

SAMPLE
OPTION PURCHASE AGREEMENT

Dated as of _____

This confirms the agreement between _____ ("Producer") and _____ ("Author") with respect to the novel entitled " _____ " written by Author. That work, and the title, themes, stories and all other contents thereof, and the characters therein, and all translations, adaptations and other versions thereof now or hereafter owned by Author, whether now existing or hereafter created, are herein referred to collectively as the "Property".

A. Conditions Precedent: Producer's obligations hereunder are subject to its receipt, in form and pursuant to terms and conditions satisfactory to Producer, of _____ copies of all chain of title documents with respect to the Property including without limitation the executed Publisher's Releases further described in Paragraph 7.

1. Option: Author hereby grants to Producer an exclusive and irrevocable option to purchase all rights in the Property as set forth in Paragraph 4 hereof (the "Rights") upon and subject to the following terms and conditions:

(a) Option Period: The initial option period ("Initial Period") shall commence on the date hereof and shall continue for a period of ___ months following the date of receipt by Producer of this Agreement signed by Author ("Execution Date") as indicated below and may be extended by Producer for an additional period of ___ months ("Extension Period") consecutive to the Initial Period by written notice and the payment to Author of the sum provided in subparagraph (b)(ii) below at any time prior to expiration of the Initial Period. The Initial Period and Extension Period are hereafter referred to collectively as the "Option Period".

(b) Option Payments: Producer shall pay to Author the following sums in consideration of the option herein granted:

(i) For the Initial Period, \$ _____ ("Initial Payment"), payable promptly upon execution of this Agreement by the parties hereto.

(ii) For the Extension Period, if applicable, \$ _____ ("Extension Payment").

(c) Development Activities: During the Option Period, Producer may engage in customary development and preproduction activities with respect to motion pictures and/or other productions based on the Property. If in connection with such development or preproduction activities Author or another party is engaged by or on behalf of Producer to write revisions of the Property, all such revisions shall be and remain Producer's sole and exclusive property, whether or not Producer exercises the option hereunder; provided, however, that if Producer does not exercise said option, Producer's use (if any) of such revisions shall be subject to Author's rights in the Property.

(d) Automatic Extensions: The Initial Period shall be extended without notice for a period equal to the length of time which elapses, if any, between the Execution Date and the date on which the condition precedent is satisfied. The Initial Period and/or Extension Period, as applicable, shall be extended without notice for periods equal to the length of the time necessary to settle or otherwise resolve any third party claims arising during the Option Period which in Producer's reasonable good faith judgment would adversely affect Producer's acquisition and/or exercise of the Rights and of labor disputes and other force majeure events, which interfere with Producer's development and preproduction of the Property and for such additional time as is reasonably necessary for Producer to recommence its usual business operations. In the event that the Initial Period or Extension Period would otherwise expire on a Saturday, Sunday or national holiday, said period shall be extended without notice until the end of the next following business day.

2. Purchase Price/Exercise of Option: If Producer exercises its option, the above Initial Payment will apply toward the purchase price of the Rights which shall be a total of \$ _____ (the "Purchase Price").

The balance of the Purchase Price shall be paid upon exercise of the option. The option, if exercised, shall be exercised by written notice or by commencement of principal photography of the first feature-length motion picture based on the Property produced pursuant to the Rights (the "Picture").

3. Additional Payments/Participation: Author shall be entitled to the following additional payments subject to the conditions specified:

(a) Net Proceeds Participation: If the Picture is produced and released, a sum equal to ___% of 100% of the Net Proceeds of the Picture, defined, accounted for and paid in accordance with with Producer's standard definition thereof.

(b) Theatrical Sequels and Remakes: If a feature-length theatrical sequel or remake motion picture based on the Property is produced pursuant to the Rights, a sum equal to ___% of the previous theatrical motion picture's purchase price in the case of a sequel or ___% of the Purchase Price in the case of a remake, payable within 10 days following the completion of principal photography of each such sequel or remake; plus a sum equal to ___% of 100% of the Net Proceeds of each such sequel, or ___% of 100% of the Net Proceeds of each such remake, defined, accounted for and paid in accordance with Producer's standard definition thereof.

4. Grant of Rights: If the option is exercised, Producer shall own, and Author assigns and sells to Producer, exclusively, in perpetuity and throughout the universe, all right, title and interest in the Property except for the Reserved Rights expressly set forth in Paragraph 5 below. Without limiting the generality of the foregoing, the Rights in the Property herein granted include:

(a) Audiovisual Works: The right to produce all types of audiovisual works and sequels thereto and remakes thereof and all other types of derivative works based thereon, intended for exploitation in any medium now or hereafter devised (including by way of illustration only, any form of theatrical, television or home video exploitation) and all music and music publishing rights, soundtrack album and other soundtrack exploitation rights, merchandising rights and promotional and advertising rights.

(b) Copyrights/Exploitation Rights: With respect to works produced pursuant to the rights granted in subparagraph (a) above, all copyrights, neighboring rights, trademarks and any and all other Authorship and exploitation rights in the Property now or hereafter recognized in any and all territories and jurisdictions (including by way of illustration only, reproduction, distribution, adaptation, performance, fixation, rental and lending rights, exhibition, broadcast and all other rights of communication to the public) and the right to exploit such works in all media, markets and languages and in any manner now known or hereafter devised subject to Author's Reserved Rights.

(c) Alteration Rights: The right to change, add to, delete or take from, translate, or otherwise modify the Property in any manner Producer may in its discretion determine in connection with the Picture and other works that will embody all or part of the Property. To the fullest extent allowable under any applicable law, Author hereby irrevocably waives or assigns to Producer its so-called "moral rights" or "droit moral". Author expressly acknowledges that many parties will contribute to the Picture and other works that will embody all or part of the Property. Accordingly, if under any applicable law the above waiver or assignment by Author of "moral rights" or "droit moral" is not effective, then Author agrees to exercise such rights in a manner which recognizes the contribution of and will not have a material adverse effect upon such other parties.

(d) Name, Likeness and Biography: The right to use, in a reasonable and customary manner, Author's names, likenesses and biographies in and in connection with the Picture and any other works that will embody all or part of the Property.

(e) Rental Right: Author acknowledges that the assignment by Author hereunder also includes, without limitation, the assignment, on Author's own behalf and on behalf of Author's heirs, executors, administrators and assigns, in perpetuity, of all rental and lending rights (including any right to equitable remuneration) under national laws (whether implemented pursuant to the Economic Community Rental and lending Rights Directive or otherwise) to which Author may now be or hereafter become entitled with respect to the Property and all versions thereof, and Author acknowledges that the consideration hereunder includes consideration for all such lending and rental rights and is an adequate part of the revenue derived or to be derived from said rights and constitutes equitable remuneration

(f) General Public Rights: The rights herein granted by Author to Producer are in addition to, and this Agreement shall in no way limit, the rights with respect to the Property or the subject matter thereof which Producer may now or hereafter enjoy as a member of the general public.

(g) No Obligation To Proceed: Nothing contained in this Agreement shall be construed as requiring Producer to exercise or exploit, or continue to exercise or exploit, any of the rights herein granted.

5. Reserved Rights: Author reserves the following rights (the "Reserved Rights") in the Property, subject to the terms and conditions set forth below, it being expressly acknowledged and agreed that Author shall have no right to utilize any elements from any work produced pursuant to the Rights or any new or changed material created by or for Producer in the exercise of the Reserved Rights or otherwise, provided that if Producer does not exercise the option hereunder, Producer's use (if any) of such new or changed material shall be subject to Author's rights in the Property.

(a) Publishing Rights: The following publishing rights in the Property, except that Producer shall have the right to publish excerpts from and summaries of the Property, or any motion picture or other versions thereof based upon the Property, for advertising and/or publicizing purposes only (not for sale or resale) of any work produced pursuant to the Rights and the right to publish souvenir booklets (for release only at those theaters exhibiting the Picture or other productions produced pursuant to the Rights granted hereunder) and "making-of-the-movie" and "coffee-table" type books relating to the Picture, provided that no such publication shall contain excerpts or summaries in excess of 7,500 words in the aggregate (not to be serialized) taken from the Property. The foregoing limitation on serializing is not intended to and shall not preclude Producer's publication of advertising and/or publicity materials in installments.

(i) Print Editions: The right to publish print editions of the Property in book form, whether hardcover or softcover and in magazines or other periodicals, whether in installments or otherwise, it being acknowledged that unless the Property has heretofore been published in comic book or comic strip form, the right to publish comic books and/or comic strips shall be deemed included within the merchandising rights granted to Producer in Paragraph 4(a) hereof.

(ii) Recorded Readings: The right to publish recorded readings by a single narrator of the text of published print editions of the Property in the form of audiocassettes, audiodisks or similar audio-only devices individually purchased by the end-user.

(iii) Electronically Read Editions: The right to publish the text of published print editions of the Property in the form of CD-ROM, DVD, videocassette tape or similar electronically read devices individually purchased by the end-user. Such electronically read editions may not contain visual images (other than the text) or audio tracks of any kind.

Producer shall take all steps necessary to protect the copyright in the Property as it may be contained in any publication by Producer. With respect to any excerpts from the Property (if any) used by Producer as aforesaid, Producer shall identify Author as the author of the Property from which the excerpts were taken, but any summaries of the Property (as distinguished from actual excerpts) shall not be attributable to Author.

(b) Stage Rights: Subject to subparagraphs (e) and (f) below, the right to perform the Property or adaptations thereof on the live stage with actors appearing in person in the immediate presence of the audience (including the right to record a cast album) provided no broadcast, telecast, photography or the reproduction of such performance is made, except for archival purposes and for the use of customary minor excerpts in award programs and for advertising and publicity purposes solely in connection with the exploitation of such stage rights.

(c) Radio Rights: Subject to subparagraphs (e) and (f) below, the right to produce for and broadcast on radio audio-only versions of the Property and adaptations thereof; provided, however, that Producer shall have the right to broadcast on radio excerpts from (not to be serialized) and publicity regarding the Property for advertising and publicity purposes only (and not for sale or resale) and only in connection with the exercise of the Rights granted to Producer hereunder; provided, however, that any such excerpts contained in a radio broadcast shall be limited to 3 minutes in length. The foregoing limitation on serializing is not intended to and shall not preclude Producer's broadcast of advertising or publicity materials in installments.

(d) Author Written Sequels: Subject to subparagraphs (e) and (f) below, the right to write and publish printed versions of author written sequels to the Property, whether hardcover or softcover and in magazines or other periodicals, whether in installments or otherwise. An author written sequel is a work of authorship, whether created by or under license from Author before or after the creation of the Property, using one or more of the characters appearing in the Property participating in different events from those found in the Property.

(e) Holdbacks: Except for publishing rights, Author shall not exercise or exploit, or suffer or knowingly permit the exercise or exploitation of, any of the Reserved Rights until 5 years after the first general release of the Picture in the United States, or 7 years after the date of exercise of the option by Producer, whichever occurs first. Further, Author agrees that if Author writes a work which is an author written sequel to the Property, Author will not dispose of or exploit rights in such author written sequel corresponding or equivalent to the Rights (the "Equivalent Rights") or to the Reserved Rights other than publishing rights (the "Equivalent Reserved Rights") until 5 years after the first general release of the Picture in the United States or 7 years after the date of exercise of the option by Producer, whichever occurs first, it being acknowledged and agreed that, with respect to the Equivalent Rights, Author's right to do so is in any case limited to new characters and material contained in such author written sequel and not previously contained in the Property.

(f) First Negotiation: If Author at any time proposes to negotiate with any party for the license, exercise or other disposition of any or all of the Reserved Rights (other than publishing rights), or the Equivalent Rights or the Equivalent Reserved Rights, Author shall give Producer notice thereof and an opportunity to so negotiate prior to Author so negotiating with any third party. If Producer elects to so negotiate, Author and Producer shall negotiate in good faith for a period of not less than 30 days from the commencement of such negotiations, and if an agreement does not result therefrom Author may thereafter negotiate with any third party. If Author is at any time prepared to enter into an agreement with a third party for the license, exercise or other disposition of any or all of the Reserved Rights (other than publishing rights), or the Equivalent Rights or the Equivalent Reserved Rights, Author shall, before entering into such agreement, give Producer notice of the proposed terms thereof (and all modifications of such terms) and the party involved. In each instance, Producer shall then have 10 business days in which to elect to acquire the rights involved on the terms contained in the notice.

6. Representations and Warranties: Author hereby represents and warrants that: (a) the Property was written solely by and is original with Author or, in minor part, in the public domain; (b) the Property is not based in whole or in part on the life of any real person except as approved in writing by Producer; (c) neither the Property nor any element thereof infringes the copyright in any other work; (d) the Property does not violate the rights to privacy or publicity of any person or constitute a defamation against any person, or in any other way violate the rights of any person whomsoever; (e) Author owns all rights assigned to Producer free and clear of any liens, encumbrances, other third party interests of any kind, and, to the best of Author's knowledge, free of any claims or litigation, whether pending or threatened; (f) Author has full right and power to make and perform this Agreement without the consent of any third party; (g) Author has not previously authorized or consented to exploitation of the Property as a motion picture production (including without limitation television, video and internet productions) or in any other form of audiovisual exploitation and, to the best of Author's knowledge, the Property has not previously been so exploited; and (h) without limiting Producer's rights to do so, Author will maintain copyright protection in the Reserved Rights. The term "person" as used in this Agreement shall mean any person, firm, corporation or other entity. Author shall indemnify Producer against any liability, damages, costs and expenses (including outside attorneys' fees and expenses) incurred by Producer by reason of any claim which if true would constitute a breach of any of Author's representations, warranties and/or agreements contained in this Agreement. Upon presentation of any such claim to Author, or the institution of any such action naming either or both of the parties as defendants, Author shall promptly notify Producer thereof. In any such claim or action, Author may engage independent counsel, at Author's sole cost and expense, and said counsel may participate on Author's behalf, provided that Producer shall be entitled to maintain control of the conduct of the defense of any such claim or action. Producer shall have the right to adjust or settle any such claim or action as it may determine in its sole discretion in good faith without affecting the foregoing indemnity.

7. Additional Documents: At Producer's request, Author will execute, acknowledge and deliver to Producer any and all additional documents which Producer may reasonably deem necessary to evidence and effectuate the purposes of this Agreement including, without limitation short-form options and assignments in the form attached hereto. Author hereby irrevocably appoints Producer as attorney-in-fact with full power to execute, acknowledge, deliver and record in the U.S. Copyright Office and elsewhere any and all such documents which

Author fails to execute within 5 business days after Producer's request therefor. The appointment shall be a power coupled with an interest. Concurrently with or promptly after execution by Author of this Agreement, and as a condition to payment by Producer hereunder, Author will deliver to Producer a Publisher's Release in a form as Producer has approved in writing, executed by an authorized signatory of each party to whom Author has granted publishing rights in the Property.

8. Credit: Author shall receive credit on screen on a separate card in the main titles (meaning the credits, whether before or after the body of the Picture, where the "directed by" credit appears) of all positive prints of the Picture in connection with the Picture as follows (subject to applicable guild requirements): if the Picture as initially released has the same title as the Property, in substantially the form: "Based on the novel by _____", otherwise in substantially the form: "Based on the novel entitled "_____ " by _____. No casual or inadvertent failure by Producer to accord such credit, nor the failure for any reason by third parties to comply with the provisions of this paragraph, shall be deemed a breach hereof by Producer.

9. Irrevocability and No Equitable Relief: All rights granted and agreed to be granted to Producer under this Agreement shall be irrevocably vested in Producer in perpetuity, including without limitation, for the full term of copyright protection everywhere in the world and any and all renewals, extensions and revivals thereof. No breach by Producer of this Agreement shall entitle Author to equitable relief, whether injunctive or otherwise, against or with respect to the Picture or any other works produced pursuant to the Rights granted hereunder or their exploitation, it being acknowledged and agreed that Author's remedy of money damages in accordance with the dispute resolution provisions set forth below is adequate. If the rights granted to Producer hereunder should revert to Author pursuant to the provisions of any copyright law or similar law, and if Author is at any time thereafter prepared to enter into an agreement with a third party for the license, exercise or other disposition of all or any of such rights, Author shall, before entering into such agreement, give Producer notice of the proposed terms thereof (and all modifications of such terms) and the party involved. In each instance, Producer shall then have 10 business days in which to elect to acquire the rights involved on the terms contained in the notice.

10. Assignment: Producer shall have the right to assign any or all of its rights under this Agreement to any person, and upon such assignment Producer shall have no further obligations to Author hereunder; provided, however, that unless such assignment is to a so-called major or so-called mini-major motion picture company or a United States television network (as those terms are commonly understood in the motion picture or television industries at the time) which assumes such obligations in writing, or unless Author approves of such assignment, such assignment shall not relieve Producer of its payment obligations to Author under this Agreement.

11. Miscellaneous:

(a) Entire Agreement: Except as herein expressly provided, this Agreement cancels and supersedes all prior negotiations and undertakings relating to the Property and contains all terms and conditions, pertaining to the subject hereof. If there is any conflict between any provision of this Agreement and any present or future statute, law, ordinance, regulation or collective bargaining agreement the latter shall prevail; provided, that the provision hereof so affected shall be limited only to the extent necessary and no other provision shall be affected.

(b) Notices: All written notices which either party hereto is required or may desire to give to the other shall be given by delivering or mailing the same to the other at the address shown on the face hereof, or at such other address as may be designated in writing in a notice to the other given as aforesaid. Notices shall be sufficiently given when hand-delivered or when the same shall be deposited so addressed, postage prepaid, in the United States mail and/or when the same shall have been transmitted by facsimile or similar means and the date of said delivery, mailing or transmission shall be the date of the giving of such notice.

(c) Governing Law/Dispute Resolution: This Agreement shall be construed in accordance with the laws of the State of New York applicable to agreements executed and wholly performed within said state and the parties consent to the exclusive jurisdiction of the state and federal courts thereof with respect to any and all disputes arising under this agreement or related to its subject matter.

(d) Relationship of the Parties: This Agreement is not a partnership between or joint venture of the parties hereto and neither party is the agent of the other. This Agreement is not for the benefit of any third party, whether or not referred to herein. Paragraph headings and organization are for convenience only and shall not be

used to construe meaning. A waiver of any breach shall not waive a prior or subsequent breach. All remedies shall be cumulative and pursuit of any one shall not waive any other. This Agreement may be signed in counterpart, each of which shall be deemed an original, but all of which together shall constitute the Agreement.

Producer

By: _____
Its:

Author
