

## OPTION/PURCHASE AGREEMENT

This Option/Purchase Agreement (the "Agreement") dated as of \_\_\_\_\_, by and between \_\_\_\_\_ ("Producer") and \_\_\_\_\_ ("Writer").

### 1. REPRESENTATIONS AND WARRANTIES

- a) Exclusive Rights Holder: Writer represents and warrants to Producer that Writer exclusively owns and/or controls all rights in and to the \_\_\_\_\_ entitled "\_\_\_\_\_" (the "Property") including, without limitation, the rights granted herein to Producer.
- b) [Copyright Registration: Writer represents that copyright to the Property is registered in the United States Copyright Office, under registration number \_\_\_\_\_, to copyright claimant \_\_\_\_\_.]
- c) Prior Versions: Writer represents and warrants that, to the best of its knowledge, no motion picture or dramatic version of the Property or any part thereof has been authorized or produced; no development or production based on the Property or any part thereof has been authorized, produced, presented or broadcast on radio or television or video or internet productions; and no written or oral agreement or commitment whatsoever with respect to the rights to reproduce or license the reproduction of the Property, or the right to use or license the use of materials contained in the Property for presentation either in audio or visual format or both, through radio, motion picture, television or otherwise therein have heretofore been made or entered into by or on behalf of Writer; none of the rights herein granted and/or assigned, or purported to be granted and/or assigned, to Producer have been granted and/or assigned to any other person.
- d) No Infringement or Violation of Third Party Rights: Writer represents and warrants that, to the best of Writer's knowledge: the Property is not adapted from any other literary, dramatic or other material of any kind or nature nor does the Property copy or use the plot, scenes, sequences, story or characters of any other literary, dramatic or other material; the Property does not infringe upon any statutory or common law rights in any other literary, dramatic or other materials; no material in the Property has, as of the effective date of this Agreement, been found by a court of competent jurisdiction to be libelous or violative of the rights of privacy or any other rights of any other person; the full use of the rights in the Property herein granted to Producer will not violate any rights of any person; and the Property is not in the public domain in any country in the world where copyright protection is available. Writer's representation and warranties do not extend to changes, additions, and/or deletions made to the Property by or on behalf of Producer, and Producer hereby indemnifies and holds harmless Writer from all claims, demands, liabilities, losses, costs or expenses (including attorneys' fees) or causes of action arising out of or in connection with any such changes, additions, or deletions made to the Property.
- e) No Impairment of Rights: Writer represents and warrants to Producer that, to the best of Writer's knowledge, Writer exclusively owns or controls, throughout the world, the rights in the Property herein granted to Producer; that Writer has not assigned, licensed or in any manner encumbered or impaired said rights; that Writer has not committed or omitted to do any act by which the rights might be diminished or impaired; and that, as

03.25.2019

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of the effective date of this Agreement, there is no outstanding claim or litigation pending against the Writer with respect to the copyright of the Property or any part thereof or in the rights therein. Writer further represents that Writer shall not attempt hereafter to encumber, diminish or impair any of the rights herein granted.

## 2. COMPENSATION FOR THE PROPERTY

- a. Option: Subject to the remainder of this section 2, Writer grants to Producer an exclusive option to license the sole and exclusive motion picture and other rights set forth in Paragraphs 5 and 6 herein (the "Rights").
- b. Option Term: As full consideration for the option set forth in 2(a) above, and without any reservations as to the sufficiency thereof, Producer agrees to pay within fifteen (15) days of execution of this Agreement, and Writer agrees to accept the sum of \_\_\_\_\_ Dollars (\$ . ) (the "Option Fee"), applicable against the license fee set forth below. The initial term of the Option shall be for \_\_\_\_\_ (#) months (the "Initial Period") commencing as of the date set forth above, and may be renewed by Producer for one additional period of \_\_\_\_\_ (#) months ("Extension Period") consecutive to the Initial Period by written notice and the payment to Writer of the fully applicable sum of \_\_\_\_\_ Dollars (\$ ) ("Extension Payment") for such additional period. The Initial Period and Extension Period are hereafter referred to collectively as the "Option Period".
- c. License Fee: If Producer elects to exercise its Option to license the rights set forth herein, Producer shall give Writer written notice of Producer's election, and shall pay to Writer the License Fee, reduced by the sum of the Option Fee and Extension Payment if applicable. The "License Fee" shall be \_\_\_\_\_ (%) of the "Production Budget", measured as of the commencement of principal photography excluding bonds, bonding fees, contingency, legal fees, insurance premiums, deferrals and finance charges, and all compensation paid to Writer, except in no event shall the License Fee be less than \_\_\_\_\_ Dollars (\$ ) or more than \_\_\_\_\_ Dollars (\$ ). Producer shall provide Writer a written copy of the final Production Budget at the time of the payment of the License Fee. If at the time of exercise of Producer's option, the Production Budget is not set, then the minimum amount set forth above will be paid to Writer upon exercise of the Option and adjusted as necessary upon commencement of principle photography.
- d. Contingent Compensation: If Producer or its licensee or assignee produces a motion picture materially based on the Property (the "Picture"), then in addition to the compensation set forth above, Producer shall pay to Writer additional, contingent compensation ("Contingent Compensation") equal to \_\_\_\_\_ % of 100% of the Net Proceeds of the Picture, defined, accounted for and paid in accordance with Producer's standard definition thereof, which definition will be within then current motion picture industry standards (the "Net Proceeds Definition").

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- e. Theatrical Sequels and Remakes: If a feature-length theatrical sequel or remake (including a dramatization) motion picture based on the Property is produced pursuant to the Rights, a sum equal to [REDACTED] % of the previous theatrical motion picture's License Fee in the case of a sequel or [REDACTED] % of the License Fee 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 [REDACTED] % of 100% of the Net Proceeds of each such sequel, or [REDACTED] % of 100% of the Net Proceeds of each such remake, defined, accounted for and paid in accordance with the Net Proceeds Definition.
- f. Payment: With respect to any payment to be made to Writer hereunder, it is expressly agreed that should Producer fail to make such payment as herein provided due to a *force majeure* type event, then Producer will have a reasonable opportunity to cure such failure. Payments to Writer hereunder will be made by check(s) drawn on Producer's (or its assignee's) bank account to:  
[REDACTED].

### 3. INDEMNIFICATION

Writer does hereby agree to indemnify and hold Producer harmless of and from any and all third party claims, demands, liabilities, losses, costs or expenses (including outside attorneys' fees) or causes of action arising out of or in connection with any breach of any of Writer's representations, warranties, covenants or agreements herein contained. Writer's obligations under this section relate only to the rights in the Property acquired by Producer hereunder and not to any changes or additions which are made by Producer in the exercise of the rights granted Producer hereunder. As to such changes or additions or any claims arising out of the production, exhibition, distribution and/or marketing of the Picture, Producer shall indemnify Writer on the same basis as set forth above.

### 4. REVERSION/TURNAROUND

If, at the expiration of any applicable Option Period, Producer has not exercised its rights either to extend the Option Period or to license the rights, both as hereinabove provided, all rights previously granted to Producer in the Property, unless agreed to otherwise in writing, shall revert back to Writer and Writer shall have the right to collect and/or retain all Option Fees that are due and payable pursuant to this Agreement. The parties agree to execute such other documents and to perform all such other and further acts as may be necessary or desirable to carry out the purposes and intent of this Agreement.

### 5. RIGHTS GRANTED

Upon Producer's exercise of its Option, and subject to section 4 of this Agreement, Writer hereby grants to Producer, solely, exclusively, in perpetuity and throughout the world, the following rights owned and/or controlled by Writer:

- a) Motion Pictures: To make any number of silent, sound, talking and/or musical motion picture versions of the Property or any part or parts thereof, in any format or delivery system now or hereafter known.
- b) Copies: To make copies and reproductions of such motion pictures on 35mm film, film of other widths and/or gauges, videotape, and/or discs, and any other material, whether now known or hereafter invented.

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- c) Production, Distribution: To produce, transmit, distribute and exhibit such motion pictures by and with sound and voice recording, reproducing and transmitting devices, radio devices, television devices and all other devices and improvements, present or future, which may now or hereafter be used for or in connection with the production, transmission, distribution and exhibition of any present or future kind of motion picture productions.
- d) Telecast: To televise such motion pictures, and to produce motion pictures for purposes of television and to transmit, reproduce, distribute, exhibit, advertise and exploit such motion pictures in any manner.
- e) Adaptations: To translate, adapt, arrange, change, transpose, add to and subtract from the Property and title thereof to such extent as Producer may desire, to make motion picture remakes or sequels to, and new versions and adaptations of, the Property or any part or parts thereof (including the right to make television series), to use excerpts from the Property for the title, subtitles, text and dialogue of such motion pictures, to interpolate other material in such motion pictures, and to use the Property or any part or parts thereof or the title, theme and characters thereof in conjunction with any other literary, dramatic, musical or other material of any kind in the making of such motion pictures and the advertising, exploitation and publicizing thereof.
- f) Digital Media: To produce, reproduce, distribute, exhibit, vend and otherwise exploit all digital media rights in connection with any motion picture based on the Property.
- g) Exploitation: To produce, reproduce, distribute, exhibit, vend, and otherwise exploit and dispose of such motion pictures, trailers, and stills in connection therewith for any and all motion picture uses and purposes, including theatrical, non-theatrical, pay television, video cassette and disc and sound record uses and purposes, and to authorize and license others so to do, throughout the world, including the right to make and use and exploit sound records, sound on film, tape and cassettes, audio-visual devices of any type, and all other contrivances and devices now or hereafter used for producing, recording, transmitting, distributing and exhibiting motion pictures.
- h) Copyright: To secure copyright and renewals and extensions of copyright in such motion pictures in the United States and in all other countries of the world where the same may be secured or is provided for, in the name and for the benefit of Producer or otherwise.
- i) Title: To use the title by which the Property is now, or hereafter may be, known as the title of any motion picture or motion pictures based thereon in whole or in part, or in which any part of the Property is used, or for any other motion picture or motion pictures or in the exercise of any of Producer's rights hereunder; but, Producer shall not be obligated to use said title, and may use any other title or titles for any motion picture version or versions of the Property and may change the title of any such motion picture from time-to-time.
- j) Publishing: To publish or license for publication the screenplay of each motion picture version in English or any other language and in any part of the world.

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- k) Name, Likeness and Biography: The right to use, in a reasonable and customary manner, the names, likenesses, biographies, photographs in and in connection with the motion picture and any other works that will embody all or part of the Property.
- l) Rights to Make Changes: Having acknowledged understanding of the needs of motion picture production by granting Producer the unlimited right to change, vary, alter, add to, take from, translate, substitute, combine and modify the Property, Writer hereby waives (for itself, its heirs, executors, administrators and assigns) the benefits of any provision of law known as the “droit moral” or any similar laws or legal principles, and agrees (for itself, its heirs, executors, administrators, and assigns) not to institute, support, maintain or permit directly or indirectly any litigation or proceedings instituted or maintained on the ground that any motion picture produced, distributed or exhibited by Producer and based, or claimed to be based, upon the Property or using any material therefrom, in any way constitutes an infringement or violation of any of its “droit moral” or is in any way a defamation or mutilation of the Property, or of any part thereof, or contains unauthorized variations, alterations, modifications, changes or translations.

## 6. INCIDENTAL RIGHTS

Without limiting the generality of the other grants contained herein, upon Producer’s exercise of the applicable Options and payment of the corresponding fees and agreement on Contingent Compensation, the following rights are also hereby granted to Producer solely, exclusively, in perpetuity and throughout the world, to be exercised, however, only in connection with and for the purpose of advertising, publicizing, and promoting motion picture versions of the Property, and Producer’s exploitation of the other rights granted herein:

- a. Broadcast: The right to broadcast by radio or television (by living actors, transcriptions and other present or future means) dramatic versions, sketches, scenes, adaptations and material from or based upon the Property or any motion picture version thereof, and announcements of or concerning such motion pictures, which announcements may include material from the Property or from such motion pictures.
- b. Print Publication: The right to print and publish in such form and publications as Producer may desire for advertising and promotional purposes (including newspapers, fan magazines and trade periodicals) and to copyright in its own name, or the name of its nominee, dialogue, summaries, synopses, sketches, dramatizations, novelizations or other adaptations of or selections from the Property and for any motion picture version thereof, not to be serialized, and the right to use excerpts from such motion pictures in heralds, programs, booklets, posters, lobby displays, press books and all other media of advertising and publicity, excluding commercial tie-ups.
- c. Use of Name: The right to identify Writer as the publisher of the Property, and the Author as the author of the Property.

## 7. EXERCISE OF PRODUCER’S RIGHTS

It is agreed that all rights granted to Producer herein may be exercised by Producer with respect to all drafts, revisions, adaptations, arrangements, dramatizations, translations (to the extent Writer is able to obtain such rights) and other versions of the Property which may heretofore have been written or which may hereafter be

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written by or with the authority of Writer. It is further agreed that Producer shall be under no obligation to exercise or put to use any of the rights acquired by Producer hereunder and that Producer may exercise any one or more of said rights at any time.

## **8. CREDIT**

Writer shall receive credit on screen on a separate card in the main titles (meaning the credits, before 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 [REDACTED] entitled [REDACTED]. 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 provided that such failure will be cured on a prospective basis.

## **9. PUBLICITY**

All publicity, paid advertisements, press notices, or other information with respect to the exploitation of any of the rights granted hereunder by Writer to Producer shall be under the sole control of Producer, provided however that Writer may issue publicity relating to the Picture, the content and timing of which shall be subject to Producer's prior approval, not to be unreasonably withheld.

## **10. RIGHT TO ENGAGE IN PREPRODUCTION**

Writer acknowledges that during any and all applicable Option Terms, Producer may undertake development, preproduction and production activities in connection with any of the rights to be acquired hereunder, but the results and proceeds of such activities will not be exploited except as permitted under this Agreement.

## **11. OPTION PERIOD RESTRICTIONS**

During any and all applicable Option Terms, Writer shall not exercise or otherwise utilize any of the rights herein granted to Producer; nor shall Writer permit the use of or use any other rights reserved to Writer in a way that would in any manner or for any purpose unfairly compete, interfere, or conflict with the full and unrestricted use of the rights herein granted to Producer.

## **12. COPYRIGHT OF PROPERTY**

If the Property is hereafter published in any territory, Writer shall take and complete any and all steps and proceedings, required by law of any territory within which such publication occurs, to secure copyright in the Property, to prevent the Property from falling into the public domain by reason of such publication and to reserve for Producer all rights in any such publication granted to Producer hereunder. Writer shall take such steps and proceedings as may be necessary to renew or extend any and all copyrights now or hereafter secured by Writer upon the Property. As a material part of the consideration moving to Producer for its execution of this Agreement, Writer, without the payment of any further consideration by Producer, shall (promptly upon any such renewal or extension) assign to Producer, for such renewed or extended term, all of the rights in the Property which are granted to Producer under this Agreement. Writer hereby

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waives the provisions of Sections 203 and 304(c) of Title 17 of the U.S. Code, if either of said Sections is applicable, to the maximum extent permitted by law. If Writer has the right to and does exercise any termination rights under either of said Sections, then Producer shall, nonetheless, have the right of first negotiation and first refusal rights with respect to any proposal by Writer to grant any other person any of the rights herein granted Producer.

### **13. ADDITIONAL DOCUMENTATION**

Writer agrees to execute and procure any other and further instruments necessary to convey, assign and copyright the rights in the Property, if any, herein granted by Writer to Producer in any territory throughout the world. If it shall be necessary under the laws of any territory that copyright registration be acquired in the name of Writer, Producer is hereby authorized by Writer to apply for said copyright registration in the name of Writer; and, in such event, Writer shall and does hereby assign and transfer the same unto Producer, subject to the rights in the Property reserved hereunder by Writer.

### **14. INSTITUTION OF LEGAL ACTION**

Writer does hereby grant to Producer the free and unrestricted right, but at Producer's own cost and expense, to institute in the name and on behalf of Writer any and all suits and proceedings at law or in equity to enjoin and restrain any infringement of the rights herein granted; and Writer does hereby assign and set over unto Producer any and all cause or causes of action arising or resulting by reason of or based upon such infringement or infringements, and Writer does hereby assign and set over unto Producer any and all recoveries obtained in any such action. Writer agrees that Writer will not compromise, settle or in any manner interfere with any such litigation, if brought, and Producer does hereby agree to indemnify and save harmless Writer from any costs or damages which Writer may suffer as a direct result of any such suits or proceedings, except to the extent, if any, that any such suit or proceeding is the result of a breach by Writer of Writer's representations, warranties or agreements hereunder.

### **15. DVD**

Producer shall provide Writer with ten DVDs of the picture when commercially available, if ever.

### **16. ASSIGNMENT**

Producer may assign, transfer, sublicense, delegate or grant all or any part of its rights, privileges, and property hereunder to any motion picture studio for purposes of developing, producing and distributing the Picture. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns. In the event Producer shall sell or assign all of its right, title, and interest in and to the Property, and in the event such transferee shall assume all of the executory obligations of Producer as of the date of such transfer, Producer shall remain secondarily liable to Writer for any obligations hereunder accruing from and after the date of such transfer.

### **17. MISCELLANEOUS**

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- a. Member of Public: Neither Producer's entering into this Agreement, nor anything herein contained, nor submission of the Property to Producer shall put Producer in a worse position with respect to the Property and rights therein than Producer would otherwise have been in as a member of the general public.
- b. Governing Law/Dispute Resolution: This Agreement, including the exhibits attached hereto, shall be construed in accordance with the laws of the Commonwealth of Pennsylvania and the parties consent to the exclusive jurisdiction of the courts thereof with respect to any and all disputes arising under this agreement or related to its subject matter.
- c. Waiver: No waiver by either party of any breach hereof shall be deemed a waiver of any preceding or succeeding breach hereof. Neither party shall be liable for any breach of this Agreement unless it shall have received written notice from the other party of such breach and shall not, within a reasonable time after receipt of such notice, have cured such breach.
- d. Relationship: Nothing herein contained shall constitute a partnership between or joint venture by the parties hereto, or constitute either party the agent of the other. Neither party shall hold itself out contrary to the terms of this paragraph, and neither party shall become liable for the representation, act, or omission of the other, contrary to the provisions hereof. This Agreement is not for the benefit of any third party and shall not be deemed to give any right or remedy to any third party, whether referred to herein or not.
- e. Severability: Nothing contained in this Agreement shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision of this Agreement and any material statute, law, ordinance, order or regulation contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event, any provision of this Agreement so effected shall be curtailed and limited only to the extent necessary to bring it within the legal requirements; provided, however, that no other provision of this Agreement shall be affected thereby and such other provision shall continue in full force and effect.
- f. Section Headings: Section headings are for convenience only and shall not be deemed part of this Agreement or used to construe it or otherwise be given any legal effect.
- g. Counterparts: This Agreement may be executed in one or more counterparts which may be delivered by email or facsimile signature, but all of which, taken together, shall constitute but one original document.

## 1. NOTICES

All notices hereunder may be served personally or by certified or registered mail, telegraph, overnight courier service or cable to the following addresses, or such substitute address as either party may designate by written notice to the other. The date of deposit of such notice in the United States mail or the date of delivery thereof to the telegraph or cable office shall be deemed the date of service of any notice. The addresses to which any such notice, accountings or statements are to be sent are as follows:

Producer:

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Writer:

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first written above.

**Producer**

**Writer**

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

On Behalf of \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

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