

# **SAG-AFTRA 2012 Music Video Agreement**

This Agreement (“Agreement”) is between Screen Actors Guild – American Federation of Television and Radio Artists (“SAG-AFTRA”) and the undersigned Company (“Company”) and shall cover the production of music videos, as that term is defined herein.

## **1) RECOGNITION**

SAG-AFTRA is recognized as the exclusive bargaining agent for all performers employed in the production of music videos in any media to speak, act, sing or in any other manner perform as talent (including, but not limited to: actors, narrators, announcers, singers, dancers, models, puppeteers, and stunt performers), but excluding instrumental musicians, extras/background performers, office clerks or employees, production assistants or guards as defined by the National Labor Relations Act.

In addition, Assistant Choreographers and Choreographers shall be recognized for the sole purpose of providing contributions to the AFTRA Health and Retirement Fund as set forth in Section 6 below.

## **2) SCOPE OF AGREEMENT**

The terms and conditions of this Agreement apply to Music Videos produced by the Company, or by any production company producing a Music Video on behalf of the Company, in the United States, its territories and possessions.

Any performer who is asked to sign a release in connection with his/her performance will be notified of this request at the time he/she is notified of the audition (or, if there is no audition, at the time of booking). Nothing contained in the release shall modify or be inconsistent with the terms of this Agreement. To the extent that there is a conflict between a release and this Agreement, this Agreement shall prevail.

## **3) DEFINITION OF A MUSIC VIDEO**

The term “Music Video” as used herein means and includes an audiovisual product that contains as its underlying audio track a sound recording and a visual element of the type of genre traditionally produced for exhibition on cable television or made available for digital distribution via Internet streaming and/or download.

For avoidance of doubt, recordings of informal performances (e.g., videos taken on the “Back of the Bus” during a tour) shall not be considered a Music Video within the scope of this Agreement.

#### **4) UNION SECURITY**

Except as set forth below, the following Union Security terms shall apply to all covered performers employed under this Agreement.

Until and unless the Union Security provisions of the Labor Management Relations Act, 1947, as amended, are repealed or amended so as to permit a stricter Union Security clause, it is agreed that during the term of this Agreement, the Company will employ and maintain in employment only such persons covered by this Agreement who are members of SAG-AFTRA in good standing, or those who shall make application for membership on the thirtieth (30<sup>th</sup>) day following the beginning of employment hereunder or the date of execution of this Agreement, whichever is later, and thereafter maintain such membership in good standing as a condition of employment. As used herein, the requirement of SAG-AFTRA membership means the requirement to tender uniform SAG-AFTRA initiation fee and dues.

The terms of this provision shall not apply to the individuals excluded from the "Preference of Employment" as set forth below in Paragraph 5(b).

#### **5) PREFERENCE OF EMPLOYMENT**

The following Preference of Employment terms shall apply to principal performers employed under this Agreement.

- a) In recognition of the services performed by professional performers, the Company agrees that in hiring of performers, preference will be given to qualified professional performers. A "qualified professional performer," for the purpose of this Section, is a person who has had prior employment as a performer in the entertainment industry, or who has had sufficient training so as to qualify for a career as a professional performer.
- b) The Preference of Employment shall not apply to and shall not prevent the engagement of any performer who is related to or otherwise has a close personal relationship with the Royalty Artist and has been engaged at the request or direction of the Royalty Artist whose track is being used to create the Music Video.

#### **6) AFTRA HEALTH AND RETIREMENT FUNDS**

- a) With respect to services performed under this Agreement (which shall include all fees and compensation for Covered Work), the Company shall pay to the AFTRA Health and Retirement Funds (the "AFTRA Funds") a sum equal to twelve and one-half percent (12.5%) of the gross compensation due each performer for such services (which does not

include a talent agent's commission's paid directly to the talent agent), without any deductions whatsoever, whether pursuant to oral or written contracts.

Subject to applicable law, if a dancer on whose behalf contributions have been made to the AFTRA Funds during five (5) of the prior ten (10) years is employed to work on a music video as an assistant choreographer, but not as a dancer, the Company will contribute to the AFTRA Funds on such dancer's behalf on the basis of the highest compensation received by any dancer on the music video. Such employment shall not be subject to other provisions of this Agreement.

If a dancer who has qualified for health coverage under the AFTRA Funds for five (5) years is employed to work on a music video as a choreographer, but not as a dancer, the Company will contribute to the AFTRA Funds on such dancer's behalf on the basis of the highest compensation received by any dancer on the music video. This paragraph shall not require the application of any other provision of this Agreement to choreographers.

Notwithstanding the above, with respect to performers other than Dancers, Assistant Choreographers, and Choreographers, health and retirement contributions shall not be paid on gross total compensation in excess of \$3000 per day for any performer.

- b) Along with the payments required pursuant to this paragraph, the Company agrees to submit to the AFTRA Funds a completed **Schedule A** form as attached hereto and as described in paragraph 7, below, for each AFTRA-covered performer. Payment, together with the Schedule A, shall be made to the AFTRA Funds not later than three (3) weeks following the later of the date of: 1) the event triggering the payment obligation (*i.e.*, the performance); or 2) the receipt by the Company of the relevant Schedule A form.
- c) If payments and/or reports are not received by the AFTRA Funds within thirty (30) days after they become due, the Company shall pay interest on the delinquent payments at the rate specified by the AFTRA Funds' Trust Agreement, as same may be amended from time to time, and further shall pay liquidated damages to the AFTRA Funds of up to twelve percent (12%) per year, if assessed by the Trustees.
- d) The Company shall promptly comply with requests for audits by the AFTRA Funds and shall make available all records reasonably requested

by the AFTRA Funds' auditors to verify the accuracy and completeness of the Company's compliance with its contribution and reporting obligations.

- e) The AFTRA Funds shall continue to be maintained as Trust Funds and shall be administered pursuant to the Agreement and Declaration of Trust Establishing the AFTRA Health Fund and the AFTRA Retirement Fund, as amended and restated as of October 30, 2002, as amended ("Trust Agreement"), which Trust Agreement, as amended, is hereby ratified and confirmed, and is made a part of this Agreement with the same force and effect as though fully set forth herein.

The Company confirms and ratifies the designation of the current Producer Trustees of the AFTRA Funds and agrees to be bound by the actions and determinations of said Trustees. The Company also confirms and ratifies the procedures under the Trust Agreement for the substitution of Producer Trustees.

The Trustees of the AFTRA Funds are authorized to allocate contributions to the AFTRA Funds made hereunder between the AFTRA Health Fund and the AFTRA Retirement Fund in amounts (expressed in dollars or percentages) that they may consider necessary and appropriate, and to change such allocations from time to time as the Trustees in their discretion deem appropriate. The Company ratifies the current and prior allocations heretofore adopted by the Trustees.

- f) If it is necessary for a production company to make contributions to the AFTRA Funds pursuant to a written participation agreement, the parties will develop an appropriate agreement to be signed by the production company and SAG-AFTRA.

## **7) MEMBER REPORTS**

The Company agrees to furnish SAG-AFTRA with a member report for each day of production, signed by an authorized agent of the Company. The member report shall give full and specific information sufficient to permit computation of a performer's fee with respect to services rendered by the performer. The form shall be as set forth on **Schedule A**.

## **8) ADMISSION TO PREMISES**

Any representative of SAG-AFTRA shall be admitted to the premises of the Company or where the audition, rehearsal or production of a music video takes place, at any reasonable time, to check the Company's adherence to this Agreement, but such

checking shall be done so as not to interfere with the conduct of the Company's business. The Company agrees, upon SAG-AFTRA's request, to furnish a list of all performers appearing on any music video. Representatives of SAG-AFTRA shall be subject to any applicable confidentiality agreements and/or liability waivers as necessary, and SAG-AFTRA shall give reasonable notice prior to admission.

## **9) AUDITIONS**

Should the Company choose to hold auditions, the Company shall provide the following audition conditions:

- a) An audition for a given video or videos will be scheduled by the Company for a specific time and the performer or the performer's representative shall be notified thereof.
- b) The total time for the initial audition shall be four (4) hours in length (audition time shall be calculated from the performer's stated call time).
- c) Suitable shelter and the Company shall not require performers to wait outdoors and be directly exposed to inclement weather (*e.g.* rain, sun, cold) while waiting to be auditioned.

If auditions are captured on video, such video may be used in the Music Video upon payment of a scale payment for the audition day and may be utilized in any other audio/visual production provided that the appropriate payment has been made in accordance with Paragraph 21 below.

For purposes of Music Videos with a Production Budget of \$200,000 or less, scale payment shall be the compensation negotiated by the performer. Performers who auditioned but were not hired to perform on a Music Video shall be paid the lowest scale being paid to a performer on the music video.

## **10) SAG-AFTRA COMPENSATION**

Any and all compensation paid by the Company to a performer for services covered by this Agreement shall be considered "SAG-AFTRA Compensation" for that performer, with no offsets or deductions taken by the Company or any other payor prior to calculating and reporting such SAG-AFTRA Compensation to SAG-AFTRA and to the AFTRA Funds.

**11) MINIMUM COMPENSATION**

- a) For Music Videos with a Production Budget of \$200,000 or less:

The minimum compensation paid to performers for their work in the Music Video shall be subject to negotiation between the performer and the Company, or the performer’s talent agent and the Company. The resultant agreed-to compensation shall be considered SAG-AFTRA Compensation.

- b) For Music Videos with a Production Budget greater than \$200,000:

The following minimum daily rates shall be paid to Dancers:

	<b>Upon Effective Date</b>	<b>6/1/13</b>	<b>6/1/14</b>
10 hours	\$500	\$510	\$520
12 hours	\$602	\$614	\$626

Time in excess of 12 hours shall be paid at time and a half.

Dancer Rehearsal day	2012:	\$275 (8 hours)(\$40 hr. for each additional hour)
	2013:	\$280 (8 hours)(\$41 for each additional hour)
	2014:	\$285 (8 hours)(\$42 for each additional hour)

Minimum compensation paid to all other performers shall be subject to negotiations between the performer and the Company.

**12) PRODUCTION BUDGET**

For purposes of this Agreement, the calculation of the “Production Budget” of any music video shall include all costs of making the music video.

The Company shall notify the performer and/or his or her agent at the time of notice of audition (or, if no audition takes places, at the time of booking) whether a Production Budget is expected to be above or below \$200,000. SAG-AFTRA may audit the reported production budget of any music video to verify compliance with the terms of this Agreement.

### **13) WORK DAY**

The workday shall consist of up to ten (10) consecutive hours, not inclusive of a one-half hour meal period.

### **14) OVERTIME AND REST BETWEEN DAYS**

On productions with budgets over \$200,000, if the Dancer's work day exceeds 10 hours but not more than 12 hours, the Dancer shall, as an overtime payment, receive the 12-hour day rate set forth in Paragraph 11 above, rather than the 10-hour day rate.

A performer shall be entitled to a twelve (12) consecutive hour turnaround time from the time he or she is finally dismissed until his or her first call thereafter, whether for make-up, wardrobe, rehearsal or any other purpose.

There shall be a penalty in the amount of \$50 per hour for each hour in which a performer is not afforded the designated turnaround time.

### **15) MEAL PERIODS**

Meal periods shall not be counted as work time for any purpose. The performer's first meal period shall commence within six (6) hours following the time of the performer's first call for the day; succeeding meal periods for this same performer shall commence within six (6) hours after the end of the preceding meal period. Meal periods shall not be less than thirty (30) minutes in length. Performers shall receive the same type of meal as that served to other members of the cast and crew.

Performers shall be entitled to penalties in the amount of \$10 for the first half hour and \$7.50 for each half hour thereafter for violations of this Section.

### **16) EXTRAORDINARY RISK CIRCUMSTANCES**

- a) The parties to this Agreement agree that the performers employed hereunder shall not be placed in circumstances hazardous or dangerous to the individuals.
- b) The performer taking part in a performance with any extraordinary risk circumstances as defined in Paragraph 16(c) below shall be paid additional compensation equal to \$80 for each day the performer takes part in such performance in productions with a budget greater than \$200,000 and \$40 in productions with a budget of \$200,000 or less.
- c) Extraordinary risk circumstances shall mean when a dancer is required to do any of the following: perform complex aerial acrobatics, wire flying, elevated platforms or staircases, support more than one other person in

any manner which affects safe performance of the dance routine, dance under conditions where safe performance of the dance routine is affected because sight or breathing is impaired (*e.g.*, by use of a mask or presence of fog, smoke or fire), or perform continuous acrobatic movements that incorporate weight-bearing pressure on the hands and arms.

- d) When known at the time of call, dancers or their agents shall be notified at that time if any work is to take place on concrete surfaces or include a significant amount of "knee work." In such circumstances, the dancer or his/her representative may negotiate for an additional payment.
- e) Dancers will not be required to do knee work without knee pads during rehearsals, and may wear knee pads during a shoot provided that, in the judgment of the director and/or choreographer, it does not interfere with the look or esthetic of the project.
- f) The Company and SAG-AFTRA agree to cooperate in the distribution of copies of all safety guidelines issued by the Industry-Wide Labor/Management Safety Committee.
- g) No grievance shall be filed regarding the provisions of Paragraph 16 without a discussion between SAG-AFTRA and the Company regarding the issue(s) in question.

**17) CANCELLATION OF CALLS (APPLICABLE ONLY TO VIDEOS WITH PRODUCTION BUDGETS OVER \$200,000)**

The Company shall have the right to cancel any call with more than 24 hours' notice and reschedule the call within 15 days of the original call date. If the call is not rescheduled in that time period, there will be a 25% payment of what the Dancer would have received for the call that was cancelled.

A call may be cancelled with less than 24 hours' notice without payment because of the impossibility of production due to "Force Majeure." For purposes of this Agreement, Force Majeure is defined as an extraordinary event or circumstance beyond the control of the parties, including the unavailability of the Royalty Artist or other essential talent due to illness or similar reason, war, strike, riot, crime, or an "act of God" (such as hurricane, flooding, earthquake, volcanic eruption).

Nothing herein shall prevent the Company from rescheduling the start time of a call on a given day.



**18) WARDROBE AND WARDROBE ALLOWANCE**

- a) Time spent during the work day for makeup, hair, dress or wardrobe shall be considered work time.
- b) Performers shall receive a single maintenance fee of \$40.00 if they are requested to bring any specific personal items as wardrobe.

**19) LIQUIDATED DAMAGES FOR LATE PAYMENT**

Payment shall be made to the performer not later than thirty (30) calendar days following the date or dates of employment. In the event the Company fails to make timely payment as herein provided, the following cumulative liquidated damages payments shall be due and payable to the performer for each day, beginning with the day following the date of default, at four dollars (\$4.00) per day and shall continue without limitation as to time until the delinquent payment, together with all liquidated damages, are fully paid. Such liquidated damages shall be in addition to any and all other remedies which SAG-AFTRA may have against the Company under this Agreement.

**20) PRODUCTION DRESSING ROOMS AND SANITARY PROVISIONS**

- a) There shall be an adequate supply of bottled or other drinking water;
- b) The Company shall provide an adequate number of suitable chairs for all performers to use or share;
- c) Adequate toilet facilities shall be provided for all performers, with toilets kept in a clean and sanitary condition. "Adequate toilet facilities" includes washing facilities with individual towels and soap.
- d) Men and women shall be afforded the opportunity to change clothing separately, and performers shall be provided with space in which they can store their personal belongings.
- e) In inclement weather (*e.g.*, rain, sun, cold), performers will be provided shelter and shall not have to wait outdoors.

**21) USE OF MATERIAL**

- a) For the payment of the compensation set forth in Paragraph 10 above, the music video may be used as described in Section 3 of this Agreement and for other promotional purposes.

- b) In addition to the compensation set forth in Paragraph 10, with respect to videos with a Production Budget over \$200,000, the Company shall pay to each performer a single re-use fee of no less than \$500 per production which shall be compensation for all other commercial uses, if any, other than those set forth above of a music video or part thereof. For videos with a Production Budget of \$200,000 or less, the Company shall pay to each performer a re-use fee of \$175 per production which shall be compensation for all other commercial uses, if any, other than those set forth above of a music video or part thereof. Notwithstanding the above, if a music video is licensed for use in a Television commercial aired on broadcast or cable television in an advertisement for a product other than the sound recording, the applicable payments under the Commercials Code will apply.

## **22) NO DISCRIMINATION**

The parties to this Agreement agree not to discriminate against any performer in compliance with any applicable federal or state law or regulation.

## **23) DISPUTE RESOLUTION**

All disputes and claims of every kind and nature whatsoever between any Company and SAG-AFTRA or between any Company and any member of SAG-AFTRA, arising out of or in connection with this Agreement, shall be resolved in accordance with the following procedures.

The parties shall establish a Grievance Committee (the "Committee") consisting of two representatives from SAG-AFTRA and two from the Company.

The Committee shall meet to hear all claims or disputes as soon as possible following the filing of a dispute or claim, but in any event, no later than the first week of the month following the month in which the claim was filed with the Committee. All claims must be raised no more than six (6) months after the performer knew or should have known of the events giving rise to the dispute.

Any agreed-to final decision of the Committee shall be binding on the parties, and judgment on the decision may be entered by any party in the highest court of the forum, state or federal, having jurisdiction

If the Committee is unable to reach a resolution, the dispute may be presented within 30 days of the committee meeting to final and binding arbitration under the AAA Labor Arbitration Rules.

## **24) TERM OF AGREEMENT**

This Agreement shall be effective upon approval by the SAG-AFTRA National Board, and all of the terms and conditions set forth herein shall only apply to productions in which performers have entered into agreements after the date of approval. This Agreement shall terminate on December 31, 2014.