

Model Film Option Agreement

www.writersguild.org.uk

Contact us

You can contact us in the following ways:

Email: admin@writersguild.org.uk

Telephone: 020 7833 0777

DATED

OPTION AGREEMENT

between

Writer

and

Producer

CONTENTS

CLAUSE

1. Interpretation2

2. Option4

3. Payment.....4

4. Assignment and grant of Rights5

5. Credit.....6

6. Writer's warranties and undertakings6

7. Producer's representations and warranties7

8. Accounting8

9. Reversion of Rights8

10. Further assurance8

11. Variation9

12. Exercise of Rights9

13. Assignment9

14. Waiver.....9

15. Severance10

16. Payment10

17. Entire agreement10

18. Third parties10

19. Notices.....11

20. Governing law.....11

21. Jurisdiction11

This agreement is dated [DATE]

Parties

- (1) [INDIVIDUAL NAME] of [INDIVIDUAL ADDRESS] (**Writer**)
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Producer**)

BACKGROUND

- (A) The Writer is the author of the Work (as defined below).
- (B) The Writer has agreed to grant to the Producer the exclusive option to acquire Film rights in the Work on the terms of this agreement.

Agreed terms

1. Interpretation

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions:

Budget: for the purposes of this agreement, the final projected cash cost of production as approved by the principal financiers of the relevant film, excluding any overhead charged by a third party financier, completion guarantee fees, insurance costs, legal fees, audit fees, finance costs (such as interest, commitment fees and finder's fees), contingency payments and all other payments to the Writer.

Business Day: a day other than a Saturday, Sunday or public holiday in England and Wales, when banks in London are open for business.

CDPA: the Copyright, Designs and Patents Act 1988.

Derivative Film Material: any trailers, DVD "extras", documentaries, electronic press kits, making-of films, "behind the scenes" films or other productions based on any film made under this agreement and any material connected with advertising and promoting those films.

Film: the first film based on the Work and produced pursuant to this agreement, including the soundtrack of the film and all its parts and constituents, which the Producer intends, but does not undertake, to produce.

First Option Fee: shall be the amount of £[AMOUNT]

First Option Period: Shall be the period of [PERIOD] from the date of this agreement

Literary Publication Rights: the right to publish and distribute printed versions of the Work in book form, whether hardcover or softcover, and in magazine or other periodicals, whether in instalments or otherwise.

Net Profits: the Producer's net profits (as defined in the principal financing agreement or collection agreement relating to the film in question) derived from exploitation of the Rights throughout the world remaining to the Producer and any co-producer of the film after deduction of the aggregate participations in net profits payable to the financiers of the film.

Option: the option described in clause 2.

Option Period: the First Option Period together with, where exercised, the Second Option Period.

Purchase Price: the amount identified in clause 3.1.

Radio Rights: the right to broadcast audio-only performances or readings from the Work on the radio.

Rights: the rights described in clause 4.1.

Second Option Fee: the amount of £[AMOUNT]

Second Option Period: the period of [PERIOD] from the expiry of the First Option Period.

Stage Rights: the right to present the Work or any version or adaptation of it on the stage of the dramatic theatre with actors appearing in the presence of an audience.

VAT: value added tax [or any equivalent tax] chargeable in the UK [or elsewhere].

WGGB Screen Credits Agreement: the agreement dated 1 May 1992 between the Writers' Guild of Great Britain and the Producers' Alliance for Cinema and television and any agreement amending or substituted for it.

Work: the original screenplay entitled "[TITLE]"

- 1.2 Unless the context otherwise requires, words and expressions used in this agreement shall have the same meanings as are assigned to them by the CDPA. Notwithstanding the foregoing, wherever in this agreement the term "film" or any similar term is used and the soundtrack is not expressly referred to, the term shall include the soundtrack of that film.
- 1.3 Clause headings shall not affect the interpretation of this agreement.
- 1.4 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

2. Option

- 2.1 In consideration of First Option Fee paid by the Producer to the Writer, the Writer hereby grants to the Producer the exclusive option (**Option**) to acquire the Rights exercisable at any time within the First Option Period by notice in writing to the Writer together with payment of the Purchase Price. The First Option Fee shall be on account of the Purchase Price
- 2.2 At any time before the expiry of the First Option Period, the Producer may extend the Option for the Second Option Period by paying the Writer the Second Option Fee together with written notice of exercise of the option to extend. The Second Option Fee shall not be on account of the Purchase Price.
- 2.3 The Producer shall be exclusively entitled during the Option Period to prepare budgets and storyboards and engage in any other form of development activity and make announcements that a film based on the Work is being developed, provided that unless the Producer exercises the Option it may make no commercial use of any such materials without the prior written consent of the Writer.

3. Payment

- 3.1 If the Option is exercised, then as full consideration for the rights hereby granted and assigned, the Producer hereby agrees to pay to the Writer on exercise of the Option:
- (a) £[AMOUNT]; and
 - (b) not later than the first day of principal photography of the Film, such further sum, equal to [PERCENTAGE]% of the Budget less the amount paid in 3.1(a);
- (together the **Purchase Price**).
- 3.2 In addition to the Purchase Price, the Producer shall pay to the Writer the following sums:
- (a) such sums as shall from time to time equal [NUMBER]% of 100% of the Net Profits from the Film;
- 3.3 The Writer shall be entitled to receive payments payable to the Writer from recognised collection societies provided this does not in any way increase payments due from the Producer to the Writer.
- 3.4 All sums payable under this agreement shall be exclusive of VAT. Any VAT which is payable shall be paid by the Producer within [NUMBER] Business Days of receipt of a valid VAT invoice from the Writer.

4. Assignment and grant of Rights

- 4.1 Subject to the Producer exercising the Option and paying the Purchase Price, the Writer with full title guarantee assigns (and where necessary by way of present assignment of future copyright) to the Producer the exclusive right to make and exploit the Film based on the Work (**the Rights**) to hold absolutely throughout the world during the full period of copyright but subject to the provisions of clause 4.2. Including
- (a) perform the Film in public by exhibition of any such productions by all methods now known or invented in the future including exhibiting the productions before live audiences in theatres and non-theatrically;
 - (b) exploit the Film on DVD or any other audio-visual device now known or invented in the future;
 - (c) communicate the Film to the public (including by broadcasting and making the production available by electronic transmission over the internet);
 - (d) rent or lend the Film to the public including distribution of the adaptations in the form of DVDs, digital downloads or streams;
 - (e) broadcast and transmit for advertising purposes excerpts of the Film by means of all forms of television (and radio and any other telecommunications system or device;
 - (f) to make sound recordings of the soundtracks of the Film whereby the same may be performed either in synchronisation with the picture action of the production or separately from the picture action of the production and to communicate to the public (including by broadcast and making available by electronic transmission on an interactive basis) those sound recordings for any purpose;
 - (g) secure copyright registration and protection of the Film and sound recordings in any or all countries;
- 4.2 The Writer reserves the Stage Rights and the Radio Rights and Literary Publication Rights in and to the Work. Subject to the exercise of the Option and payment of the Purchase Price to the Writer, the Writer agrees not to exploit or permit the exploitation of the Stage Rights and Non-dramatic Radio Rights for a period of [PERIOD] years from the date of the exercise of the Option or [PERIOD] years from the date of the release of the Film, whichever is the shorter period.
- 4.3 The Writer grants to the Producer the right to use the name, likeness, photograph and biography of the Writer in connection with the advertising, exploitation and exhibition of the Film provided that provided that the Writer shall have right of approval of the name, likeness and biography, not to be unreasonably withheld and provided these shall not be used in such manner as to suggest that the Writer endorses any commercial goods or services or facilities publicised thereby.

4.4 The Writer hereby waives, pursuant to section 87 of the CDPA, unconditionally and irrevocably and in perpetuity in favour of the Producer all rights under sections 77 to 85 inclusive of the CDPA in respect of the Work and all other moral and author's rights of a similar nature whether now existing or conferred in the future under the laws of any jurisdiction. This waiver shall extend to the Producer's licensees, sub-licensees, assignees and successors in title to the copyright in the Work.

5. Credit

5.1 If the Producer makes a film based wholly on the Work the Producer shall accord to the Writer credit on all positive copies of the Film in the main titles of the Film and in all paid advertising in the same style, type and size as the credit accorded to the individual producer of the Film in the form "Written by [NAME]".

5.2 If the Producer makes a film which is not based wholly on the Work, the Producer shall accord the Writer such lesser credit (if any) on all positive copies of the Film as provided under the terms of the WGGB Screen Credits Agreement. Any dispute relating to credits shall be determined in accordance with the arbitration provisions under the WGGB Screen Credits Agreement.

5.3 No inadvertent breach by the Producer of the provisions of this clause and no failure of third parties to accord the credit shall constitute a breach of this agreement by the Producer. The Producer shall take all reasonable efforts to remedy such failure on becoming aware of it.

6. Writer's warranties and undertakings

6.1 The Writer hereby represents and warrants to and with the Producer that:

- (a) the Writer is the sole author of the Work which is wholly original to the Writer and nothing in it infringes the copyright or any other rights (including any rights of confidentiality and/or privacy) of any third party;
- (b) copyright in the Work subsists and the Writer will do all in the Writer's power to maintain the entire copyright in the Work throughout the world for the full period including all permitted renewals, reversions, revivals and extensions;
- (c) the Work does not contain any material which:
 - (i) is defamatory, blasphemous or obscene;
 - (ii) breaches any duty of confidentiality;
 - (iii) infringes any third party's copyright or other rights; or

except to the extent that any such material has been fully identified in written notice to the Producer in advance of signature of this agreement.

- (d) the Writer is not aware of any legal proceedings or any threat of such proceedings or any claim by any third party concerning the Work;
- (e) the Writer will not enter into nor authorise any third party to enter into any agreement, licence, assignment, charge or other document concerning the Work which will or might conflict or interfere with the Rights;
- (f) no film or radio or television programme based on the Work has been developed, produced or authorised and the Writer has not previously granted, licensed, assigned, charged or in any way dealt with or encumbered the Rights;
- (g) the Writer has good title and full right and authority to enter into this agreement and to assign the Rights pursuant to this agreement free from encumbrances throughout the world;
- (h) the Writer will comply with all requirements of the Producer insofar as arranging for errors and omissions insurance is concerned;
- (i) the Writer is a "qualifying person" within the meaning of section 154 of the CDPA; and

6.2 The Writer undertakes to indemnify the Producer against all liabilities, claims, demands, actions, costs, damages and loss arising out of any breach by the Writer of any of the terms of this Agreement. In the event of any claim, dispute, action, writ or summons in connection with clause 6.1, the Writer and Producer agree to provide full details to the other party at the earliest opportunity and shall not settle any such matter without first consulting the other party.

7. Producer's representations and warranties

7.1 In consideration of the Writer granting to the Producer the Option. The Producer agrees that it shall pay to the Writer the First Option Fee within 14 days of both parties signing this Agreement and if the Second Option Period is exercised, the Producer shall pay the Extended Option Fee within 7 days of the Expiry of the Option Period.

7.2 The Producer acknowledges and accepts that the Writer is the original owner of the Work. The Writer shall have the right of first refusal to write any further work, including but not limited to, treatments, further screenplay drafts, bibles or pitch documents on terms not less than set out in the WGGB / PACT Agreement 1992.

7.3 The Producer agrees that involvement or engagement of any other person to write any drafts, revisions or amendments of the Work shall require the prior written approval of the Writer.

- 7.4 The Producer agrees that it will not assign, transfer or charge any of the rights or obligation under this Agreement to any third party without the prior written consent of the Writer such consent not to be unreasonably withheld or delayed.
- 7.5 The Producer undertakes that it shall be responsible for any sums due in respect of the production and the exploitation of the rights in the Film including any sums due in respect of any third party from the clearance, consent or otherwise of any material which is in the Work which is not owned or controlled by the Writer.
- 7.6 The Producer undertakes to indemnify the Writer against all liabilities, claims, demands, actions, costs, damages and loss arising out of any breach by the Producer of any of the terms of this Agreement. In the event of any claim, dispute, action, writ or summons in connection with clause 6.1, the Writer and Producer agree to provide full details to the other party at the earliest opportunity and shall not settle any such matter without first consulting the other party.

8. Accounting

- 8.1 Not less than annually, the Producer shall ensure that the Writer is provided with accounting and payment terms (including frequency of payment of Net Profits and in all other respects) on a most favoured nation basis with any other entities entitled to participate in Net Profits generated from the exploitation of the Film.
- 8.2 The Producer agrees that the Writer shall be entitled to arrange for an audit to inspect and make copies of the Producer's books of account, records, contracts, databases and any other material in order to verify the sums due to the Author. In the event that any audit shows a deficit to the Author of 5% or more or more than the Producer shall pay the sum owed to the Writer, interest at the rate of 8% over the base rate of the Bank of England and all costs of such audit.

9. Reversion of Rights

If principal photography of the Film has not commenced within [NUMBER] years from the date of the exercise of the Option the Writer shall have the right to require all rights acquired by the Producer in the Work. On receipt of the Writer's written notice of reversion the Producer shall assign the Rights to the Writer within 14 days. The Writer agrees to pay to the Producer an amount equivalent to the amount received by the Writer as the Purchase Price no later than the first day of principal photography of a film based on the Work.

10. Further assurance

At the Producer's request and expense, the Writer shall, and shall use all reasonable endeavours to procure that any necessary third party shall, execute and deliver such

documents and perform such acts as may be required for the purpose of giving full effect to this agreement and in particular confirming the Producer's title to the Rights in all parts of the world.

11. Variation

- 11.1 No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

12. Exercise of Rights

The Producer shall not be obliged to make any use of the Work or any part of it or having made the Film or any other adaptation based on the Work shall not be obliged to exploit it and the Producer shall not, subject to the rights of the Writer in clause 9, be liable to the Writer in any manner whatsoever for any damage whatsoever suffered by the Writer in consequence of non-exploitation.

13. Assignment

The Producer may assign, mortgage, charge, declare a trust over, license or grant the benefit of this agreement or its rights or benefits under this agreement in whole or in part to any third party and all the representations and warranties of the Writer in this agreement shall then to the extent of the assignment, mortgage, charge, trust, licence or grant inure for the benefit of that third party, provided that the Producer shall remain directly liable to the Writer for its obligations under this agreement.

14. Waiver

- 14.1 No waiver by the Producer of any failure by the Writer to observe any covenant or condition of this agreement shall be deemed to be a waiver of any preceding or succeeding failure or of any other covenant or condition nor shall it be deemed a continuing waiver. The rights and remedies provided for in this agreement are cumulative and no one of them shall be deemed to be exclusive of the others or of any rights or remedies allowed by law.
- 14.2 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of the right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

15. Severance

- 15.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- 15.2 If any provision or part-provision of this agreement is deemed deleted under clause 15.1, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

16. Payment

The Writer hereby authorises the Producer to send all monies due to the Writer as follows which shall be a good and full and sufficient discharge for the monies so paid.

Account Name:

Bank:

Account Number:

Sort Code Number:

OR

The Writer hereby authorises and requests the Producer to pay all monies due to the Writer under this agreement to the Writer's duly authorised agent [NAME OF AGENT] of [ADDRESS OF AGENT] whose receipt shall be valid and binding on the Writer.]

17. Entire agreement

- 17.1 This agreement constitutes the entire agreement between the Producer and the Writer with reference to the terms and conditions of the Option and the assignment of the Work and the Rights and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

18. Third parties

This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

19. Notices

19.1 Any notice given to a party under or in connection with this agreement shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to the address specified below

Writers Email: [EMAIL]

Producers Email: [EMAIL]

19.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt;
- (b) if sent by pre-paid first-class post or next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
- (c) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause, business hours means 9.00 am to 5.00 pm Monday to Friday on a day that is not a public holiday in the place of receipt, provided that no undelivered or undeliverable notification is received by the sending party in respect of the email (for the avoidance of doubt this does not include automated reply or “out of office” messages)

19.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

20. Governing law

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

21. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation. This does not affect the parties right of arbitration under the Screen Credits Agreement set out in clause 5.2 above.

This agreement has been entered into on the date stated at the beginning of it.

Signed by [NAME OF WRITER]

.....

for and on behalf of [NAME OF PRODUCER]

.....

Disclaimer

The information and materials contained in these guidelines are intended as a general guide only. Nothing in these pages constitutes specific advice and the Writers' Guild of Great Britain does not accept any responsibility for any loss which may arise from reliance on such information.

No guarantee is given as to the accuracy and/or completeness of the information/materials contained in these pages and the WGGB does not warrant that these guidelines or their contents or the website on which they appear or any hypertext links are virus free or uncontaminated.

The WGGB advises that you should, where appropriate, always seek expert professional advice from the Writers' Guild of Great Britain or agent member of the Personal Managers' Association or a media solicitor.