

BOOKING AGENT AGREEMENT



UNITY • HARMONY • ARTISTRY

AMERICAN FEDERATION
OF MUSICIANS

Agreement No. _____

AMERICAN FEDERATION OF MUSICIANS BOOKING AGENT AGREEMENT

- (A) **Purpose:** The American Federation of Musicians, hereinafter called "Federation," agrees to franchise the Booking Agency signatory to this Agreement, hereinafter called "Agent," to render services to members of the Federation, hereinafter called "Members," upon the terms and conditions set forth herein which are in conformity with the policy and objectives of the Federation to assure the availability to its Members of competent, fair, honest and scrupulous booking agents, to prevent unfair dealing by such agents with its Members, and to maintain wage scales for its members.
- (B) **Application & Acceptance:** Agent has submitted to the Federation a completed application for a Booking Agent Agreement. Agent warrants and represents that the statements made therein are true and complete as of the date hereof.

Therefore, in consideration of the mutual covenants between them, the Federation and Agent agree as follows:

1. Federation hereby accepts the application of the Agent, and approves and franchises the Agent as qualified to act as an agent for its Members.
2. Agent shall represent and deal with Members in accordance with the terms and conditions of this Agreement.
3. Agent shall fully comply with all applicable State licensing requirements where such requirements are not in conflict with Federal law.
4. (a) **Reports to the Federation:** Agent shall promptly report to the Federation any change in the facts stated in the aforesaid application. Upon request, Agent shall promptly furnish to the Federation any information requested relating to Agent's performance of its duties hereunder and pursuant to agreements and arrangements with members.

(b) Agent's Responsibility: Agent shall be responsible for any violation of this Agreement by any subsequent person, firm, partnership or corporation, employed, retained or utilized by the Agent, or otherwise associated with the Agent, in representing or dealing with Members, as fully as if Agent had violated this Agreement.

5. **Agent Not Employer:** Agent shall not act as the employer of any Member for whom he or she is the agent.

6. **(a) No commissions, considerations in excess of stipulations in Schedule 1:** Agent will not charge, accept or receive from any Member any commission, including consideration in lieu of money, in excess of the commissions stipulated in Schedule 1, attached to and made a part of this Agreement, for the booking of any engagement.

(b) In no event shall the payment of any such commissions for the booking of any engagement result in the receipt of Agent commissions, including consideration in lieu of money, from any person or persons, including any Member, which in the aggregate are more than the commission stipulated in Schedule 1. Any commission, including consideration in lieu of money, received by Agent for furnishing the services of any such Member for any engagement from any source other than the Member for whom Agent renders services, shall be reported to such Member and the amount thereof shall be deducted from the commissions otherwise payable by such member.

(c) Escrow: Any money received by Agent as a deposit or advance from the purchaser of the services of a Member(s) shall be maintained by the Agent in a separate escrow account for the benefit of the Member(s) until completion of the engagement for which the money is received by the Agent.

(d) Contracts must incorporate terms of this Agreement: All agreements, contracts or arrangements between Agent and any Member for the booking of engagements for said Member shall incorporate therein each and every portion of this Agreement and, if not specifically incorporated therein, all said engagements, contracts or arrangements between Agent and any Member shall be deemed to incorporate by reference each and every provision of this Agreement. No said agreement, contract, or arrangement shall contain any provision which is in conflict with any provision of this Agreement. Any said agreement, contract, or arrangement which provides for the exclusive retaining of Agent by a Member shall not be effective until it has been submitted to and approved in writing, by the office of the President of the Federation, which approval shall not be unreasonably withheld. The provisions of this paragraph (d) shall not be applicable to said agreements, contracts or arrangements which were or are entered into between the agent and a musician while the musician was not or is not a Member of the Federation.

7. **(a) All Agreements in writing:** All engagement contracts procured by Agent providing for the performance of services by a Member for any purchaser of such services shall be in writing on the applicable, officially approved, Federation contract form, which shall be fully completed and executed; and a copy thereof shall be filed by the Agent with the Local Union affiliated with the Federation in whose territorial jurisdiction the services are to be performed.

(b) Members must receive applicable minimum wage scale: All such engagement contracts shall provide for retention by Members in gross monies, and/or other consideration, an amount not less than the applicable minimum wage scale (including Pension and Health and Welfare Fund contributions, if applicable) of the Federation and/or of any Local Union affiliated with the Federation in whose territorial jurisdiction the services are to be performed. (See, also, paragraph (B) of Schedule 1 attached hereto).

8. **Federation Unfair List:** Agent shall not solicit or require Members to perform services for, or on the premises of, any non-neutral purchaser of music who is listed on the Federation's Unfair List, provided that such listing is legal in accordance with the provisions of the Settlement Agreement, dated April 30, 1979.
9. **AFM Seal/Contract Forms and Non-Members:** Neither an officially approved contract form of the Federation nor the Trademark of the Federation shall be utilized by the Agent, in any manner whatsoever, in the Agent's representation of, or dealing with or for, non-members of the Federation. The Agent shall exercise reasonable care in carrying out the provisions of this paragraph.
10. **Agreement Non-Transferable:** This Agreement shall be personal to the Agent and the rights and privileges of the Agent hereunder shall not be transferable or assignable by operation of law or otherwise without the prior consent, in writing, of the Federation. Such consent shall not be unreasonably withheld and if the consent is not granted the Federation shall furnish written reasons therefor.

(a) Arbitration of disputes: Except as provided in (b) or (i) below, any default, dispute, controversy, claim or difference arising between the agent and the Federation, a Local Union affiliated with the Federation, or any member of the Federation, or between the Agent and any other agent franchised by the Federation shall be submitted for a final and binding determination by the International Executive Board of the Federation (hereinunder called "IEB"), in accordance with the Rules of Practice and Procedure of the IEB, which shall contain a procedure for summary judgment with respect to allegations by the Agent that a member owes the Agent commissions. A copy of said Rules of Practice and Procedure may be obtained by written request to the Secretary-Treasurer of the Federation. The determination of the IEB shall be conclusive, final and binding on all parties; provided, however, that the termination of this Agreement, either by the Agent or the Federation, as provided in this agreement, shall not be deemed a default,

dispute, controversy, claim or difference hereunder. The President of the Federation may, upon agreement of the parties render such conclusive, final and binding determination whenever, in the discretion of the President, the IEB will be unable to act with sufficient promptness under the circumstances.

(b) Agent's claim against member: When the Agent has a claim for commissions against a Member of the Local Union of the Federation in the territorial jurisdiction within which the Agent maintains his or her principal office, the Agent shall have the choice of either filing the claim with that Local Union or the IEB. Any such claim filed with said Local Union shall be initially adjudicated by the person, persons or body specified by the rules, Bylaws or practices of said Local Union. Any party to such Local Union adjudication may appeal from the adjudication thereof to the IEB within thirty (30) days from the date on which such party is notified of such Local Union decision or within such additional time as the President of the Federation or the IEB may specify. On such appeal, the IEB acting under its Rules of Practice and Procedure, may receive additional evidence from any party. Pending such appeal, the President of the Federation may stay the award on such terms and conditions as he or she may deem proper, including but not limited to the deposit of adequate security with the Federation. The determination of the IEB on appeal from the adjudication of such person, or persons or body shall be final and binding upon all parties. The adjudication from which an appeal is not taken to the IEB, as provided above, shall be final and binding upon all parties.

(c) Timeliness: No default, dispute, controversy, claim or difference shall be determined by the IEB and no claim shall be adjudicated by the Local Union, unless filed with the IEB or the Local Union within one (1) year following the occurrences of the event upon which the claim is based, except as provided in (d) or (e) below.

(d) Acknowledgement/extension: A written acknowledgment of any claim, dated and signed by the Member or Agent against whom such claim is asserted, shall extend the time in which such claim may be submitted for determination for a period of one (1) year following the date of such acknowledgment.

(e) Extensions: The delivery by the Agent of a statement of account to the Member and the failure of the Member to object thereto within the time therein prescribed, as provided in 12(a) below, shall extend the time in which any claim specified in such statement of account may be submitted for determination for a period of one (1) year following the date of mailing of such statement of account.

(f) Penalties: In the event that an award for money is made by either the IEB or the Local Union in accordance with the provisions of this Section 10 and said money is not paid within twenty-one (21) days from the date the parties are notified of said award, six percent (6%) interest per annum shall be added to the amount of money awarded, provided that such interest shall be added only for the period of one (1) year from the date of such notification of the award or until the money is paid, whichever is shorter.

(g) Court of appropriate jurisdiction: The prevailing party in an arbitration case may enforce said award by bringing an action for judgment in confirmation thereof together with costs and reasonable attorneys fees incurred in enforcing the award. The action to confirm or enforce an arbitration award may be brought in courts located in New York County, New York, or in a court of appropriate jurisdiction in another State of the United States.

(h) Direct payments/waiver: If the agent elects to receive payment of commissions directly from a purchaser of the services of a Member, rather than from the Member, the Agent waives all right to file a claim for said commissions under the foregoing provisions of this Section 10.

(i) American Arbitration Association: Notwithstanding the foregoing provisions of Section 10: Should an Agent file a claim for arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, judgment upon an arbitration award rendered on any claim may be entered in any court having jurisdiction thereof. The Agent shall pay the full cost of such arbitration proceeding, except any costs personally incurred by a Member for himself or herself, his or her attorney or his or her own witnesses. In the event the Agent chooses to submit his or her claim under the procedures outlined in Section 10(a) through (h) above, rather than to initially submit his or her claim in accordance with the provisions of this Subsection(i), the Agent may not thereafter proceed under this Subsection(i). Conversely, when the Agent submits a claim for arbitration in accordance with the provisions of this Subsection(i), he or she may not thereafter submit the claim under Section 10(a) through (h) above.

11. Statement of Account Requirements: The statement of account referred to in Section 10(e) above must comply with all of the following requirements:

(a) Such statement of account shall be rendered by the Agent to the Member at least once in each twelve (12) months' period during the term of the agreement between the Agent and the Member.

(b) Such statement of account shall be in reasonable form and detailed sufficiently to inform the recipient of (I) each receipt by the Agent in connection with performances by the Member since the date of the last such statement and the places and dates of such performances; (II) each disbursement made by the Agent to or on behalf of the Member as of date of the last such statement; and (III) the net amount owed by the Agent to the Member or by the Member to the Agent as of the date of such statement.

(c) Such statement of account shall be deemed to have been duly delivered, if mailed by certified or registered mail, return receipt requested, addressed to the Member at the address last filed by such Member with the Agent.

(d) Such statement of account shall state prominently that objection to any item therein contained shall be made, in writing, within a stated time which, in no event, shall be less than sixty (60) days following the date of the mailing of such statement; and if said objection is not made as provided in this Subsection(d), such failure to object will be deemed to be prima facie evidence that the statement of account is correct.

12. Rebooking of Steady Engagements:

(a) Provided that the contract for a steady engagement indicates clearly which personnel performing said engagement are "key personnel," in the event a "Signatory Musician" to that contract or "key personnel" designated in that contract (as signed or initialed by said "key personnel") are rebooked for a steady engagement in the same location, as defined in Schedule 1(A)(i) of this Agreement, regardless of who rebooks them, within sixty (60) days (which period may be extended up to no more than one hundred and eighty (180) days if agreed in writing) of the completion of their previous engagement at that location; said "Signatory Musician" and/or "key personnel" who are rebooked shall be liable to Agent who originally booked them, for the commission on the subsequent contract in accordance with the provisions of Schedule 1 of this Agreement. The date of the rebooking is the date of signing of the subsequent contract for the engagement and the provisions of this Section 12(a) shall apply only to the first rebooking within the period set forth above.

(b) **Fees:** The Federation shall furnish to the Agent, for a fee of \$100.00 per annum, a copy of each issue of the Federation's "International Musician" and a copy of the Federation's list of affiliated Local Unions, which are

printed while this Agreement is in effect; and the Federation shall furnish to Agent, the certificate designating the Agent as a franchised Agent, which certificate shall be returned to the Federation in the event this Agreement and Agent's franchise are terminated in accordance with the provisions of Section 13 below.

13. Term of Agreement:

(a) This agreement shall be in full force and effect for one (1) year following the date set forth below, provided however, that Agent may terminate or cancel this Agreement, at his or her sole discretion, at any time during said one (1) year period, or during any successive one (1) year period of renewal, as set forth in (b) below, by at least thirty (30) days written notice served upon the Office of the President of the Federation by certified or registered mail, return receipt requested; and provided further, that the Federation may terminate or cancel this Agreement and its franchise to the Agent as qualified to act as an agent for its Members during said one (1) year period, or during any successive one (1) year period of renewal, as set forth in (b) below, by written notice to Agent, only when Agent, either willfully or through gross negligence, has caused any Member to suffer a monetary loss and it is reasonably foreseeable that Members who use the services of Agent may suffer a monetary loss. In the event the Federation terminates this Agreement and cancels Agent's franchise, as provided above, there shall be no requirement for the Federation to re-franchise Agent at any time thereafter and if, in its sole discretion, Federation decides to re-franchise Agent upon his or her re-application, Federation may provide whatever reasonable conditions it desires upon said re-franchising. Prior to the Federation terminating this Agreement and revoking its franchise with respect to an Agent, as provided above, the President of the Federation shall furnish, in writing, to said Agent notice of the Federation's intent to terminate the Agreement and revoke its franchise at least thirty (30) days in advance of said termination and revocation;

and upon written request therefor furnished to the President by said Agent within ten (10) days after receipt of said notice by this Agent, the Agent shall be granted a hearing by the President, or his or her designee(s), at a date, time and place to be determined by the President in his or her sole discretion. If such hearing is requested, the Agent may be represented at said hearing by an attorney and, subsequent to said hearing, the President, or his or her designee(s), shall serve written notice upon the Agent with respect to the disposition of the matter.

(b) Termination: This Agreement shall automatically terminate, and Agent's franchise as qualified to act as an agent for Members of the Federation shall be automatically canceled, one (1) year from the date of this Agreement set forth below, or on any succeeding anniversary date of this Agreement unless said Agent furnishes to the Office of the President of the Federation a written request for renewal prior to the end of the first year of this Agreement and prior to the end of each one year period thereafter. The Federation shall furnish to the Agent written notice of the said termination date at least thirty (30) days prior to the said termination date. In addition, by notice, in writing, to Agent at least thirty (30) days prior to any anniversary date of this Agreement, the Federation may modify or amend this Agreement, as it deems necessary, to carry out the policy and objectives of the Federation as set forth in (A) above, and any such modification or amendment shall take effect on said anniversary date.

(c) Failure to Renew: If Agent fails to renew this agreement and his or her franchise, in accordance with (b) above, the Federation shall be under no requirement to re-franchise the Agent or renew this agreement at any time thereafter, and if the Federation decides, in its sole discretion, to re-franchise Agent and renew this Agreement upon application by Agent, the Federation may impose any reasonable conditions upon said re-franchising and renewal as it deems necessary.

(d) Termination—Agent’s Loss of Rights and Privileges: Upon termination of this Agreement and Agent’s franchise, as provided above, the Agent’s right, privilege and authority to represent Members shall terminate and the Agent and each and every Member shall thereby and thereupon be deemed released and discharged of and from any and all agreements, contracts and arrangements with Agent covered by this Agreement; and of and from any and all claims by Agent which relate to continuing representation of such Members by Agent following such termination; but such termination shall not affect any contracts then existing between any Member and purchaser of the services of such Member or the right of the Agent to commissions earned from services previously rendered but not yet paid at the time of such termination.

14. Court of Jurisdiction: This Agreement has been made in the Borough of Manhattan, City of New York, New York, and shall be construed, interpreted and applied according to the laws of the State of New York. Any claim, action or cause of action arising under this agreement and brought against the Federation shall be brought only in courts located in New York County, New York.

IN WITNESS THEREOF, the parties hereto have hereunto set the hands and seals:

AGENT: _____

BY: _____

American Federation of Musicians

BY: _____

Date: _____

SCHEDULE 1

MAXIMUM COMMISSIONS

- (A) Commissions equal to the percentages set forth below of the gross monies and other consideration received by the Member, directly or indirectly, for each engagement:
- (I) Fifteen percent (15%) if the duration of the engagement is two (2) or more days per week for the same purchaser in the same location. This type of engagement shall be known as a “steady engagement.”
 - (II) Twenty percent (20%) for Single Miscellaneous Engagements of one (1) day duration—each for a different purchaser of the services in a different location.
 - (III) Federation Signatory Booking agents that have negotiated a Federation Personal Management Agreement with Federation Members, same having been filed with and approved by the President’s Office, which approval shall not be unreasonably withheld, shall be allowed an additional commission of five percent (5%) of gross monies and other consideration received by the Member for each engagement performed.
- (B) In no event, however, shall the payment of any such commissions result in the retention by a Member for any engagement of gross monies and other consideration in an amount less than the applicable minimum wage scale (including Pension and Health and Welfare contributions, if applicable) of the Federation or of the Affiliated Local Union thereof in whose territorial jurisdiction the services are to be performed.
- (C) Commissions, as provided in this Schedule 1, are due and owing to Agent at the completion of an engagement and must be paid to agent within ten (10) days from the date on which an engagement is completed.

(D) No commissions shall be payable on any engagement if the Member is not paid for such engagement unless such non-payment was the fault of the Member. In such instances, the Booking Agent may file a claim with the International Executive Board for damages not exceeding the amount of commissions that would have been payable had the member been paid for such engagement.

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