then the parties agree to submit the matter to mediation and arbitration in accordance with the provision of Paragraph 14 herein.

13. **ARBITRATION.** If a dispute arises out of or relates to this Agreement, or the breach thereof, and if said dispute cannot be settled through direct discussions, the parties agree to first endeavor to settle the dispute in an amicable manner by mediation in California under the Mediation Rules of the American Arbitration Association before resorting to arbitration. Thereafter, any unresolved controversy or claim arising out of or relating to this contract, or breach thereof, shall be settled by binding arbitration in California in accordance with the Commercial Arbitration Rules of the American

Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

14. NOTICES. Any notices that are required to be given hereunder, or that either Party may desire to give, shall be delivered by hand or sent by mail, air courier, messenger, facsimile, or prepaid telegram, or confirmed electronic facsimile addressed to Writer as follows:_____ . Either party may designate a different address by written notice so sent.

15. CHOICE OF LAW. This Agreement shall be governed by the jurisdictional and procedural laws of the State of California. For the purposes of jurisdiction, this Agreement shall be deemed created and entered in the State of California.

16. CAPTIONS. All section titles or captions contained in this Agreement are for convenience only and shall not be deemed a part of this Agreement.

17. TIME OF ESSENCE. Time shall be of the essence of this Agreement.

18. INVALID PROVISION. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and the Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

19. ASSIGNMENT. Neither party may assign this Agreement, in whole or in part, without the other's consent, to any person or other entity. Inasmuch as this Agreement requires personal services of both parties, any consent to assignment is completely discretionary and may be withheld for any reason.

20. ENTIRE AGREEMENT. This Agreement sets forth the entire agreement between Writer and Manager with respect to the subject matter hereof and cancels and supersedes as of the date hereof, any and all other understandings and agreements between Manager with respect to the Property. Any modification to this Agreement must be in writing, signed by both parties.

Whereas the parties hereto have executed this Agreement the day and year set forth above.

a Delaware corporation

By: _____
_____ Chairman

_____, LLC,
a New York LLC

By: _____
_____ COO