

ABSENT PRESENT PRODUCTIONS LLC
138 West 25th St., 10th Floor
New York, NY 10001

As of {***Date}

{Writer}

Address

Address

Re: " _____ " - **Writer's Agreement**

Ladies and Gentlemen:

The following shall constitute the agreement (the "Agreement") between Absent Present Productions LLC ("Company") and [INSERT WRITER'S NAME] ("Writer") (Soc. Sec. #: ____ - ____ - ____) with respect to the writing services of Writer in connection with an as yet undetermined motion picture project to be determined by Company pursuant to Paragraph 2.2 below (the "Picture"). The parties hereto hereby agree as follows:

1. **CONDITIONS PRECEDENT.** Company's obligations hereunder are subject in all respects to satisfaction of the following conditions precedent:

1.1 The selection of Writer, in Company's sole discretion, as part of the Symbolic Exchange Smart Scares Submission Call, hosted by the Black List, LLC;

1.2 Signature by Writer and delivery to Company of this Agreement;

1.3 Signature by Writer and delivery to Company of a fully executed certificate of authorship in connection herewith;

1.4 Writer's completion to Company's satisfaction of the I-9 form (eligibility verification form) and Writer's submission to Company of documents satisfactory to Company to demonstrate Writer's employment eligibility;

1.5 Company's receipt and approval of all chain-of-title documentation to the Picture.

2. **ENGAGEMENT.** Commencing upon satisfaction of the conditions precedent set forth in Paragraph 1 above, Writer shall render all services as are required by Company hereunder and all services as are customarily rendered by writers of first-class feature-length theatrical motion pictures in the motion picture industry, as when and where required by Company. Writer shall render such services to the full extent of Writer's talents and abilities for and as directed by Company. Writer shall be obliged to incorporate into all material written hereunder such changes, revisions, deletions and/or additions as may be required by Company or any representative designated by Company. Writer shall be available for and shall participate in story conferences and

meetings with Company and such other parties as Company may designate, as and when designated by Company. Company's executive responsible for supervising Writer's services hereunder shall be James Schamus or Joseph Pirro or their replacements. Each item of work set forth in Paragraphs 2.3 through 2.6 below shall be not less one hundred ten (110) pages and not more than one hundred thirty (130) pages in length. Writer shall not give a copy of or show the material written by Writer hereunder, or any part or parts thereof, to any person other than Company, the producer(s) and/or director of the Picture, if previously engaged by Company, without the prior written consent of the business affairs department of Company.

2.2 Idea Submission Period. For a period beginning as of the date hereof and continuing for up to three (3) months following satisfaction of the conditions precedent as per Paragraph 1 above, Writer shall submit a reasonable number of story ideas and/or pitches ("Writer Submitted Ideas") to Company for consideration as the basis of the Picture and Writer's writing services hereunder, and Company may also elect to submit ideas ("Company Submitted Ideas") to Writer for consideration and discussion; provided, however, that Company will make the ultimate decision at any time in its sole discretion regarding the story idea upon which the screenplay for the Picture will be based.

2.3 Commencement Notice. Writer shall not commence rendering any services until notified in writing to do so by the business affairs department of Company.

2.4 Initial Commitment. Company shall engage Writer to write and deliver: (i) a complete original first draft screenplay (the "First Draft"); and (ii) a complete original final draft screenplay (the "Final Draft") incorporating Company's changes and suggestions to the First Draft (the "Final Draft").

2.5 Optional Rewrite. Company is granted an irrevocable option, exercisable in Company's sole discretion, to engage Writer to complete and deliver an additional complete second rewrite of the Final Draft or the "Optional Polish" (defined below) incorporating Company's changes and suggestions (the "Optional Rewrite").

2.6 Optional Polish. Company is granted an irrevocable option, exercisable in Company's sole discretion, to engage Writer to complete and deliver a complete polish of the Final Draft or, if Company exercised its option for the Optional Rewrite, the Optional Rewrite incorporating Company's changes and suggestions (the "Optional Polish").

3. **BASIC COMPENSATION FOR WRITING SERVICES**. In full and complete consideration to Writer for all writing services hereunder and for the rights and privileges to which Company is entitled hereunder, and provided Writer has fully and completely performed all such services and that Writer is not in default of this Agreement, Company shall pay to Writer the following basic compensation:

3.1 First Draft and Final Draft

(a) For the First Draft, the sum of Thirty-Six Thousand Nine Hundred Sixty-Four Dollars (\$36,964), payable one-half (1/2) on commencement of writing services on the First Draft upon Company's instruction to do so, and one-half (1/2) upon satisfactory delivery of the First Draft.

(b) For the Final Draft, the sum of Ten Thousand Eight Hundred Ninety-Eight Dollars (\$10,898), payable one-half (1/2) on commencement of writing services on the Final Draft upon Company's instruction to do so, and one-half (1/2) upon satisfactory delivery of the Final Draft.

3.2 Optional Second Rewrite. If Company exercises its option for the Optional Rewrite as set forth above, Writer shall receive Twenty-Three Thousand Three Hundred Seventy-Four Dollars (\$23,374), payable one-half (1/2) on commencement of writing services on the Optional Rewrite upon Company's instruction to do so, and one-half (1/2) upon satisfactory delivery of the Optional Second Rewrite.

3.3 Optional Polish. If Company exercises its option for the Optional Polish as set forth above, Writer shall receive Eleven Thousand Six Hundred Ninety-Five Dollars (\$11,695), payable one-half (1/2) on commencement of writing services on the Optional Polish upon Company's instruction to do so, and one-half (1/2) upon satisfactory delivery of the Optional Polish.

3.4 Payment. All sums accrued hereunder shall be payable on Company's regular pay day of the week following the week services were rendered. All payments shall be sent to the address set on page 1 of this Agreement and shall be deemed made when placed in the U.S. mail, or sent by courier or messenger.

4. CONTINGENT COMPENSATION. In addition to the compensation set forth in Paragraph 3 above, and provided the Picture is produced and released and that Writer has performed all services hereunder and that Writer is not in breach of the Agreement, Writer shall be entitled to the following contingent compensation:

4.1. Production Bonus.

(a) If Writer receives sole "screenplay by" or sole "written by" credit upon final credit determination under the Writer's Guild of America ("WGA") Basic Agreement ("WGA Agreement") (other than pursuant to Paragraph 7 of Theatrical Schedule A thereof) ("Screenplay Credit"), Writer shall receive a production bonus ("Sole Credit Bonus") equal to two percent (2%) of the "Ingoing Direct Budget" (as defined below) of the Picture, with a floor of Fifty Thousand Dollars (\$50,000) and a ceiling of One Hundred Fifty Thousand Dollars (\$150,000), less the aggregate of all sums paid or payable under Paragraph 4 of this Agreement.

(b) If Writer is accorded shared Screenplay Credit, then, in lieu of the foregoing, Writer shall receive a production bonus ("Shared Credit Bonus") equal to fifty percent (50%) of the Sole Credit Bonus which would have been applicable if Writer had been accorded sole Screenplay Credit.

(c) The bonus set forth in this Paragraph 4.1 shall be payable upon final credit determination pursuant to the WGA Agreement.

4.2 Participation.

(a) In the event that (A) the Picture is financed by a major or mini-major studio and produced by Company (or its successors or assigns), (B) Writer is accorded Sole Screenplay Credit, and (C) Writer is not in uncured material default hereof, then (D) Writer shall be entitled to sums equal to five percent (5%) of one hundred percent (100%) of the “Net Proceeds” of the Picture, as such term is defined by the motion picture studio.

(b) In the event that (A) the Picture is financed independently (e.g., through private equity, via a negative pickup deal with a studio, from so-called “soft money” and/or through similar methods) and produced by Company (or its successors or assigns), (B) Writer is accorded Sole Screenplay Credit, and (C) Writer is not in uncured material default hereof, then (D) Writer shall be entitled to sums equal to five percent (5%) of one hundred percent (100%) of producer’s share of the “Net Proceeds” of the Picture, as such term is defined by the applicable financing agreements for the Picture.

(c) In the event that (A) the Picture is financed by a motion picture studio and produced by Company (or its successors or assigns), (B) Writer is accorded Shared Screenplay Credit, and (C) Writer is not in uncured material default hereof, then (D) Writer shall be entitled to sums equal to two and a half percent (2.5%) of one hundred percent (100%) of the “Net Proceeds” of the Picture, as such term is defined by the motion picture studio.

(d) In the event that (A) the Picture is financed independently (e.g., through private equity, via a negative pickup deal with a studio, from so-called “soft money” and/or through similar methods) and produced by Company (or its successors or assigns), (B) Writer is accorded Shared Screenplay Credit, and (C) Writer is not in uncured material default hereof, then (D) Writer shall be entitled to sums equal to two and a half percent (2.5%) of one hundred percent (100%) of producer’s share of the “Net Proceeds” of the Picture, as such term is defined by the applicable financing agreements for the Picture.

4.3 No Credit. Writer shall not be entitled to receive any contingent compensation under this Paragraph 4 if Writer does not receive either sole or shared Screenplay Credit.

4.4 Definitions. “Ingoing Direct Budget” of the Picture shall be defined as the direct cash budget of the Picture approved by Company on the date that Company elects to proceed to Production of the Picture, exclusive of completion bond fees, bank fees, interest, financing costs, contingency, budgeted residuals, overhead charges, insurance and all sums paid or payable to Writer in connection with the Picture.

4.5 No Guarantee. Company makes no representation or warranty that the Picture will be produced, or if the Picture is produced, that the proceeds of the Picture shall be sufficient to generate any participation. Nothing contained herein shall be construed to give Writer any right, title or interest of any kind in or to the gross receipts derived from the Picture, and the participation shall not in any way constitute a lien or claim on the Picture or on any gross receipts derived therefrom.

5. DELIVERY SCHEDULE.

5.1 Reading and Writing Periods. The periods within which Writer shall deliver each item of material after Company's instruction that Writer commence writing said material, and Company's reading and option periods, shall be as follows, it being understood that Writer's services shall be furnished to Company on an exclusive basis during the writing periods and on a non-exclusive but first-priority basis during the reading and option periods, and that time is of the essence with respect to Writer's delivery of the required material within the applicable writing period; it being understood and agreed that any untimely delivery by Writer to Company shall be deemed a material breach of this Agreement.

First Draft	8 weeks
Reading/Option Period	up to 6 weeks
Final Draft	6 weeks
Reading/Option Period	up to 6 weeks
Optional Rewrite	4 weeks
Reading/Option Period	up to 6 weeks
Optional Polish	2 weeks
Reading/Option Period	up to 6 weeks

5.2 Deferral. Company may defer Writer's services on any writing step to such other time as Company elects, subject to Writer's prior professional contractual commitments. If Company elects to defer Writer's services on any writing step hereunder, Company shall pay Writer for said deferred services as if said services were timely rendered in accordance with the schedule set forth in Paragraph 5.1 above; provided, however, that Writer thereafter renders said deferred services as required by Company.

6. **RIGHTS GRANTED.**

6.1 Company Sole And Exclusive Owner. Writer acknowledges that Company shall be the sole and exclusive owner of all rights of every kind and nature in perpetuity in and to all materials written or submitted hereunder, including, without limitation, the First Draft, Final Draft, Optional Rewrite and Optional Polish, if any, and the results and proceeds of every kind of services heretofore and hereafter rendered by Writer in connection with the Picture, including, without limitation, any performance by Writer and all ideas, suggestions, themes, plots, stories, characterizations, dialogue, titles and other material, whether in writing or not in writing, at any time heretofore or hereafter created or contributed by Writer which in any way relate to the Picture or to the material on which the Picture will be based (collectively, the "Materials"), all such Materials being a "work made for hire" for Company within the meaning of the U.S. Copyright Law in as much as: (i) the Materials were and shall be created by Writer as an employee within the scope of Writer's employment; and (ii) the Materials were and shall be specifically commissioned by Company as part of an audiovisual work. In the event any of the Materials shall be deemed not to constitute a "work made for hire", Writer hereby assigns to Company all right, title and interest in and to such materials, including, without limitation, all rights under copyright or otherwise in perpetuity for use in any medium now known or hereafter devised throughout the world.

6.2 Unlimited Exploitation Right. Company shall have the unlimited right to use, exploit, advertise, merchandise and exhibit any motion picture or other work of any nature based on or contained in the Materials and elements thereof and all rights therein (including, but not limited to, the right to make sequels, remakes, computer and/or interactive software, video games, and other

works based on the Materials, and/or any motion picture based on the Materials) in any manner and in all media, whether now known or hereafter devised, throughout the world, in perpetuity, in all languages, as Company, in its sole discretion shall determine, without any further payment to Writer except as specifically provided in this Agreement or as required in the WGA Agreement. Company may change, alter, add to, subtract from, or rearrange all or any part of the material written, contributed or submitted by Writer hereunder, or combine it with any other material, as Company sees fit, including the right to employ other and/or additional writers. Writer hereby waives any and all so-called moral rights of authors.

6.3 Novelization. Writer has notified Company that Writer has no interest in writing a novelization of the screenplay. Accordingly, Company may publish or cause to be published a novelization of the screenplay without further negotiation with Writer and without additional payment to Writer; except that if it is determined that Writer is entitled to separation of rights pursuant to the WGA Agreement, Company shall pay to Writer the sums required to be paid pursuant to Article 16A.3(a)(3) thereof.

6.4 Assignment of Property. Without limiting the generality of Paragraph 6.1 above, Writer hereby grants and assigns to Company throughout the world in perpetuity all right, title and interest of every kind and nature in and to the Materials and the elements thereof, including, without limitation, all copyrights (and extensions and renewals thereof).

6.5 Certificate of Authorship. Writer shall, concurrently with execution of this Agreement, execute and deliver to Company a certificate of authorship in connection herewith in Company's customary form.

6.6 Name/Voice/Likeness. Writer hereby grants exclusively to Company forever and throughout the world the right to use, for no additional consideration, Writer's name, image, voice, likeness, photograph and biography in connection with the Picture and all ancillary, subsidiary and derivative rights therein and thereto, including, but not limited to, music, publishing, soundtrack albums, computer and/or interactive software, publications, promotions, merchandising and commercial tie-ins.

7. CREDIT. Upon condition that Writer shall fully perform all of the services and obligations required to be performed by Writer hereunder and that Writer is not in default hereunder, Company shall accord Writer writing credit in connection with the Picture in a manner consistent with the minimum requirements of the then-current WGA Agreement; subject to the foregoing, all other aspects of Writer's credit (if any) and the according of credits to other writers shall be determined in Company's sole discretion. No casual or inadvertent failure by Company or any third parties to comply with the provisions of this Paragraph or failure by any third parties to comply with their agreements with Company shall constitute a breach of this Agreement by Company.

7A. FIRST NEGOTIATION. If Writer is entitled to sole Screenplay Credit on the Picture, and within seven (7) years after the initial general theatrical release of the Picture, Company produces a live action English-language theatrical sequel, live action English-language theatrical prequel, live action English-language theatrical remake, or live action English-language television production based upon the Picture, and if Writer is then active as a professional writer in the theatrical motion picture or television industry, whichever is the applicable medium, then Company shall first negotiate with Writer for Writer's services in connection with the first such production, provided

that: (i) any engagement in connection with a television production shall be subject to licensee and/or distributor and/or financier approval, as applicable; and (ii) Writer's right of first negotiation with respect to a television series shall apply only to the pilot or the first episode if there is no pilot. The foregoing right of first negotiation shall apply to subsequent live action English-language theatrical sequels, live action English-language theatrical prequels, live action English-language theatrical remakes and live action English-language television productions but only if Writer was actually engaged for the first such production and Writer received sole "Screenplay Credit" for the immediately preceding live action English-language theatrical sequel, live action English-language theatrical prequel, live action English-language theatrical remake or live action English-language television production, as applicable. If Company and Writer do not reach an agreement within fifteen (15) business days after commencement of negotiations, Company shall have no further obligation to Writer with respect to such live action English-language theatrical sequels, live action English-language theatrical prequels, live action English-language theatrical remakes or television productions, except as set forth in Paragraph 7B below.

7B. **PASSIVE PAYMENTS.** Provided that Writer is not in material default of this Agreement, and if Writer receives sole Screenplay Credit and sole "separated rights", then if Writer is not actually engaged to render writing services in connection with a particular theatrical sequel, theatrical prequel, theatrical remake or television production pursuant to Paragraph 7A above, Writer shall be entitled to receive one hundred percent (100%) of the payments specified below. If Writer is entitled to either shared Screenplay Credit or shared "separated rights" (but at least some portion of each), Writer shall be entitled to receive fifty percent (50%) of the payments specified below. If Writer does not receive any Screenplay Credit or any share of "separated rights", Writer shall not be entitled to any payments pursuant to this Paragraph 7B.

7B.1 **For Theatrical Sequels or Prequels.**

(a) One-half (1/2) of the cash compensation actually paid to Writer pursuant to Paragraphs 3 and 4.1 above; and

(b) As contingent compensation, a percentage of the Defined Net Proceeds (if any) of such theatrical sequel or prequel, as applicable, which percentage shall be one-half (1/2) of the percentage of the Defined Net Proceeds to which Writer was entitled (pursuant to Paragraph 4.2 above) for Writer's writing services on the Picture.

7B.2 **For Theatrical Remakes.**

(a) One-third (1/3) of the cash compensation actually paid to Writer pursuant to Paragraphs 3 and 4.1 above; and

(b) As contingent compensation, a percentage of the Defined Net Proceeds (if any) of such remake, which percentage shall be one-third (1/3) of the percentage of the Defined Net Proceeds to which Writer was entitled (pursuant to Paragraph 4.2 above) for Writer's writing services on the Picture.

7B.3 **For Prime Time Network (i.e., CBS, NBC, ABC and FBC) Television Series.** Two Thousand Seventy-Seven Dollars (\$2,077) per 30 minute episode; Three Thousand Nine Hundred Forty-Six Dollars (\$3,946) per 60 minute episode; and Five Thousand One Hundred Ninety-Three

Dollars (\$5,193) for any episode over 60 minutes. For non-primetime network and non-network series, Writer shall be entitled to receive one-half (1/2) of the otherwise applicable episode payment. One hundred percent (100%) of the royalty set forth in this Paragraph 7B.3, shall be payable over the first five (5) network reruns only, in the combined territory of the United States and Canada. The fifth such payment shall be deemed a buyout of any subsequent payment obligation for reruns.

7B.4 For Prime Time Network Made-For-Television Movies ("MOW") and Mini-Series. Seven Thousand Five Hundred (\$7,500) per telecast hour, to a cap of Sixty Thousand Dollars (\$60,000). For non-prime time network and non-network MOWs and Mini-Series, Writer shall be entitled to receive one-half (1/2) of the otherwise applicable MOW or Mini-Series payment, as applicable. In addition:

(a) If the MOW or Mini-Series has a theatrical exhibition in the United States and Canada prior to its initial broadcast on prime-time free network television in the United States, Writer shall be entitled to an additional sum equal to one hundred percent (100%) of the applicable compensation paid or payable to Writer pursuant to Paragraph 7B.4 above, payable within thirty (30) days after the date of the initial theatrical release of the applicable MOW or Mini-Series in the United States;

(b) If the MOW or Mini-Series has a theatrical exhibition in the United States subsequent to its initial broadcast on prime-time free network television in the United States, Writer shall be entitled to an additional sum equal to fifty percent (50%) of the applicable compensation paid or payable to Writer pursuant to Paragraph 7B.4 above, payable within thirty (30) days after the date of the initial theatrical release of the applicable MOW or Mini-Series in the United States;

(c) If the MOW or Mini-Series has a theatrical exhibition outside the United States prior or subsequent to its initial broadcast on prime-time free network television in the United States, Writer shall be entitled to an additional sum equal to fifty percent (50%) of the applicable compensation paid or payable to Writer pursuant to Paragraph 7B.4 above, payable within thirty (30) days after the date of the initial theatrical release of the applicable MOW or Mini-Series outside the United States;

(d) In no event shall Writer be entitled to receive more than the total additional amount of a sum equal to one hundred percent (100%) of the compensation paid or payable to Writer pursuant to Paragraph 7B.4 above, with respect to any theatrical exhibition of the applicable MOW or Mini-Series.

7B.5 For Television Spin-Offs. A generic spin-off ("Generic Spin-off") shall be defined as a new series utilizing a character created by Writer and contained in the Picture and the original television series. In the event of a Generic Spin-off, Writer shall receive one-half of the sums set forth in Paragraph 7B.3 above. A planted spin-off ("Planted Spin-off") shall be defined as a new series derived from the first series containing characters contained in the first television series, but not utilizing characters created by Writer and contained in the Picture. In the event of a Planted Spin-off, Writer shall receive one-fourth (1/4) of the sums set forth in Paragraph 7B.3 above.

7B.6 Payments. Unless specified otherwise, theatrical payments due under this Paragraph 7B shall be payable on commencement of principal photography and television payments shall be

payable upon the receipt of the license fee.

7B.7 Royalties and Rerun Fees. The royalty and rerun payments set forth in this Paragraph 7B are inclusive of the minimum royalties and rerun fees payable under the WGA Agreement.

8. **REPRESENTATIONS & WARRANTIES.** Writer represents and warrants as follows:

8.1 Originality. All of the Materials submitted or written by Writer will be wholly original with Writer and not copied in whole or in part from any other work except for that which is specifically embodied in the materials assigned to Writer by Company.

8.2 No Infringement. Neither the Materials nor any elements thereof, nor any other materials submitted to or included in the Picture by Writer will violate, conflict with, or infringe any rights whatsoever, including, without limitation, the following: any common law or statutory right, throughout the world; any right of publication, performance, or any other right in any work; and any right against libel, slander, invasion of privacy or similar right of any person or entity. Writer further represents and warrants that there are no third parties whatsoever having any right, interest or claim in the Materials or any elements thereof nor proceeds therefrom, and the Materials are not the subject of any litigation or any claim that might give rise to litigation, and that Writer is free to enter into this Agreement and to grant Company all rights granted or which may be granted herein.

8.3 Writer's Performance. Writer has and will continue to have the right to enter into and to perform this Agreement until all materials and services required or requested hereunder are delivered, and to grant to Company all rights granted hereunder. Writer is not subject to any conflicting obligation or disability which will prevent or interfere with the performance of this Agreement and Writer's rendition of exclusive services to Company during the term hereof.

8.4 Commitments To Others. Writer represents that Writer has not entered into any agreement (written or oral, implied or express) with any third party which relates to the Picture or the production of the Picture nor has Writer made any promises to any third party in connection with the Picture or the production of the Picture.

9. **ANNOTATION GUIDE.** To the extent any material written hereunder is based in whole or in part on any actual individual, whether living or dead, or involves any "real life" incident, Writer shall annotate the material written hereunder in accordance with the guidelines provided in the Annotation Guide attached hereto and incorporated herein by this reference. In connection therewith, Writer shall provide, concurrently with Writer's delivery of material to Company, a full and detailed annotation identifying the source of all factual material contained therein which concerns any actual individual, whether living or dead, or involves any "real life" incident. Upon Company's reasonable request and subject to Writer's professional availability, Writer shall consult and cooperate with attorneys for Company or the errors and omissions insurance carrier for the Picture for the purpose of permitting Company to evaluate the risks involved in the utilization of the materials supplied by Writer.

10. **COMPANY'S CONTROL.** Writer acknowledges the right of Company to make any changes in the product of any of Writer's services hereunder in the preparation and exploitation of any productions based upon or incorporated in the Materials. Without limiting the generality of the foregoing, Company shall have all final artistic control over and the right to cut, edit, add to, subtract

from, arrange, rearrange and revise the product of any of Writer's services hereunder in any manner. Company shall not be obligated to produce, market or release the Picture, or to continue such production, marketing, or release, if commenced.

11. **INDEMNITY.**

11.1 Writer hereby indemnifies and holds Company, its parent, subsidiaries, successors, licensees and assigns, and any of its or their agents, employees or representatives thereof, harmless against any and all claims and expenses (including, without limitation, reasonable legal fees and expenses) incurred by any of the aforementioned indemnitees hereunder by reason of the breach or alleged breach of any warranty, undertaking, representation, agreement or certification made hereunder by Writer.

11.2 Company shall defend, indemnify and hold harmless Writer from and against any third party liabilities, losses, claims, demands, damages and costs (including, without limitation, reasonable outside attorneys' fees and expenses) arising out of any materials furnished to Writer by Company including without limitation the Assigned Material or the development, production, distribution and/or exploitation of the Picture (and all rights therein and any elements thereof) with respect to which Writer have no obligation to indemnify Company hereunder. Company shall not be required to indemnify Writer for any claims arising from Writer's intentionally tortious and/or grossly negligent conduct.

11.3 Writer shall have the right as well as the obligation to consult and cooperate with Company in connection with any claim, subject to the indemnity set forth in Paragraph 11.2 above and, upon Company's request, to furnish Company with any and all evidence, materials or other information relevant thereto. Writer shall have the right (at Writer's sole expense) to have Writer's own counsel present in connection with the defense of any such claim, provided that such counsel fully cooperates with Company's counsel and in no way interferes with the reasonable handling of the case by Company's counsel. Writer understands and agrees that all aspects of the defense of such claim, whether as part of any litigation, negotiations or otherwise (including, without limitation, any decision regarding any settlement), shall be controlled by Company, Company shall be free to use counsel of Company's choice in connection therewith, and such control shall in no way abrogate or diminish Writer's obligations under Paragraph 11.1 above.

12. **FORCE MAJEURE, DISABILITY, AND DEFAULT.**

12.1 Force Majeure. If the development, pre-production or production of the Picture is interrupted or prevented by matters beyond the control of Company ("force majeure events"), including (without limitation) the death, disability or default of a member of the cast, producer or director; fire, earthquake, flood or other natural disaster; riot, war, governmental order; or labor dispute (or threat thereof), Company shall have the right to automatically suspend and extend Writer's services and compensation, and any time periods hereunder for the duration of any such force majeure event and the period reasonably required by Company thereafter to resume development, pre-production or production of the Picture. If any such suspension shall last longer than eight (8) weeks, Company shall have the right to terminate this Agreement at any time thereafter on written notice to Writer. In the event Company terminates this Agreement pursuant to this Paragraph 12.1, Company shall retain its sole and exclusive ownership of the Materials and Company and Writer shall be relieved of all executory obligations hereunder and the compensation,

if any, theretofore accrued to Writer under this Agreement shall be deemed payment in full of the compensation payable to Writer hereunder.

12.2 **Disability.** If Writer is unable to fully perform services hereunder, whether due to death, disease, incapacity, or otherwise, Company shall have the right to automatically suspend and extend Writer's services and compensation, and the running of any time periods hereunder during the occurrence of such inability and for such a period of time thereafter as Company reasonably requires to resume the use of Writer's services. If such disability continues for a period of (i) four (4) consecutive days, or seven (7) days in the aggregate, during the writing periods or during principal photography of the Picture, or (ii) ten (10) days in the aggregate during all other periods, Company shall have the right to terminate this Agreement. In the event Company terminates this Agreement pursuant to this Paragraph 12.2, Company shall retain its sole and exclusive ownership of the Materials and Company and Writer shall be relieved of all executory obligations hereunder and the compensation, if any, theretofore accrued to Writer under this Agreement shall be deemed payment in full of the compensation payable to Writer hereunder.

12.3 **Default.** Upon any breach by Writer of any of the terms and conditions of this Agreement, Company shall immediately have the right, exercisable at any time, to terminate this Agreement by so notifying Writer in writing. Upon any such termination, Company shall be relieved of its obligations and Writer shall be entitled to no further compensation hereunder. In the event Company terminates this Agreement pursuant to this Paragraph 12.3, Company shall retain its sole and exclusive ownership of the Materials. The foregoing shall in no way limit any other remedy which Company may have against Writer.

13. **INSURANCE.** Company shall have the right to apply for and take out, at Company's expense, life, health, accident, cast or other insurance covering Writer, in any amount Company deems necessary to protect Company's interest hereunder. Writer shall not have any right, title or interest in or to such insurance. Writer shall assist Company in obtaining such insurance by submitting to usual and customary medical and other examinations required by Company's insurer and by signing such application, statements and other instruments as may be reasonably required by any such insurance company. If Writer fails or is unable to qualify for such insurance at customary rates or with customary deductibles, Company shall have the right to terminate this Agreement.

14. **PUBLICITY RESTRICTIONS:** Subject to Writer's professional availability and as reasonably requested by Company, Writer shall cooperate in good faith in the promotion of the Picture and no additional compensation or other remuneration shall be payable to Writer therefor. Writer shall not, without Company's prior written approval, (i) issue or authorize the publication of any news story, publicity or publicity materials relating to the Picture, Writer's services hereunder, or Company, (ii) make any derogatory or knowingly false statements concerning the Picture, Company or any officers or employees of Company, (iii) disclose any confidential information regarding Company or the Picture (including, but not limited to, the screenplay or other material, the release plan, the budget, or the terms of any contracts), or (iv) encourage any other individual to do any of the foregoing.

15. **NO OBLIGATION TO PROCEED.** Notwithstanding any other provision of this Agreement, Company shall have no obligation to utilize Writer's services or to include the results or proceeds thereof in the Picture, or to produce, release, distribute, market or otherwise exploit the Picture, or to exercise any or all of Company's rights hereunder.

16. **ASSIGNMENT.** Company shall have the right to assign, license and delegate this Agreement in whole or in part, or any or all of Company's rights, obligations, options or privileges hereunder, to any entity, and this Agreement and any or all of said rights, obligations, options and/or privileges may in turn be transferred by any assignee, successor, transferee or delegate. Writer acknowledges that the services to be rendered by Writer hereunder are of the essence of this Agreement and that neither this Agreement nor any of Writer's rights or obligations hereunder may be assigned, delegated or otherwise transferred.

17. **NOTICES.** All notices hereunder shall be in writing and may be given by personal delivery, unless personal delivery is impracticable, in which case notice may be given by telegram or facsimile transmission, or by registered or certified mail (postage prepaid), and shall be deemed given hereunder on the date delivered, telegraphed or faxed or a date forty-eight (48) hours after the date mailed. Until further notice, the address of the parties shall be as follows:

WRITER

{Writer}

Address

Address

COMPANY

Absent Present Productions LLC

138 West 25th St., 10th Floor

New York, NY 10001

Attn: James Schamus

With a copy to:

Eschenasy Consulting

1180 S. Beverly Drive, Suite 650

Los Angeles, CA 90035

Attn: Avy Eschenasy

18. **WGA AGREEMENT.** Writer represents and warrants that Writer is or will, prior to or concurrent with the commencement of services hereunder, become a member in good standing of the WGA. Company represents and warrants that Company is and shall remain a signatory to the WGA Agreement and shall comply with the terms thereof during the term of this Agreement. Writer and Company agree that this Agreement shall be subject to the provisions of the WGA Agreement, and any discrepancy between this Agreement and the WGA Agreement shall be resolved in favor of the WGA Agreement. To the extent that any term of the WGA Agreement is more advantageous to Writer than the terms hereof, the terms of the WGA Agreement shall supersede the less advantageous term hereof, but said less advantageous terms shall be limited only to the extent necessary to comply with the minimum mandatory terms of the WGA Agreement. Any additional compensation payable to Writer pursuant to the WGA Agreement shall be paid at the minimum rate permitted thereby. To the extent that any payment hereunder exceeds applicable WGA Agreement minimums (including any share of profits or revenues), then such excess, to the fullest extent not prohibited by the WGA Agreement, may be credited against any additional payment required by the WGA Agreement and may be deemed payment for any additional services or rights obtainable by such payment under the WGA Agreement, and any additional payment required by the WGA Agreement may be credited against any contingent compensation payable hereunder. All sums payable hereunder are inclusive of any required sums payable under the WGA Agreement for Writer's services or any use whatsoever of the Materials.

19. **RENTAL AND LENDING RIGHTS AND PERFORMERS' PROPERTY RIGHTS.**

19.1 "Rental and Lending Rights" means all rights of Writer to authorize, prohibit, control or receive money (other than as provided in this Agreement) from the rental, lending, fixation, reproduction or other exploitation of the results and proceeds of services, or any motion picture, program or other production based thereon, by any media or means now known or hereafter devised as may be conferred upon Writer under applicable laws, regulations or directives, in any jurisdiction throughout the world, including any so-called rental and lending rights pursuant to any European Community directives or enabling or implementing legislation, laws or regulations enacted by member nations of the European Community.

19.2 "Performers' Property Rights" means performers' rights to authorize or prohibit the making of copies of a recording of the whole or a substantial part of a performance, the issuing of copies of such a recording and the right, if any, to authorize or prohibit the rental or lending of copies of such a recording under applicable laws, regulations or directives, in any jurisdiction throughout the world, including any so-called performers' property rights pursuant to any European Community directives or enabling or implementing legislation, laws or regulations enacted by member nations of the European Community.

19.3 Writer acknowledges that the compensation payable under this Agreement includes adequate and equitable remuneration for the Rental and Lending Rights and Performers' Property Rights and to the fullest extent permitted by applicable law, constitutes a complete worldwide buyout and assignment to Company of all Rental and Lending Rights and Performers' Property Rights, in perpetuity. Writer hereby irrevocably grants to Company throughout the world in perpetuity, the right to collect and retain for Company's own account all amounts payable to Writer in respect of Rental and Lending Rights and irrevocably direct any collecting societies or other persons or entities receiving such amounts to pay them to Company. Writer hereby irrevocably gives to Company all consents which may be required in respect of performances under the 1988 Copyright Designs and Patents Act of the United Kingdom and any comparable laws in any jurisdiction and amendments or reenactments thereof to enable Company to use and authorize the use of Writer's services under this agreement and of the results and proceeds thereof in any place and in any jurisdiction by any means and in all media now known or hereafter devised.

20. **DISPUTE RESOLUTION.**

20.1 Any controversy, claim, or dispute arising out of or relating to this Agreement or this agreement to arbitrate, including, without limitation, the interpretation, performance, formation, validity, breach, or enforcement of this Agreement, and further including any such controversy, claim, or dispute against or involving any officer, director, agent, employee, affiliate, successor, predecessor, or assign of a party to this Agreement (each, a "Dispute"), shall be fully and finally adjudicated by binding arbitration to the fullest extent allowed by law (the "Arbitration"). The seat of the Arbitration shall be New York. Except as provided herein or by agreement of all parties, the Arbitration shall be administered by JAMS or its successor ("JAMS") or, if no longer in existence, another nationally-recognized administrator, and conducted in accordance with its comprehensive arbitration rules then in effect (the "Rules"). The Arbitration shall be conducted as expeditiously and economically as reasonably practicable. Notwithstanding the foregoing, any party may seek emergency equitable relief to the extent otherwise permitted by this Agreement in any

court of competent jurisdiction upon a showing of exigent circumstances justifying such relief.

20.2 The Arbitration shall be conducted by one arbitrator (the “Arbitrator”). Unless all parties to the Arbitration agree, the Arbitrator shall be a lawyer with experience in entertainment law, if possible, admitted to practice in at least one State of the United States and need not be on the administrator’s roster. The Arbitrator shall be selected as follows: If all parties to the Dispute do not agree upon the Arbitrator within twenty (20) days after commencement of the Arbitration, then any party may initiate the following selection process by written notice to each other party. Within five (5) business days after such notice, each side to the Dispute shall simultaneously transmit to each other side a list of four (4) persons qualified to serve as the Arbitrator (the “Candidates”). No party shall nominate a Candidate whom that party knows or reasonably believes to have a conflict of interest rendering the Candidate unable to serve as the Arbitrator. If any single Candidate appears on the list of each side then that person shall be appointed as the Arbitrator. If more than one Candidate appears on the list of each side, then one of those Candidates shall be selected randomly and that person shall be appointed as the Arbitrator. If no Candidate appears on the list of each side then, within three (3) business days after the initial exchange of lists, each side may strike one Candidate from the list of each other side and shall rank all remaining Candidates in order of preference (with “1” being the most preferable Candidate), and the ranked lists shall be simultaneously exchanged. The Candidate with the lowest total number of points shall be appointed as the Arbitrator. In the event of a tie, one of the Candidates with the lowest total number of points shall be selected randomly and that person shall be appointed as the Arbitrator. If the person selected as the Arbitrator declines to serve or becomes unwilling or unable to serve after selection or appointment, then the Candidate with the next lowest total of points shall be appointed as the Arbitrator. If any party to the Arbitration fails to timely participate in the foregoing selection process then the administrator shall appoint the Arbitrator pursuant to the Rules, except that each recalcitrant party shall be excluded from that selection process.

20.3 All parties to a Dispute shall participate in meaningful early efforts to resolve the Dispute, whether by direct meeting, mediation, or other reasonable means; provided, however, that this obligation shall not be a condition precedent to the initiation or progress of an Arbitration or other legal proceeding permitted herein.

20.4 The exchange of information in the Arbitration shall be governed by the Rules except as follows: (i) no side shall take the deposition of more than three (3) individuals (including the use of corporate, “persons most knowledgeable,” F.R.C.P. 30(b)(6), or similar deposition notices or devices) unless, upon a showing of extraordinary cause, the Arbitrator permits that side to take a limited number of additional depositions; (ii) each side shall be entitled to the limited discovery of documents (including electronically stored information) which are directly relevant and material to the Dispute and are produced in response to a request that is narrowly tailored to minimize both the burden and expense of the responding person and the disclosure of confidential, sensitive, or financial information; (iii) no party shall propound interrogatories or requests for admission unless permitted by the Arbitrator upon a showing of extraordinary cause; and (iv) upon the request of any party, the Arbitrator shall weigh the anticipated burden or expense of any requested discovery against its likely benefit, and shall impose any reasonable conditions on that discovery, including, without limitation, allocation of the expense of the discovery to the party seeking it.

20.5 The Arbitrator shall entertain any demurrer, motion to strike, motion for judgment on the pleadings, motion for complete or partial summary judgment, motion for summary adjudication,

or other dispositive motion. The Arbitrator shall issue a written award supported by a statement of decision setting forth the Arbitrator's complete determination of the Dispute and the factual findings and legal conclusions relevant to it (the "Award"). The Award shall be final and binding on the parties and, if the Award is not fully satisfied within ten (10) business days after its issuance, then judgment upon the Award may be entered by any court having jurisdiction thereof or having jurisdiction over the relevant party or its assets. Each party to this Agreement irrevocably submits to the personal jurisdiction and venue of a state or federal court of competent jurisdiction in New York County, New York for any purpose permitted herein.

20.6 The administrative costs of the Arbitration, including fees of the Arbitrator, initially shall be split equally between the sides; provided, however, that the Arbitrator may, in his or her discretion, allocate such costs in favor of any prevailing party.

20.7 The existence of the Dispute and the Arbitration shall be afforded the highest degree of confidentiality permitted by law. Except only to the extent necessary for a judicial proceeding to enforce, confirm, modify, or vacate an Award, or any other judicial proceeding permitted herein, or as may otherwise be required by law, the Arbitration, the Award, and all related proceedings, evidence, rulings, and testimony, shall remain confidential and shall be used solely for purposes of the Arbitration and adjudication of the Dispute.

21. **LIMIT ON LIABILITY.** Each party to this Agreement acknowledges and agrees that exemplary or punitive damages shall not be recoverable under any circumstance for any claim arising hereunder or in connection herewith. Writer further acknowledges and agrees that Writer's sole remedy for any breach of this Agreement by Company shall be the recovery of actual damages caused by that breach (if any), and under no circumstance shall Writer be entitled to recover consequential or expectancy damages of any kind, to terminate, revoke, or rescind this Agreement, or to obtain any injunctive or other equitable relief in connection with this Agreement. Without in any manner limiting the foregoing, Writer and Writer's successors and assigns shall not under any circumstance enjoin or restrain the development, financing, production, distribution, exhibition, promotion, marketing, or other exploitation of any content, property, or work of Company or any of its affiliates in any medium now known or hereafter devised, including, without limitation, any audiovisual work produced hereunder or in connection herewith, or the exercise of any allied, ancillary, or related right therein, and Writer irrevocably relinquishes, waives, releases, and disclaims any right, at any time, to any such injunctive or other equitable relief. Except as otherwise provided by this Agreement, Company reserves all legal and equitable remedies consistent with New York or United States law, as applicable.

22. **MISCELLANEOUS.**

22.1 **New York Law/Entire Understanding.** This Agreement shall be governed by the laws of the State of New York applicable to agreements entered into and to be wholly performed therein and shall not be modified except by a written document executed by both parties hereto. This Agreement expresses the entire understanding of the parties hereto and replaces any and all former agreements or understandings, written or oral, relating to the subject matter hereof. Paragraph headings are for the convenience of the parties only and shall have no legal effect whatsoever.

22.2 **Delivery Of Further Instruments.** Writer will duly execute, acknowledge and deliver to Company or cause to be executed, acknowledged and delivered to Company, any and all further

agreements and instruments consistent herewith which Company may deem reasonably necessary to carry out and effectuate the purpose and intent of this Agreement or to evidence Company's rights in the Materials and the Picture. Writer hereby appoints Company as Writer's attorney-in-fact to execute any such instruments which Writer shall fail for any reason to execute and deliver, it being acknowledged that such appointment is coupled with an interest and is irrevocable.

22.3 Writer's Services Are Unique. It is agreed that Writer's services are extraordinary and unique and not replaceable, and that there is no adequate remedy at law for a material breach of this Agreement by Writer, and Company, in the event of such a material breach by Writer, shall be entitled to seek equitable relief by way of injunction or otherwise.

22.4 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument.

If the foregoing correctly sets forth your understanding, please sign in the space provided below.

Very truly yours,

ABSENT PRESENT PRODUCTIONS LLC

By: _____
Its: _____

ACCEPTED AND AGREED TO:

{ WRITER }

ANNOTATION GUIDE

Annotated scripts should contain for each script element, whether an event, setting, character or section of dialogue within scene, notes in the margin which provide the following information:

1. **Characters:** For each character:

- (a) Whether the character is real, fictional or composite.
- (b) For real characters, whether the actual person is living or dead (if living, whether a release has been signed), and whether the name has been changed.
- (c) For composite characters, the name (s) of actual person (s) on whom the composite character is based, and what characteristics can be attributed to such actual person (s).

2. **Scene Notations:** For each script element:

- (a) Whether it presents or portrays fact, fiction or fiction which is a product of inference from fact:
- (b) If fact or a product of inference from fact, the source material therefor, such as:
 - (i) For books: title, author and page (s).
 - (ii) For newspaper or magazine articles: date, page and column.
 - (iii) For interviews: whether notes or tapes exist and, if so, a page or tape reference, and the participants.
 - (iv) For trial or deposition transcripts: the court or other forum, date, person testifying, and transcript page number.
 - (v) Any other source.

To the extent possible, multiple sources should be identified for each script element. Descriptive annotation notes are helpful (e.g., the setting is a restaurant because Jane Roe usually had business meetings in restaurants when visiting New York - Los Angeles Times; August 30, 1993, p.9).

- (c) If partly fact and partly fiction, indicate what parts are fact and what parts are fiction. For factual parts, describe source material as specified in Paragraph 2(b) above.

3. **General:**

Copies of all materials referenced pursuant to Paragraph 2(b) above should be retained for no less than 5 years for review by Company and cross-indexed by reference to script page and scene numbers.

CERTIFICATE OF AUTHORSHIP

I, [INSERT WRITER'S NAME], hereby certify that pursuant to a writing agreement ("Writing Agreement") between Absent Present Productions LLC ("Company") and me dated as of [INSERT DATE] in connection with the motion picture project presently entitled "Untitled [INSERT WRITER'S NAME] Picture" (the "Picture"), all literary material of whatever kind or nature, to be written or to be furnished, by me and all of the results and proceeds of my services pursuant to said Writing Agreement (all such literary material and all such results and proceeds being referred to collectively herein as the "Material") will be written by me within the scope of my employment for Company and shall be a "work-made-for-hire" specially ordered or commissioned by Company for use as part of the Picture in accordance with the U.S. Copyright Act with Company being deemed the author of the Material. I hereby acknowledge that Company, as author of the Material, is the sole and exclusive owner of all rights of every kind or nature, whether now known or hereafter devised (including, without limitation, all copyrights and all extensions and renewals of copyrights) in and to the Material, with the right to make all uses of the Material throughout the universe and all changes in the Material as Company deems necessary or desirable. To the extent there may be any material written or prepared by me in connection with the Picture which is not deemed to be prepared as a work-made-for-hire (which material is deemed to be part of the Material for the purposes hereof), any and all right, title and interest therein and thereto (including, without limitation, any copyright thereof) are hereby irrevocably granted and assigned to Company in perpetuity, I acknowledge that the sums paid to me in connection with the Materials pursuant to the Writing Agreement also constitutes consideration in full for such grant and assignment.

I hereby waive all rights of "Droit Moral" or "Moral Rights of Authors" or any similar rights or principles of law which I may now or later have in the Material. It is agreed that my consideration for the Material is included in the compensation to be paid pursuant to the Writing Agreement.

I warrant and represent that I have the right to execute this document and, except to the extent that it is based upon material assigned to me by Company to be used as the basis therefor, that the Material is or shall be original with me, that the Material does not and shall not violate, conflict with, or infringe the copyright of any person or entity or defame or disparage any person or entity or infringe upon or violate the rights of privacy, publicity or any other rights of any kind or nature whatsoever of any person or entity, and that the Material is not the subject of any litigation or of any claim that might give rise to litigation.

I shall indemnify and hold harmless Company, its parent, subsidiaries, successors, licensees and assigns, and any of its or their agents, employees, officers, directors, shareholders or representatives, from and against any and all liabilities, judgments, claims, costs, damages, losses and expenses (including, without limitation, attorneys' fees and court costs, whether or not in connection with litigation) arising out of or in connection with a breach or alleged breach of the foregoing covenants, warranties and representations.

I agree to execute any documents and do any other acts as may be required by Company or its assignees or licensees to further evidence or effectuate Company's rights as set forth in this Certificate of Authorship or the Writing Agreement. Upon my failure to do so, I hereby appoint Company as my attorney-in-fact for such purposes (it being acknowledged that such appointment is irrevocable and coupled with an interest) with full power of substitution and delegation.

I further acknowledge that (i) in the event of any breach hereunder by Company I will be limited to my remedy at law for damages, if any, and will not have the right to terminate or rescind the Writing Agreement or this Certificate or to enjoin the distribution, advertising or exploitation of the Material or the Picture, (ii) nothing herein shall obligate Company to use my services or the results or proceeds thereof in the Picture or to produce, advertise or distribute the Picture, and (iii) this Certificate shall be governed by the laws of the State of New York applicable to agreements executed and to be performed entirely therein.

Subject to the Writing Agreement, Company's rights with respect to the Material and/or my services may be freely assigned and licensed and its rights shall be binding upon me and inure to the benefit of such assignee or licensee.

I have caused this document to be executed as of the _____ day of _____.

{WRITER}

ACCEPTED AND AGREED TO:

ABSENT PRESENT PRODUCTIONS LLC

By: _____

Its: _____

