American Federation of Musicians
of the United States and Canada

AFL-CIO/CLC Affiliated

TINO GAGLIARDI
OFFICE OF THE PRESIDENT
West Coast Office
3220 Winona Avenue
Burbank, CA 91504

# INDEPENDENT FILM/ FESTIVAL FILM AGREEMENT SIGNATORY PACKET

**The AFM Independent/Festival Film Agreement is designed for film projects budgeted at $11 million or less. This Agreement is available whether the project is headed for film festivals or commercial exhibition.**

## Overview and Agreement Scope

The AFM Independent Film/Festival Film Agreement covers "Musicians" (defined as: instrumentalists, leaders, contractors, conductors, arrangers, orchestrators, copyists, production musicians and librarians, as well as featured instrumental musicians and orchestras and those who appear on camera ("sideline musicians")) engaged for the production of a motion picture budgeted either at $8,000,000 and under ("Tier 1") or $2,000,000 and under ("Tier 2") and exhibited at film festivals, through direct presentation to prospective distributor/buyers, or commercially. A motion picture budgeted up to $11,000,000 may also qualify as Tier 1, provided that the Producer engages at least 15 Scoring Musicians for a recording session.

The agreement is conceptually built around the structure of the AFM Basic Theatrical Motion Picture Agreement for qualifying projects that are audiovisual in nature and have a narrative component. Audiovisual presentations of live performances should not utilize this agreement unless they are intended for initial exploitation in cinemas or film festivals.

The signatory Employer must be the entity which owns and controls the film, which is usually the film's production company. In the event that ownership is transferred at a later date, residual obligations remain with the Employer unless that employer executes an Assumption Agreement with the Distributor and the AFM. A boilerplate Assumption Agreement is provided at the end of this packet.

# Project Checklist

As an Employer looking to underscore a festival film, the following list is meant to guide you through the process of getting the recording under contract, filing the work, paying the Musicians and handling secondary payments for use of the film in other media. Note that if you use a music contractor, they can take care of many of these steps for you:

- ☐ **Submit a Request Letter:** Use of the Independent Film/Festival Film agreement is authorized on a project-by-project basis under a specially written Letter of Agreement (LOA). This LOA must be executed between the Employer and the AFM in advance of the hiring of Musicians. The first step is to submit a request letter to the AFM, including all of the information required in the checklist provided on the following page.
- ☐ **Sign the LOA:** Once the AFM approves the request letter, an LOA will be prepared and submitted to the Employer for signature. Once executed, the film will be covered under the agreement, at which point, the hiring process may begin.
- ☐ **Report the Session to the AFM Local:** Prior to recording, it is always beneficial to send advanced notice of the session to the AFM Local Union office whose jurisdiction in which the recording is taking place. To find the appropriate Local, visit the AFM website and click "About" and then "Locals", where you can search by location.
- ☐ **Put out the Call to the Musicians:** Once you are signatory and the session is reported, you may call the Musicians you intend to hire. Musicians will need to know the location, time and length of the session, the scale they will be working under, and the title of the film on which they are performing.
- ☐ **Submit the Final Budget:** Films utilizing this agreement must be budgeted at $2,000,000 or less. A total estimated budget must be submitted in writing to the AFM no later than 96 hours in advance of the first session or sideline call. A final budget must be provided to the AFM upon the AFM's request.
- ☐ **Collect Paperwork:** In order to payroll the session, collect W-4s, I-9s and any other documents required for payroll, as well as any information that might be necessary to complete the B-Report Form. Familiarize yourself with the Report Form in advance so you know what types of information are required.
- ☐ **During the session(s),** the Leader (the instrumental musician who leads the group in performing) should keep track of the hours worked and the instrumental parts performed by each Musician.
- ☐ **Fill Out the B-Report Form:** After the session is complete, fill out the B-7 Report Form (available on **page 8**) including the calculation of wages and benefits. Assistance on this can be found later in the packet. The B-7 should be signed by both you (the Signatory of Record) as well as the Leader. It is important these signatures be included to confirm that the Leader has looked over the document to ensure that the hours and wages are reported correctly.
- ☐ **Submit the B-7 to Payroll:** The session report is sufficient as an invoice for payment. Once complete, the B-7 session report should be sent to payroll so checks can be issued in a timely manner. Musicians must be paid within 15 business days of the session. Copies of the B-7 must be sent to the applicable Local as well as the AFM and Employers' Pension Fund and the Music Performance Trust Fund. You should also retain a copy for your own records.
- ☐ **Handle Secondary Payments as Required:** The original session payment under this agreement covers all distribution of the film in the primary market, considered to be theatrical under this agreement. Any release in an additional market may require additional payments. More information on residuals can be found later in this packet.

# INDEPENDENT FILM / FESTIVAL FILM AGREEMENT APPLICATION

1. Name of Employer / Producer (Production Company Name)

2. Address of Employer / Producer

3. Name and Title of Contact (Point Person)

4. Telephone Number and Email Address of Contact

5. Title of the Film

6. Date and Location of the Scoring Session(s)

7. Name of Composer

8. Estimated Budget of Film

Once the list is completed, please have the Producer return the checklist to the AFM to prepare the Agreement for this project. The checklist may be returned to the address below or by email to mallen@afm.org.

American Federation of Musicians
Attn: Matt Allen
3220 Winona Avenue
Burbank, CA 91504

Once we receive this information, we will prepare the Agreement and submit the completed Agreement to the producer for signing.

**This checklist is intended as a guideline only and does not cover all terms and conditions pertaining to independent / festival films. Please refer to the agreement for complete information. The total estimated budget for the Picture of not more than $2,000,000 (or other amount approved by the AFM) must be submitted in writing to the AFM no later than 96 hours in advance of the first session or sideline call, as applicable. A final budget must be provided to the AFM upon the AFM's request.**

# Sessions

## *Session Calls and Cancellations*

Scoring sessions must be a *minimum* of 3 hours, though longer sessions and "double sessions" are permitted. In the case of a **double session** (two sessions performed on the same day), it shall include a maximum of 7 recording hours in an 8-hour time span, with a minimum 1-hour lunch break.

Once engaged, a Musician may not be canceled with less than 96 hours' notice.

## *Scale Wages*

The standard rate for a minimum call 3-hour session, which permits a maximum 15 minutes of finished music, depends on the number of instrumental Musicians engaged for that session, per the following charts:

**Tier 1:**

| Number of Musicians | Per-Hour Rate | 3-Hour Minimum Session Fee |
|---|---|---|
| 9 or fewer Musicians | $100.00 | **$300.00** |
| 10-24 Musicians | $90.00 | **$270.00** |
| 25 or more Musicians | $80.00 | **$240.00** |

**Tier 2:**

| Number of Musicians | Per-Hour Rate | 3-Hour Minimum Session Fee |
|---|---|---|
| 9 or fewer Musicians | $48.00 | **$144.00** |
| 10-24 Musicians | $44.00 | **$132.00** |
| 25 or more Musicians | $40.00 | **$120.00** |

Each session must employ a Leader, who shall be paid double Side Musician scale and shall be included in the total number of Musicians used to determine the rate. When hired, a Contractor shall also be paid double Side Musician scale. In the event that a session employs 10 or more Musicians (including Side Musicians and the Leader), a Contractor shall be required. Any Single Musician performing alone shall also be paid double Side Musician scale.

For standard sessions, **overtime** shall be paid in 15-minute increments, prorated at the applicable per-hour rate above, with a maximum of one hour of guaranteed Musician availability beyond the original session call length. This is called the "**hold hour**." Overtime *beyond the hold hour* in a standard session pays 150% of the per-hour rate, in 15-minute increments.

For double sessions, the hold hour is the 7$^{th}$ hour of recording within the 8-hour time span, which pays at 120% of the per-hour rate. Recording beyond the 8-hour time span pays at 150% of the applicable rate. As above, all overtime is paid in 15-minute increments.

**Doubling** occurs when an instrumentalist switches between instruments during a recording. An instrumentalist who doubles shall be paid an additional 50% of scale wages for the first such double and an additional 20% for each double beyond the first.

However, this is not the same as performing multiple parts (or "**overdubbing**"), which is recording one instrumental part, then recording another instrumental part over that same part, such that the tracks are layered in a way that could only have been performed in real time by two Musicians. If a Musician overdubs, they shall be paid an additional scale payment equivalent to the applicable 3-hour minimum session fee for each part. This does not apply to Musicians engaged at the "electronic multi-tracking" rate, which is discussed below.

If the Musician is required to bring heavy instruments to a recording session, they shall be paid for **cartage**. The Employer shall pay actual incurred common carrier costs for cartage of such instruments; however, if private transportation is taken, then the cartage fee shall be $30.00 for harp and/or $12.00 for string bass, cello, drums, mallets, tympani, heavy amplifiers/electronics, baritone or bass saxophone, contrabass clarinet, contrabassoon, accordion, baritone horn, bass trombone, and tuba.

## *Electronic Multi-Tracking (EMT)*

Musicians who perform on electronic instruments (e.g. keyboards, synthesizers, etc.) may be engaged to perform at the **Electronic Multi-Tracking (EMT)** rate of **$160.00 per hour** instead of the standard "real time" rates listed above. However, this EMT rate shall include all doubles and overdubs as described earlier. The Musician must be notified when they are engaged for the session that this rate is being applied and this rate is not applicable if none of the instrumentation is electronic. The minimum call is still 3 hours.

## *Sideline Musicians (On-Camera Work)*

Musicians who appear on camera shall be paid the **sidelining scale** of $277.81 for Tier 1 and $194.73 for Tier 2. The sidelining work day is defined as an 8-hour minimum call. The standard Leader and Contractor requirements also apply. Beyond 8 hours, overtime is paid at 150%, in 15-minute increments.

All other terms and conditions for Sideline Musicians are as provided for in the Motion Picture Agreements.

For example, in the event that audio is captured from the performance of a Sideline Musician, they shall be paid not less than one recording session in addition to the applicable sideline scale, with the exception of "leak throughs" (which is recording of Sideline Musicians not intended for direct recording). If a Sideline Musician is required to "pre-score" their part, such that they mime to the recording during their on-camera performance, such recording shall be paid for at the recording scale for not less than the minimum call in addition to the applicable sideline scale.

In sidelining, the **doubling** percentages differ from those which are paid for audio scoring at the real time rates. Under this classification, the first double pays an additional 25% of scale and an additional 10% is paid for each subsequent double performed in the process of sidelining.

## *Music Preparation*

There are four services covered under the classification of Music Preparation: arranging, orchestrating, copying and librarian work. The work of composers is not covered under AFM agreements.

**Arranging** is the art of preparing and adapting an already written composition for presentation in other than its original form. It includes reharmonization, paraphrasing and/or development of a composition so that it fully represents the melodic, harmonic and rhythmic structure and requires no changes or additions.

**Orchestrating** is the labor of scoring the various voices and/or instruments of an arrangement without changing or adding to the melodies, counter-melodies, harmonies and rhythms.

**Copying** is the labor of writing out each instrument part on sheet music for the conductor's score and for each individual musician such that Musicians can perform their own part.

**Librarians** may also be employed in order to keep sheet music organized.

Music Preparation services are generally paid by the page of output rather than by time spent working. The standard score page is considered to have 10 lines with 4 bars each. Additional payment is required if pages contain more lines than 10. Under this Agreement, the applicable page rates track those found in Paragraph 64 of the Basic Theatrical Motion Picture Agreement ("Low Budget Films"), as listed in this AFM chart.

Arrangers may negotiate their own rates, as the skill is highly specialized, but in no case shall such a rate be less than the calculated scale rate for orchestration.

# Benefit Payments

In addition to the scale wages paid to Musicians working under the Agreement, a number of additional payments for benefits must be made, as outlined below. These payments are all in addition to the wages paid to each Musician.

## *Pension*

For all scale wage payments made under this Agreement, the Employer shall contribute an amount equal to **11.99% of those scale wages** to the American Federation of Musicians and Employer's Pension Fund. This total is inclusive of all amounts required by the Fund's Rehabilitation Plan.

## *Health & Welfare*

Contributions for Health & Welfare in the amount of **$30.54 per day** shall be made on behalf of each instrumental Musician, Leader, Contractor and Sideline Musician employed under this Agreement. Like pension, this rate is also less than the rate found in the traditional Film Agreements. For music preparation personnel, contributions shall be computed and paid based upon the current formula for Low Budget Films in Paragraph 64 of the Basic Theatrical Motion Picture Agreement.

Whenever a given Musician is a member of an AFM Local with an established Health & Welfare plan, the contributions must be sent to the plan designated by the Local Union in which the individual Musician is a member, regardless of the place where the Musician performed the services. For example, if a member of Local 802 (New York) performs film scoring services in the jurisdiction of Local 47 (Los Angeles), Health & Welfare contributions on behalf of that member shall be paid to the Local 802 health plan.

In the event that a Musician is a member of a Local that does not have an established Health & Welfare plan, those contributions shall be paid to the Musician as a non-pensionable wage.

More detailed information about this structure can be found in the full language of the Agreement.

# Further Considerations

## *Soundtrack Use*

The music that is recorded under the auspices of this Agreement is intended only for use with the motion picture for which it was scored and shall not be used for any other purpose, including reuse of the music in other motion pictures. In the event that such music is used in another medium or another motion picture, the Employer or its assignee must return to the AFM and comply with the terms and conditions of the AFM Agreement that would apply if the music were originally recorded for that purpose.

For example, if a cue from the motion picture is licensed for use in a Commercial Announcement, the Employer or the assignee must enter into and abide by the terms of the AFM's Commercial Announcements Agreement. More on this is covered in the "Assignment of Rights" section below.

The Employer is permitted to release up to 5,000 copies of a **soundtrack album** without additional payment to the Musicians, provided that the Employer:

(1) informs the AFM of such soundtrack release
(2) credits the Musicians and the AFM on the liner notes, and
(3) provides the AFM with 25 copies of the soundtrack, or its digital equivalent, upon release.

Failure to meet these terms, or sales in excess of 5,000 units, shall trigger payments under the AFM's Sound Recording Labor Agreement.

## *Promotional Use*

The Employer is also permitted to make reasonable use of Musician images and soundtrack for electronic press kits (EPKs), trailers, "making of" videos, news, review, or other similar promotional purposes.

## *Use in Other Media and Assignment of Rights*

As the signatory of record, you are responsible for all payment obligations under this Agreement. Whether or not such usage occurs, the primary market of this motion picture is considered to be theatrical. If the motion picture is released for secondary commercial exhibition (including but not limited to free television, cable television, DVD or New Media exhibition, etc.), the Employer shall make payments as required under the Film Musicians' Secondary Markets Fund (FMSMF) Agreement. Such payments will be at **1.8% of 20% of "Producer's Gross"** formula rate described for "Electronic Sell-Through" (EST) in the AFM New Media sideletter.

In the event that such obligation needs to be transferred to another party, an **assumption agreement** is required between both parties, in a format approved by the Federation, such that the obligations are transferred properly. For example, in the previously mentioned situation, if a cue is licensed into a commercial announcement, an assumption agreement should be filed with the licensee such that that party (likely an advertising agency) assumes the obligation to pay the Musicians under the AFM's Commercial Announcements Agreement.

A blank Assumption Agreement can be found at the end of this packet.

# AMERICAN FEDERATION OF MUSICIANS REPORT FORM

## For All Motion Pictures-Theatrical & Television Film (Standard, Non-Standard & Basic Cable), Industrial (Non-Theatrical-Non-TV), Miscellaneous, Low Budget Films

RP No.

Date: _____

Title of Picture/Program and/or Prod. No.: _____

Title of Episode: _____

Episode No.: _____

Length of Program: _____

Producer: _____

Producer's Address: _____

AFM Project No.: _____

Assumption Agreement on File (*indicate parties & dates in memo box*) ☐

**ADDITIONAL INFO**

Check each category that applies.

☐ Network
☐ Syndicated
☐ Prime Time
☐ Non-Prime Time
☐ Dramatic
☐ Non-Dramatic
☐ Mini-Series
☐ Animated Film
☐ Late Penalty Incl.

**MEMO**

**ORIGINAL SESSION**

AFM Local No.: _____

Recording Date: _____ No. of Musicians: _____

Recording Studio: _____

City: _____ State: _____

Hours of Employment: _____

Total Session Hrs.: _____

**RE-USE, DUBBING, NEW USE OR OTHER**

Original Report Form No.: _____

Original Recording Date: _____

Check 1 and only 1 from each of these two columns.

**Payment Type**

☐ Original Session
☐ Sideline Only
☐ Sideline w/Audio
☐ Excerpt Use
☐ New-Use Phono
☐ New-Use Other
☐ Emergency Track
☐ Unused Recording Hrs.
☐ Trailer
☐ Other: _____

**Medium**

☐ Theatrical Motion Picture
☐ Television Film
☐ Non-Standard TV Film (Pay Cable)
☐ Basic Cable TV Film
☐ Industrial (Non-Theatrical-Non-TV)
☐ Low Budget Theatrical Film
☐ Low Budget TV Film
☐ Direct To Cassette
☐ Other _____

**SIGNATORY OF RECORD:** _____

Address: _____ Phone: _____

Pension Contributions To Be Paid By (if different): _____

Address: _____ Phone: _____

*Conditions of Employment shall be in accordance with the provisions contained in the Wage Scales, Hours of Employment and Working Conditions in the basic collective bargaining agreements executed between the A.F. of M. and the Signatory.*

Representative of Employee's Signature: _____

| LOCAL UNION NO. / CARD NO. | EMPLOYEE'S NAME (As on Social Security Card) LAST FIRST INITIAL (Instrument(s)) | HOME ADDRESS (Give Street, City and State) | SOCIAL SECURITY NUMBER | HRS. GUAR. | HRS. WK'D | DBL WAGES (1) / CARTAGE | PENSION | H&W WHERE APPLICABLE |
|---|---|---|---|---|---|---|---|---|
| --- | (LDR) | | | | | ☐ --- | | |
| --- | | | | | | ☐ --- | | |
| --- | | | | | | ☐ --- | | |
| --- | | | | | | ☐ --- | | |
| --- | | | | | | ☐ --- | | |
| --- | | | | | | ☐ --- | | |
| --- | | | | | | ☐ --- | | |
| --- | | | | | | ☐ --- | | |
| --- | | | | | | ☐ --- | | |
| --- | | | | | | ☐ --- | | |
| | | | | | | TOTAL PENSION CONTRIBUTIONS | | |
| | | | | | | TOTAL H & W CONTRIBUTIONS | | |

(1) Insert overscale wages being paid.

**Include all music prep. information on this form or continuation sheet, with copies of invoices attached.**

**FOR FUND USE ONLY:**

FORM B-7/REV. 9-96

# AMERICAN FEDERATION OF MUSICIANS REPORT FORM

## Motion Pictures-Theatrical & Television Film (Standard, Non-Standard & Basic Cable), Industrial (Non-Theatrical-Non-TV), Miscellaneous, Low Budget Films

**Continuation Sheet** **RP No.** _____

Title of Picture: _____

Signatory: _____ Leader: _____

| LOCAL UNION NO. --- CARD NO. | EMPLOYEE'S NAME (As on Social Security Card) LAST FIRST INITIAL (Instrument(s)) | HOME ADDRESS (Give Street, City and State) | SOCIAL SECURITY NUMBER | HRS. GUAR. | HRS. WK'D | DBL WAGES (1) --- CARTAGE | PENSION | H&W WHERE APPLICABLE |
|---|---|---|---|---|---|---|---|---|
| --- | (LDR) | | | | | ☐ --- | | |
| --- | | | | | | ☐ --- | | |
| --- | | | | | | ☐ --- | | |
| --- |

# American Federation of Musicians
## of the United States and Canada
AFL-CIO/CLC Affiliated

UNITY • HARMONY • ARTISTRY

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TINO GAGLIARDI
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3220 Winona Avenue
Burbank, CA 91504
(818) 565-3400 • FAX (818) 565-3455
www.afm.org


DATE

NAME
PRODUCER (COMPANY)
STREET ADDRESS
CITY, STATE ZIP

**Independent Film/Festival Film Agreement**

This is a special agreement ("Agreement") between the American Federation of Musicians ("AFM") and NAME OF PRODUCER ("Producer") for the services of musicians in the production of the following motion picture: *TITLE OF FILM* (the "Picture").

A. **Scope**: This Agreement shall apply to the production of two tiers of motion pictures budgeted either at $8,000,000 and under ("Tier 1") or $2,000,000 and under ("Tier 2") and exhibited at film festivals, through direct presentation to prospective distributor/buyers, or commercially. A motion picture budgeted up to $11,000,000 may also qualify as Tier 1, provided that the Producer engages at least 15 Scoring Musicians for a recording session.

B. **Scale:** Scale wages shall be as set forth in this article (B) except as otherwise provided in article (J) (Music Preparation) or article (K) (Sideline Musicians).

(1) **Tier 1:**

| Number of Musicians | Per-Hour Rate | 3-Hour Minimum Session Fee |
|---|---|---|
| 9 or fewer Musicians | $100.00 | **$300.00** |
| 10-24 Musicians | $90.00 | **$270.00** |
| 25 or more Musicians | $80.00 | **$240.00** |

**Tier 2:**

| Number of Musicians | Per-Hour Rate | 3-Hour Minimum Session Fee |
|---|---|---|
| 9 or fewer Musicians | $48.00 | **$144.00** |
| 10-24 Musicians | $44.00 | **$132.00** |
| 25 or more Musicians | $40.00 | **$120.00** |

(2) Leader and Contractor Scale shall be computed and paid at double the applicable side musician scale set forth in (1) above. When only one recording musician is called for a session, he/she shall be paid double the side musician's rate to perform alone.

(3) Musicians playing electronic instruments (e.g. keyboards, synthesizer, etc.), may be hired at an Electronic Multi-Tracking (EMT) rate of $300 per hour under Tier 1 or $160 per hour under Tier 2, which shall include all Doubles and Overdubs described in articles (E) and (F) below, if so notified when engaged for the session.

REVIEW ONLY

C. **Session Calls and Cancellations:** Sessions shall be a minimum of 3 hours; longer sessions are permitted and Double Sessions are permitted. A Double Session shall include a maximum of 7 hours recording within an 8-hour time span, and shall also include a minimum one (1) hour lunch break. Musicians once engaged, may not be cancelled with less than 96 hours notice.

D. **Overtime** shall be paid in 15-minute increments, pro-rated at the applicable rate in article (B) above with a maximum of one (1) hour of guaranteed musician availability beyond original session call length ("hold hour"). Overtime beyond the hold hour pays at 150% using the applicable rate in article (B) above, pro-rated in 15-minute segments, except for a Double Session. For a Double Session, recording during the hold hour (the 7th hour of recording within the 8-hour time span) pays at 120% and recording outside of the 8-hour time span pays at 150% using the applicable rate in article (B) similarly pro-rated.

E. **Doubling** shall be paid at 50% of the Side Musicians' scale for the First Double, and 20% of the Side Musicians' scale for the Second Double and each thereafter.

F. **Overdubs:** Overdubs (the recording of multiple parts on the same music cue during the same session) except for those musicians engaged at the EMT rate, require an additional scale payment equivalent to the applicable 3-hour minimum session fee set forth in article (B) for each Overdub.

G. **Cartage:** The Producer shall pay actual common carrier cartage costs for heavy instruments such as keyboards or percussion, when applicable. If musicians self-transport, the Employer shall pay the musician $30 cartage for harp and $12 cartage for string bass, cello, drums, mallets, tympani, heavy amplifiers/electronics, baritone or bass saxophone, contra bass clarinet, contra bassoon, accordion, baritone horn, bass trombone and tuba.

H. **Intermission:** Musicians shall receive one 10-minute break per hour.

I. **Finished Minutes of Music:** There shall be a maximum of 15 minutes of finished music for each three-hour recording session. For each additional two and one-half (2 1/2) minutes of finished recorded music, a prorated fifteen (15) minutes at straight time shall be paid.

J. **Music Preparation** (copyists and orchestrators, etc.) shall be paid as set forth for Low-Budget Films in Paragraph 64 of the current Basic Theatrical Motion Picture Agreement and those amounts shall constitute scale under this Agreement.

K. **Sideline musicians'** scale is $277.81 for Tier 1 and $194.73 for Tier 2 (double for leader and contractor) per 8 hour day, with overtime beyond 8 hours to be paid at time and a half in 15-minute increments. All other terms and conditions for sideline musicians (except for Pension and Health & Welfare Payments) are as provided for in the Basic Theatrical Motion Picture Agreement.

L. **Pension Contribution**: Producer agrees to be bound by the Trust Indenture dated, 10/2/59, as amended from time to time, providing for contributions to the AFM and Employers' Pension Fund, and further agrees to contribute to such fund on behalf of the musicians engaged by the employer an amount equal to 11.99% of the scale wages earned by said musicians, inclusive of all amounts required by the Fund's Rehabilitation Plan. 9.09% of the total contribution amount will not be considered when calculating future benefit payments to the fund.

REVIEW ONLY

M. **Health and Welfare** payments of $30.54 per day will apply to each session musician and sideline musician. Producer shall make such payments on their behalf to the health and welfare fund of the Local in whose jurisdiction the work is being performed. Producer payments on behalf of Music Preparation musicians shall be computed and paid based upon the then current formula for Low Budget Films in Paragraph 64 of the Basic Theatrical Motion Picture Agreement.

With respect to musicians who are members of Federation Locals 47 (Los Angeles), 802 (New York), and any other Local which hereafter establishes a Health and Welfare Plan and notifies Industry, Health and Welfare payments for musicians rendering services under this Agreement shall be sent to the plan designated by the local union in which the individual musician is a member, regardless of the place where the musician performed the services. In such case, such payment shall be expressly contingent on the information set forth on the B Report Form as to the member's local affiliation.

1. All contributions with respect to musicians who are members of AFM Local 47 (Los Angeles) will be made on the musician's behalf to the Entertainment Industry Flex Plan (the "Flex Plan"). With respect to those musicians, the Producer agrees to be bound by the provisions of the Agreement and Declaration of Trust establishing the Flex Plan as it may be amended from time to time, which is incorporated by reference into and made a part of this Agreement.

2. All contributions with respect to musicians who are members of AFM Local 80 (New York) will be made on the musician's behalf to Local 802 Musicians Health Fund. With respect to those musicians, the Producer agrees to be bound by the provisions of the Agreement and Declaration of Trust establishing the Local 802 Musicians Health Fund, as it may be amended from time to time, which is incorporated by reference into and made a part of this Agreement.

3. With respect to all other musicians, Health and Welfare payment for musicians rendering services under this Agreement shall be paid to each musician, regardless of the place where the musician performed the service.

4. No such Health and Welfare Fund contribution, whether paid to any Fund or paid directly to a Musician, shall be the basis for computing the applicable AFM-EP contribution or any other payments under this Agreement such as doubling, overtime, premium time pay, etc.

5. Payments will be made simultaneously with Musicians' wage scales.

N. **Report Forms:** Employment pursuant to this Agreement shall be reported by the Producer or its authorized agent to the applicable Local and to the AFM on an AFM B-7 report form. Completed form(s) shall also reference "other" in memo box and add the words: *"Independent Film/Festival Film Agreement."*

O. **Soundtrack Use:** The music recorded under the terms of this Agreement will not be used for any purpose other than in the Picture (including reuse of such music in other motion pictures), unless the Producer or its assignee executes, returns to the AFM and complies with the terms and conditions of the AFM agreement that would apply if the music were originally recorded for that purpose.

P. **Soundtrack Album:** Notwithstanding article (O) above, the Producer may release up to 5,000 copies of a soundtrack CD without payment for musicians, provided the Producer

REVIEW ONLY

informs the AFM of such soundtrack release, lists musicians and AFM on liner notes, and provides the AFM with 25 copies of the soundtrack, or its digital equivalent, upon release. Violating these terms or sales in excess of 5,000 units will trigger payments under the AFM Sound Recording Labor Agreement as the AFM deems applicable.

Q. **Promotional Use:** Notwithstanding article (O) above, the Producer may make reasonable use of musician images and soundtrack for electronic press kits, trailers, "making of…", news, review or other similar promotional purposes.

R. **Use in Other Media:** The primary market for the Picture is considered to be theatrical (whether or not such use occurs). If the Picture is ever released for secondary commercial exhibition (including but not limited to Cable or Free Television, DVD or New Media exhibition), the Producer shall make payments for such additional exhibition as required under the Film Musicians Secondary Markets Fund Agreement and that document is incorporated into this document by reference. Such Payments will be at 1.8% of 20% of "Producer Gross" formula rate described for Electronic Sell-Through (EST) in the AFM New Media Sideletter.

S. **Assignment of Rights:** The obligations under articles (O) (P) and (R) above remain with the Producer except to the extent that the Producer executes an Assumption Agreement of a form acceptable to the AFM in which a Distributor or other rights holder assumes such obligations and thereby relieves the Producer of those obligations.

T. **Experimental Agreement:** This Agreement is on an experimental basis only, and its terms and conditions are non-citable and non-precedent-setting, except to enforce the terms herein. All conditions not outlined in this Agreement shall be in accordance with the terms and conditions of the Basic Theatrical Motion Picture Agreement.

U. **AFM Approval**: The total estimated budget for the Picture must be submitted in writing to the AFM no later than 96 hours in advance of the first session or sideline call, as applicable. A final budget must be provided to the AFM upon the AFM's request.

ACCEPTED AND AGREED TO:

**AMERICAN FEDERATION OF MUSICIANS**

Authorized Signature

Print Name

Date

ACCEPTED AND AGREED TO:

**PRODUCER**

Authorized Signature

Print Name

Email Address

Phone

Date

REVIEW ONLY

**AMERICAN FEDERATION OF MUSICIANS**
**INDEPENDENT FILM/FESTIVAL FILM AGREEMENT**
**BUYER'S ASSUMPTION AGREEMENT**

The undersigned,_____,
(insert name of buyer, licensee or distributor)
herein for convenience referred to as the "Buyer," hereby agrees with
_____,
(insert name of Producer)
that picture photoplays covered by this Assumption Agreement are subject to the AFM Independent Film/Festival Film Agreement ("Agreement") with respect to the provisions of Article R thereof relating to payments to the Film Musicians Secondary Markets Fund (herein referred to as the "Secondary Markets Fund") and American Federation of Musicians' and Employers' Pension Fund (herein referred to as the "Employers' Pension Fund"), on release of a theatrical motion picture photoplay to free television, Supplemental Markets or New Media; and the said Buyer hereby agrees, expressly for the benefit of the Secondary Markets Fund and the Employers' Pension Fund, to make said payments required thereby. It is expressly understood and agreed that the rights of Buyer to exhibit or license the exhi-bition of such photoplays on free television, Supplemental Markets or New Media shall be subject to and conditioned upon the payment to the Secondary Markets Fund and Employers' Pension Fund as provided in Article R of said Agreement, and it is agreed that said Supplemental Markets Fund or Employers' Pension Fund shall be entitled to seek injunctive relief and damages against Buyer in the event such payments are not made.

Buyer shall be liable to make the payments described above but only based upon rights actually acquired by Buyer and only for the period it holds such rights.

The undersigned agrees to keep or have access to complete records showing the income derived from the distribution of such motion pictures on free television, Supplemental Markets, or New Media within the entire territory for which Buyer is granted such rights, and the Federation and/or the Secondary Markets Fund Administrator shall have the right at all reasonable times to inspect such records. The undersigned shall give the Federation prompt written notice of the date on which each photoplay covered hereby is first telecast, exhibited or made available on free television, Supplemental Markets, or New Media. An inadvertent failure to comply with said requirement of notice shall not constitute a default by the undersigned hereunder, provided such default is cured promptly after notice thereof from the Federation or Secondary Markets Fund.

Buyer further agrees that in the event of a sale, transfer, license or assignment of the free television, Supplemental Markets, or New Media distribution rights to the above-referenced motion picture, Buyer shall obtain from the purchaser, transferee, licensee or assignee an Assumption Agreement covering the rights disposed of in the form set forth herein and shall provide an executed copy of such Assumption Agreement to the Federation. Upon delivery of such Assumption Agreement, Buyer shall not be further liable to the Federation or the Secondary Markets Fund for the keeping of any records related to or the payments required based upon the rights covered under the Assumption Agreement for the exhibition of the motion picture on free television, Supplemental Markets, or New Media, and both the Federation and the Secondary Markets Fund agree to look exclusively to the purchaser, transferee, licensee or assignee executing such Assumption Agreement for the keeping of such books or records and for making the payments attributable to the rights acquired. In the event Buyer fails to deliver such Assumption Agreement, it shall continue to be liable for the keeping of records and for the payments required for the exhibition of the motion picture in free television and, Supplemental Markets and New Media.

AGREED:

| | |
|---|---|
| _____ | _____ |
| PRODUCER | BUYER |
| _____ | _____ |
| Signature | Signature |
| _____ | _____ |
| Print Name | Print Name |
| _____ | _____ |
| Address | Address |
| _____ | _____ |
| City State | City State |
| _____ | _____ |
| Telephone | Telephone |
| _____ | _____ |
| Date | Date |

NAME OF PICTURE _____

ORIGINAL SESSION DATE/COMPOSER: _____