

# OPTION AGREEMENT

between

**company name**  
**(insert company number here)**

(Hereinafter referred to as *the Producer*)

**address**

and

**name of writer**  
**(ID# .....)**

(Hereinafter referred to as *the Author*)

**Writer's address.**

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## 1. INTERPRETATION

For the purposes of this agreement:

- 1.1 unless inconsistent with the context, the term:
  - 1.1.1 "*the Author*" means name of writer;
  - 1.1.2 "*the Producer*" means Mannequin Pictures
  - 1.1.3 "*the Rights*" means exclusive production, distribution and merchandising rights for worldwide, regional and/or local motion picture, television, video, electronic media, internet, broadband and audio rights, and all rights in all other audio-visual form of media now known or hereafter devised in respect of *the Work*;
  - 1.1.4 "*the Effective Date*" means **date**;
  - 1.1.5 "*the Work*" means the script entitled ..... created and written by name of writer;
  - 1.1.6 "*the Term*" means the period for which the option to purchase *the Rights* is open for acceptance as stipulated in clause 4;
  - 1.1.7 "*the Purchase Price*" means the sum of money paid to *the Author* in full and final settlement for the purchase of *the Rights*;
  - 1.1.8 "*the Project*" means the production of any dramatisation of *the Work* made under and in terms of *the Rights*;
- 1.2 reference to any one gender shall also include reference to the other genders;
- 1.3 the singular shall include the plural, and vice versa;
- 1.4 the clause headings are for reference purposes only and shall not affect interpretation;
- 1.5 the rule of construction that, in the event of ambiguity, the Agreement shall be interpreted against the Party responsible for the drafting thereof, shall not apply in the interpretation of this Agreement;

1.6 the use of the word "including" or "includes" followed by a specified example or instance shall not be construed as limiting the meaning of the general wording succeeding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific examples.

## 2. RECORDAL

2.1 *The Author* and *the Producer* wish to enter into an agreement whereby *the Author* shall grant *the Producer* an Option to acquire *the Rights to the Work* written by *the Author*.

2.2 *The Author* and *the Producer* wish to record the terms of their agreement, which it is intended, will supersede all prior agreements.

## 3. THE OPTION

3.1 *The Author* hereby grants to *the Producer* an exclusive and irrevocable option for *the Term*, exercisable by written notice to the Author at any time within *the Term*, to acquire *the Rights to the Work*, in perpetuity, for exploitation worldwide, regionally and/or locally in all language versions and in all manner and media of communication now known or hereafter devised.

3.2 No consideration shall be payable for the grant of the Option, other than payment of *the Purchase Price* if *the Option* is exercised in accordance with the provisions of clause 6.

3.3 *The Producer* shall have the right, at his discretion, to negotiate an extension to *the Term* of the Option for a further period of the same duration as *the Term* by written notice to *the Author* not later than 60 (sixty) days prior to the expiry of *the Term*.

## 4. THE TERM

*The Term* shall be deemed to have commenced on *the Effective Date*, and shall terminate at **date and time** (subject to extension as provided for in clause 3.3 herein).

## 5. PAYMENTS

All payments hereunder shall be made to and in the name of *the Author*.

## 6. EXERCISE OF THE OPTION

- 6.1 *The Producer* may exercise *the Option* provided in Clause 3 of this Agreement by written notice to the Author given prior to the expiry of *the Term* (or any extension thereof).
- 6.2 Upon exercise of *the Option*, all right, title and interest in and to *the Rights* shall be immediately and automatically ceded and assigned to *the Producer*. For purposes of clarity, after the exercise of the Option, the Author shall have no reversionary right or interest in and to *the Rights* (other than *the Author's* rights in and to *the Work*, excluding *the Rights*).
- 6.3 If *the Option* is not exercised prior to the expiration of *the Term* (or any extension thereof), *the Option* shall lapse and be of no further force or effect.

## 7. THE PURCHASE PRICE

- 7.1 In consideration for the exercise of *the Option* and the acquisition of *the Rights*, the Producer shall pay *the Purchase Price* to *the Author* as follows; 20% within 60 (sixty) days of exercising *the Option*, and the remainder within 30 (thirty) days of the first day of principal photography.
- 7.2 *The Purchase Price* shall constitute full and final payment for the acquisition of *the Rights* by *the Producer* from *the Author*.
- 7.3 *The Purchase Price*, shall be the greater of :
- 7.3.1 amount; or
- 7.3.2 an amount equal to ...% of the budget of *the Project*, subject to a maximum amount of amount
- 7.4 If the budget has not been determined by the date of exercise of *the Option*, then *the Producer* shall pay to *the Author* amount within 14 (fourteen) days in accordance with clause 7.1, and shall pay the surplus (insofar as 1,5% of the budget exceeds R100 000,00 (One Hundred Thousand Rand)) within 14 (fourteen) days of the budget having been finally determined.
- 7.5 Save for *the Purchase Price*, *the Author* shall not have any further right to payment or compensation of any form whatsoever and, without restricting the generality of the foregoing, shall have no right to participate in any form of net

profits, or any percentage of *the Producer's* net or any royalty payment or any back-end payment whatsoever.

8. **RESERVATION OF RIGHTS**

*The Author* expressly reserves for his sole use and disposition, all rights not specifically granted herein, including but not limited to the right to publish *the Work* in printed form.

9. **THE PRODUCER'S RIGHTS**

9.1 In exchange for payment of *The Purchase Price*, *the Author* grants to *the Producer* the exclusive worldwide rights to exploit *the Rights* as *the Producer* deems appropriate. Without detracting from the generality of the foregoing, *the Producer* shall be entitled to:

9.1.1 produce, distribute, project, exhibit, broadcast, and otherwise display or transmit *the Project* based on *the Work*, in all language versions, on all forms of television and through theatrical and non-theatrical exhibition and in all other media now known or hereafter devised;

9.1.2 produce and distribute products and merchandise in any manner related to or based on *the Rights* or the images and/or sounds used in *the Project*;

9.1.3 the exclusive right to use the title of *the Project* and the names and identities of any characters in *the Work* in connection with any form of exploitation of *the Rights*, *the Project* or merchandise based on *the Project*;

9.1.4 make, publish and copyright, or cause to be made published and copyrighted, in *the Producer's* name or in the name of *the Producer's* nominees, in any and all languages and throughout the world, during the legal term of unrestricted copyright, the Screenplay or excerpts therefrom, and,

9.1.5 broadcast and transmit by radio, television or any other means known and unknown, excerpts from and condensations of the Screenplay or any part thereof for the purposes of advertising and exploiting *the Project*.

9.2 *The Producer* shall have the non-exclusive right, but only for the purpose of advertising and exploiting *the Project*, to use *the Author's* name, likeness, and biographical data.

9.3 *The Author* acknowledges the right of *the Producer* to make changes in *the Work* deemed necessary by *the Producer* in production of *the Project*.

## 10. ASSISTANCE OF THE AUTHOR

10.1 *The Author* hereby undertakes in favour of *the Producer* and *the Producer's* successors-in-title, to render reasonable assistance and advice to *the Producer* and/or *the Producer's* successors-in-title as a creative consultant for such purposes as may be requested by *the Producer* and/or *the Producer's* successors-in-title for the purposes of the exploitation of *the Rights*.

10.2 To the extent that *the Author's* assistance and advice is required on a continuous basis, the parties will negotiate in good faith with a view to agreeing upon reasonable remuneration payable to *the Author* for such services.

## 11. INDEMNITY

*The Producer* hereby indemnifies and holds *the Author* harmless from and against any loss, harm, claim, expense or damage arising out of or in connection with the Project, save for any gross negligence or wilful misconduct on the part of *the Author*.

## 12. ASSIGNMENT OF RIGHTS

12.1 *The Author* agrees that, in the event *the Option* is exercised by *the Producer*, this document shall constitute a valid grant, cession, assignment and conveyance of *the Rights*.

12.2 *The Producer* may in its discretion form a Production Company (whether a partnership, a corporation, or any other business association that may now or in the future be created) to produce *the Project* provided for under this Agreement.

12.3 Alternatively, *the Producer* may form a separate Production Company to produce each *Project* provided for hereunder.

12.4 *The Producer* shall have the unrestricted right to assign its rights and obligations under this Agreement to said Production Company or to a partnership, corporation, or any other form of business association (whether or not *the Producer* holds an interest therein), or to an individual or other entity.

13. **THE AUTHOR'S WARRANTIES**

13.1 *The Author* hereby represents and warrants that:

13.1.1 he has full right, title and authority to enter into this Agreement and to grant the rights granted herein;

13.1.2 *the Work* does not infringe upon or violate any right of privacy or publicity or right against defamation or any copyright, trademark or trade secret of any person, firm, corporation, or other entity;

13.1.3 he holds all rights, title and interest in and to *the Work* and *the Rights* free and clear of any liens, encumbrances, claims, or litigation, whether pending or threatened.

13.1.4 he has not, at any time, licensed any interest in *the Work* to any other person or entity, and has not to date entered, and will not hereafter enter, into any agreement, commitment, or obligation that will or might conflict with or impair *the Producer's* full enjoyment of *the Rights* or any part thereof.

13.2 *The Author* hereby agrees to defend and indemnify *the Producer* against any loss or damage (including legal fees) incurred by reason of any breach or claim of breach of the foregoing representations and warranties.

14. **THE PRODUCER'S WARRANTIES AND INDEMNITY**

14.1 *The Producer* hereby indemnifies *the Author* against any loss or damage (including reasonable legal fees) incurred by *the Author* by reason of any claim for defamation or invasion or infringement of copyright, trademark, right of privacy, right of publicity, or any other intellectual property right brought against *the Author* based upon a scene, character, or event contained in *the Project*, to the extent that the grounds of such claim are based on anything not contained in *the Work* or any other material or treatment not contained in *the Work*, including but not limited to *the Producer's* advertising or solicitation materials.

14.2 *The Author* agrees and understands that *the Producer* is under no obligation whatsoever to at any time produce *the Project* or otherwise exploit *the Rights*.

15. **RESTRICTIONS ON THE PRODUCER**

It is agreed that during *the Term* (and any extended *Term*, if applicable), *the Producer* shall not until such time as he has exercised *the Option* be entitled to exercise any rights



in and to *the Work* or *the Rights*. It is understood, however, that during *the Term*, (or extended *Term*, if applicable), *the Producer* may at his own expense undertake activities in connection with the funding of *the Project*, provided that in no event may *the Producer* commence pre-production on *the Project* without exercising *the Option* as provided for in Clause 3 herein.

16. **THE AUTHOR'S CREDIT**

16.1 *The Author* shall receive credit as the author of *the Work* not smaller than that accorded the Director in the main titles of any *Project* based on *the Work*.

16.2 The credit *the Author* will receive will read; "Screenwriter: name of writer

16.3 In the event that the Author is not hired to direct *the Project*, *the Author* will be entitled to an additional credit as Co-Producer, which credit shall be not smaller than that of the Producer in any main titles of any Project based on *the Work*.

17. **ADDITIONAL DOCUMENTS**

17.1 *The Author* agrees that, if *the Producer*, in it's sole discretion, shall deem it necessary, *the Author* shall execute and/or deliver to *the Producer*, any and all further documents necessary or proper to evidence or secure to *the Producer* the *Rights* herein conveyed, granted, ceded and assigned, and to perfect the recordal thereof.

17.2 Without limiting the generality of the foregoing, *the Author* agrees to execute and deliver short form assignments of the Option and any and all *the Rights*, herein conveyed, granted, ceded and assigned to *the Producer*, duly executed and acknowledged by *the Author*, and further agrees to secure and deliver to *the Producer* a quit-claim or quit-claims of all rights, licenses, privileges and property herein granted to *the Producer*, duly executed and acknowledged by any persons, firms or corporations having any interest in *the Project* or any part thereof, if *the Producer* shall request the same.

18. **AUTHOR WRITTEN SEQUELS AND TELEVISION DERIVATIVES**

18.1 Should *the Author* write a sequel or sequels to *the Work*, *the Producer* shall have the right of first negotiation and first refusal with respect to the subsidiary rights (such as those contemplated by clause 1.1.3) of such work(s) on the same terms as those agreed to for *the Work*.

- 18.2 If *the Author* does not write a sequel or sequels within 1 (one) year after the date on which *the Producer* indicates in writing that he requires such a work, he shall be entitled to produce a sequel in any of the forms of media contemplated in clause 1.1.3 based on the characters and content of *the Work*, written by someone else. In such a case, *the Author* will be paid 50% of the “*Purchase Price*” on the same terms as laid out in clause 7.
- 18.3 *The Author* shall be entitled to be paid 50% of the “*Purchase Price*” on the same terms as laid out in clause 7 for any re-make of *the Project*.
- 18.4 For any short-form programme (including but not limited to Television, Video on Demand and and form intended to debut on the Internet,) produced based on or derived from *the Work*, *the Producer* will pay the Author R 7 000.00 (Seven Thousand Rand) for every 30 minutes or part thereof produced prior to the start of principal photography.

19. **COPIES OF WORK**

Within 30 (thirty) days after the signature of this agreement by the last party to sign, *the Author* will furnish *the Producer* with one electronically generated .pdf copy, and one printed copy of *the Work*.

20. **JURISDICTION**

The parties hereby consent to the jurisdiction of any magistrate’s court which may have jurisdiction in regard to the area, notwithstanding the fact that the quantum of the jurisdiction of that magistrate’s court may otherwise be exceeded. Notwithstanding the foregoing, either party shall in its discretion be entitled to institute action in the Supreme Court of South Africa. The terms and conditions of this agreement shall be interpreted according to the laws of the Republic of South Africa.

21. **NON-WAIVER**

No party shall be regarded as having waived, or be precluded in any way from exercising any right under or arising from this agreement by reason of any party having at any time shown any indulgence to any other party with reference to any performance hereunder, or having failed to enforce, or delayed in the enforcement of any right of action against the any other party.

22. **DOMICILIA AND NOTICES**

22.1 The parties choose as their *domicilia citandi et executandi* for the service of all legal processes and notices in terms of this agreement the addresses mentioned in Clause 20.2 below, provided that any party may change its *domicilium* aforesaid to an address in the Republic of South Africa which is not a post office box or poste restante, by written notice to the other party with effect from the date of receipt or deemed receipt of such notice.

22.1.1 Writers name and contact details

22.1.2 Production company and contact details

22.2 Any notice, order, acceptance, demand or other communication addressed by any party to the other party at his *domicilium* in terms hereof for the time being and:

22.2.1 sent by e-mail shall be deemed to be received by the addressee upon receipt of acknowledgement that the e-mail has been received at that address;

22.2.2 delivered by hand shall be deemed to be received by the addressee on the first business day after the date of proof of delivery.

22.3 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by the addressee shall be regarded as an adequate written notice or communication to him notwithstanding that it was not sent to or delivered at its chosen *domicilium*.

23. **WHOLE AGREEMENT**

23.1 This document contains the entire agreement between the parties and supersedes all prior agreements including any oral agreements.

23.2 No variation or consensual cancellation of this agreement shall be of any force or effect unless reduced to writing and signed by both *the Author* and *the Producer*.

24. **HEADINGS**

24.1 Headings and subdivisions of this agreement are for reference only, and will not form any part hereof or otherwise be given any legal effect..

**SIGNED AT Johannesburg on the \_\_\_\_ day date in the presence of the undersigned witnesses.**

**AS WITNESSES:**

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_  
**Name of writer**

**SIGNED AT Johannesburg on \_\_\_\_ day of date in the presence of the undersigned witnesses.**

**AS WITNESSES:**

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_  
**Production company name**