

# NOT FOR PROFITS THEATRE AGREEMENT

4/19/11

Agreement made and entered into this 19<sup>th</sup> day of April 2011 and between Local 802, Associated Musicians of Greater New York, (hereinafter the "Union") located at 322 West 48th Street, New York, New York 10036 and the following off-Broadway Theatre Company/Producers (hereinafter the "Employer") for all of their productions produced in off-Broadway theatrical houses of 100 to 499 seats:

## Theatre Company/Producer

- |  |  |
|--|--|
| 1) Second Stage Theatre<br>307 W 43 rd Street<br>New York, N.Y. 10036            | 3) New York Shakespeare Festival<br>425 Lafayette Street<br>New York, N.Y. 10003       |
| 2) Playwrights Horizons<br>416 W 42 <sup>nd</sup> Street<br>New York, N.Y. 10036 | 4) New York Theatre Workshop<br>79 East 4 <sup>th</sup> Street<br>New York, N.Y. 10003 |

It is agreed as follows:

### I. RECOGNITION

The Employer hereby recognizes the Union as the exclusive collective bargaining representative for all musician/employees employed by the Employer, which musician/employees shall constitute the collective bargaining unit covered by the Agreement.

The Union recognizes the Producer/Employer as the employer of all musicians who perform in their productions.

### II. UNION SECURITY AND DUES CHECK OFF

A. The Employer agrees that all musician/employees who are members of the Union, as a condition of employment, maintain their membership in the Union. If they are not members they are to become members of the Union no later than the 30th day following the date of their employment and thereafter maintain their membership in the Union.

B. The Employer agrees to report to the Union within five (5) days the name, Social Security numbers and first day of employment of any new musician/employees. The Employer agrees further that upon receipt of written authorization from each musician/employee to deduct from such musician/employee's salary the amount of his/her Local 802 work dues (3 ½%) and transmit same each week to Local 802 by no later than the 5th day of the following week.

C. The Employer shall provide one (1) hour for each of two (2) Union meetings. The purpose of these meetings is to give the Union an opportunity to discuss the provisions of this Agreement with the musicians and to elect a Union steward. The first meeting shall be within 5 days of the first cast rehearsal for rehearsal and audition musicians. The second meeting shall be within the first 5 days of orchestra rehearsals for

orchestra musicians. The Employer shall provide appropriate space for these meetings at the rehearsal site. These meetings shall be contiguous with scheduled rehearsals and need not be compensated time.

D. A validation form shall constitute evidence of engagement of a musician, and a copy of the validation form shall be given to the musician and the Union. No musician shall perform unless a copy of the form is in the musician's possession prior to the first rehearsal, except if Local 802 otherwise agrees.

### III. WORK WEEK

A. The workweek shall consist up to eight (8) performances per week with a day off each week. A performance shall be up to three hours in length. Time worked in excess of three (3) hours shall be compensated at the rate of time and one-half (1 ½ x) of the musician's regular rate of pay except for classical works from the 19<sup>th</sup> century or before, which shall be three and one-half (3 ½) hours or less in duration (for example, including but not limited to, Shakespeare, Moliere, Shaw). Each additional performance by a musician over eight (8) within the workweek shall be compensated at the rate of time and one-half (1 ½ x) of the musician's regular performance rate of pay except that if there is a ninth performance during the first preview week, the musicians shall be paid straight time for the additional performance.

B. All performances played on the seventh consecutive day of the work week, as defined in subparagraph (A) above, whether or not in excess of eight performances, shall be compensated at the rate of time and one-half (1 ½ x) the regular performance rate of pay for musicians. Time and one-half (1 ½ x) premium is to be paid to the musician actually playing the performance regardless of whether it is the regular musician or substitute.

C. When the Employer desires to change the show schedule, the Employer shall inform the Theatre Department of Local 802 at least one (1) week in advance of such a change.

D. A third performance on any day shall be compensated at time and one-half (1 ½ x) of the regular performance rate of pay.

### IV. WAGE SCALES

A. The minimum weekly performance scale wage shall be inclusive of one guaranteed doubling premium at 6 1/4 % and shall be:

#### *Minimum Scale Wages*

Seats	August 16, 2010	August 16, 2011	August 16, 2012
100-199	660.02	669.92	690.01
200-299	804.00	816.06	840.54
300-399	900.02	913.52	940.93
400-499	955.36	969.69	998.79

#### *Base Rate Scale for Calculating Premiums*

Seats	August 16, 2010	August 16, 2011	August 16, 2012
100-199	586.68	595.48	613.34
200-299	714.67	725.39	747.15
300-399	800.02	812.02	836.38
400-499	849.21	861.95	887.81

**Delacorte Theater – Minimum Scale Wages**

	<b>2010</b>	<b>2011</b>	<b>2012</b>
	832.14	844.63	869.96

*Base Rate Scale for Calculating Premiums*

	<b>2010</b>	<b>2011</b>	<b>2012</b>
	739.68	750.78	773.30

B. Effective August 16, 2010 there shall be an additional half percent (1/2%) of minimum scale wages for performances and one and a half percent (1 1/2%) August 16, 2011 and three percent (3%) August 16, 2012. The Delacorte Theater is an additional three and a half percent (3 ½%) of the 200-299 seat minimum scale wages.

C. The Musical Director/Conductor or Leader shall receive an additional premium for performances and rehearsals of:

- 100-199 seats: 25%
- 200-299 seats: 40%
- 300-499 seats: 50%

*Chart reflects the Musical Director/Conductor or Leader premium pay.*

<b>Seats</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
100-199	146.67	148.87	153.34
200-299	285.87	290.16	298.86
300-399	400.01	406.01	418.19
400-499	424.61	430.98	443.91

D. An Associate Conductor, if engaged, shall receive an additional premium for performances and rehearsals of:

- 100-199Seats: 10%
- 200-499Seats: 15%

*Chart reflects the Associate Conductor premium pay.*

<b>Seats</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
100-199	58.67	59.55	61.33
200-299	107.20	108.81	112.07
300-399	120.00	121.80	125.46
400-499	127.38	129.29	133.17

E. For a 1-9 member orchestra a playing contractor, if engaged, shall receive twenty five percent (25%) additional over and above the minimum weekly scale wages. For a 10 or larger member orchestra, a playing contractor, if engaged, shall receive fifty percent (50%) additional over and above the minimum weekly scale wages. Any musician asked to perform any of the duties of a playing contractor shall be paid as per the above rates, but in no case less than twenty-five (25%).

F. Rehearsal Musicians:

1. For a 42 hour/6day week musicians working on rehearsals and auditions, not in conjunction with an orchestra, shall be compensated as follows:

100-199 seats: \$636.54  
200-299 seats: \$769.15  
300-399 seats: \$848.72  
400-499 seats: \$954.81

2. If audition and rehearsal musicians are called by the day, the scale shall be a minimum two-hour call at the hourly rate of:

100-199 seats: \$23.88  
200-299 seats: \$29.18  
300-499 seats: \$34.48

3. Orchestra Rehearsals scales shall be a minimum two-hour call at the hourly rate of:

100-199 seats: \$20.16  
200-299 seats: \$20.69  
300-499 seats: \$23.34

4. Overtime after 8 hours in a day or 42 hours in a week shall be compensated at the rate of time and one-half (1 ½ x) of the pro-rated hourly rate in half-hour segments or parts thereof.

5. A dress rehearsal and rehearsals terminating after 7p.m. shall be paid at the performance rate.

6. A one- (1) hour rehearsal just before half-hour or just after a performance shall be paid at the minimum rate of \$26.52.

7. All musician/employees or substitutes that play an instrument during any rehearsal must be paid for the rehearsal pursuant to this section.

G. Doubling and other premiums:

1. No member of an orchestra or stage band shall perform on more than two instruments during a performance or rehearsal unless he/she receives additional compensation as set forth herein:

2. Additional doubles beyond the first double shall pay 12 1/2% for the second double and 6 ¼% for the third instrument and each additional instrument thereafter.

Doubling charges need not be paid where a musician is required to play instruments in any one of the following categories:

- (a) Saxophone and members of the saxophone family, however, if the bass saxophone is played as a double, it shall be paid for at the doubling rate.
- (b) Bassoon and contra-bassoon;
- (c) Tuba and sousaphone;
- (d) Drums, consisting of bass drum, small drum, tom toms, cymbals, gongs, and traps;

- (e) Tympani;
- (f) Mallet played instruments: xylophone, bells, vibraphone, chimes and marimba;
- (g) Latin American rhythm instruments: bongos, timbales and conga drums shall be considered as one instrument.

3. Serving as the Librarian on a production with five (5) or fewer musicians shall be compensated at 6-¼ % above the minimum scale wages and at 12-½ % for a production with more than six (6) musicians.

4. If a synthesizer(s) is utilized in the production, a premium shall be paid to each synthesizer musician according to the following:

- 100-199 seats: 12.5%
- 200-299 seats: 20%
- 300-499 seats: 25%

Seats	2010	2011	2012
100-199	73.34	74.44	76.67
200-299	107.20	108.81	112.07
300-399	120.00	121.80	125.46
400-499	127.38	129.29	133.17

5. The Employer shall be responsible for furnishing all keyboards, electronic and percussion instruments. If keyboard, electronic or percussion instruments are required to be supplied by a musician, the Employer will pay the musician a negotiated fair rental fee, which shall include cartage, if applicable.

6. Nothing contained in this article shall prevent any individual from negotiating a wage in excess of minimum scale.

7. For clarification, all of the above premiums shall be calculated on the base wage, less the first guaranteed double (See Attachment A).

V. VACATION

A. As of the beginning of the 16<sup>th</sup> week of employment the Employer shall pay an additional four-percent (4%) of the weekly gross salary to each musician as vacation pay.

B. As of the 16<sup>th</sup> week of employment each musician shall have the right to choose the time of his/her vacation provided, however, that not more than one musician may take a vacation at any one time without the consent of the employer. Two weeks written notice must be submitted to the conductor prior to taking a vacation of one week or more.

VI. HEALTH BENEFITS

A. The Employer agrees to contribute into the **The Local 802 Musicians Health Fund** an amount consistent with the schedule in Section (C) of this Article on behalf of all its musician/employees in order to provide health benefits for said musician/employees in accordance with the rules and regulations of the said plan and shall be contributed on behalf of musician/employees when on vacation or absent due to illness (up to two (2) weeks or sixteen (16) performances).

B. The Employer 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.

C. The Employers shall increase the health contributions for the musician/employees to a cap of \$72.00 per week, pro-rated at \$9.00 per performance or rehearsal.

D. Contributions shall be in accordance with the following schedule of dates and amounts, and mailed to Local 802 AFM at 322 West 48th Street, New York, NY 10036 along with the names of covered musician/employees no later than two (2) weeks after each pay day.

## VII. PENSION

A. The Employer adopts the American Federation of Musicians and Employers' Pension Fund rehabilitation plan adopted by the Board of Trustees of the Fund on April 15, 2010, including all contribution schedules, which is incorporated here by reference. Specifically, the employer's contribution shall be: 9.36% effective June 1, 2010 and 9.81% effective April 1, 2011 of each musician/employee's wages as defined in Article IV and Article V of this Agreement (which shall be considered to be scale wages) to the American Federation of Musicians and Employers' Pension Fund.

B. All contributions to the Fund shall be made by check payable to the **AFM-EPF** (American Federation of Musicians and Employers' Pension Fund). All such checks shall be accompanied by a remittance form identifying for each musician/employee for whom a contribution is made, the musician/employee's name, social security number, date(s) of engagement for which pension is paid, scale wages on which pension is paid and the amount of pension. The check and remittance information shall be transmitted to Local 802 AFM for forwarding to the Fund within fourteen (14) days following the rendering of services for which such contributions are payable. If the Employer is unincorporated, no contributions will be paid on behalf of any owner or part owner of the Employer.

C. The Employer agrees to be bound by The Agreement and Declaration of Trust establishing The American Federation of Musicians and Employer's Pension Fund, as it may be amended from time to time, which is incorporated by reference into this Agreement.

## VIII. SICK LEAVE

A. Musician/employees shall accrue one paid sick performance for every forty-eight performances played.

B. The producer may require reasonable proof of illness.

## IX. WITHHOLDINGS

All musician/employees are to be considered as employees for the purposes of Social Security, unemployment insurance, workers' compensation and all other withholding and insurance benefits under current law.

## X. WORKING CONDITIONS

- A. The Employer/Producer shall use their best efforts to maintain the temperature in the theatre at 65°-75° degrees Fahrenheit.
- B. Adequate lighting shall be provided for each musician, including rehearsal musicians.
- C. Pianos in the theatre shall be tuned and properly maintained.
- D. Employer/Producer shall make best efforts to provide and maintain a safe and sanitary condition, a secure locker room or dressing room and storage for instruments.
- E. There shall be a five- (5) minute rest period in each hour or ten- (10) minute rests period every one and one half-hours for rehearsals except dress rehearsals.

## XI. NOTICE OF CLOSING

Musician/employees shall receive one week or eight- (8) performance notice of closing or layoff. The Union shall receive written notice of closing or layoff. If a production has a temporary layoff due to poor business, musician/employees shall be guaranteed at least two weeks employment upon reopening.

## XII. IDENTITY WITH THE PRODUCT

All musician/employees, including all music preparation musicians, are hired for the run of the show. In the event a musician/employee leaves the show or is justifiably dismissed; another musician playing the same instrument(s) who will also have run of the show will fill his/her position. In the event of a cast album, taping for radio or television broadcast, or radio/television commercials, the members of the current orchestra shall be offered employment provided that their instruments are utilized in any such activity. All recordings, tapings or other electronic media uses shall be paid for at the appropriate Local 802 or AFM scales for such uses. In the event that a show moves to another theater or to Broadway, the regular members of the orchestra last engaged shall be offered employment if their instruments are utilized in the new production.

## XIII. SUBSTITUTION

Each musician/employee may substitute another musician acceptable to the Employer from a pool of up to five (5) substitutes, which shall be maintained by the musician/employee. Substitution shall be limited to less than fifty percent (50%) of performances. During the first twenty-four (24) public performances, a regular member's right to send in a substitute may be withheld. In addition, the right to send in a substitute may be withheld during the eight (8) performances prior to the official opening (and any other performances at which the critics shall be present, provided seven (7) days notice to the musicians is given) and the seven (7) performances following the official opening. Reasonable substitutions shall be allowed during performances occurring between the twenty-fourth (24<sup>th</sup>) public performance and the eighth (8<sup>th</sup>) performance prior to the official opening in order to enable musicians to fulfill engagements for which they have made business commitments. Thereafter the fifty percent (50%) rule shall apply. No more than one new substitute shall be allowed in any given section during each performance.

## XIV. NO DISCRIMINATION

Discrimination against any musician/employee because of race, religion, sex, ethnic background, political affiliation, age, sexual orientation or union activity is prohibited under this Agreement.

XV. DISMISSAL

The Employer shall have the right to dismiss musician/employees for just cause. Any dispute over dismissal shall be subject to the grievance procedure provided in Article XVI herein.

XVI. GRIEVANCE AND ARBITRATION PROCEDURE

All disputes involving a claim of violation of this Contract (hereinafter referred to as a "grievance") shall be resolved in the following manner:

A. Such grievance shall be discussed by the Union and the Employer.

B. In the event that the grievance is not resolved within 90 days after it has first been presented, either the Employer or the Union may submit the matter to arbitration before a mutually agreeable third party. In the event the Employer and Union are unable to agree upon a third party, the demand for arbitration shall be submitted to the American Arbitration Association in New York City and conducted pursuant to the Voluntary Labor Arbitration rules of the Association.

C. The decision of the arbitrator shall be final and binding upon the parties and their members. In the event of a dismissal or other disciplinary action which causes a musician to lose wages or his/her chair, the arbitrator shall award full back wages and reinstatement if it is determined that such disciplinary action was not justified by either just cause or artistic reasons. The cost of any arbitration shall be borne equally by the parties.

D. In the event of a dismissal for artistic reasons the musician/employee shall continue in his/her chair unless the dispute is settled in favor of the Employer.

XVII. NO STRIKES - NO LOCKOUTS

The Union agrees not to conduct, cause or permit any strike or picketing against the Employer, during the term of this Agreement, except for failure to pay wages when due or Health Benefits and Pension contributions within ten (10) days after such health benefits and pension contributions become due. The Employer agrees not to lock out musician/employees during the term of this Agreement.

XVIII. UNION CONSTITUTION AND BYLAWS

The Constitution, Bylaws, rules and regulations of Local 802 and the American Federation of Musicians are hereby incorporated and made a part of this Agreement as if specifically set forth herein but only to the extent that such Constitution, Bylaws, rules and regulations are not contrary to or in violation of any provisions of this Agreement or law.

XIX. INVESTORS

The Employer will not engage any musician as an instrumentalist, conductor, leader, contractor, and/or personnel manager, arranger, copyist or librarian, if such musician invests in the production. The Employer further agrees that it will not permit any such investment through or under the name of a corporation or other business entity and/or agent, nominee or member of the family of any musician employed hereunder.

XX. POSTING BOND

Employer shall post with the Union a bond or a letter of credit from a bank equal to one week's wages, pension and health benefits for the orchestra and a bond sufficient enough to cover one week's anticipated Music Preparation wages, pension and health benefits or \$5,000.00, whichever is greater, prior to the first day of employment.

XXI. INSTRUMENTATION

A. Commencing on the effective date of this Agreement and continuing for one year, or until the completion of the Union's upcoming negotiations with The League, whichever is later, there shall be no use of any virtual orchestra machine. Compositions written expressly for live musician(s) with synthesized electronic or pre-recorded sound, but excluding the use of the virtual orchestra machine will also be acceptable.

B. If the Union and The League do not reach an agreement with respect to virtual orchestras, that part of paragraph A above shall be void.

XXII. MUSIC PREPARATION

A. All arranging, orchestration, copying and other music preparation services shall be paid for according to the following terms and conditions:

100-299 Seats: 80% of General Price List (GPL)  
300-499 Seats: 100 % GPL

B. 1.) If the music prepared under this agreement is used in a larger theatre (up to 499 seats) or for rental publication, the additional 20% of General Price List rates (and appropriate pension and health benefits contributions) shall be paid to all music preparation musicians employed under this agreement.

2.) If the music prepared under this agreement is used in a theatre of 500 or more seats, the difference between the amount paid under this agreement and those specified in the larger theatre's agreement (and appropriate pension and health benefits contributions) shall be paid in full to all music preparation musicians employed under this agreement.

3.) If the music prepared under this agreement is used in a Broadway production, the difference between the amount paid under this agreement and the amount required by the Local 802/League of American Theaters and Producers Collective Bargaining Agreement (the Broadway agreement), including appropriate pension and health benefits contributions shall be paid in full to all music preparation musicians employed under this agreement.

C. In the event that a Broadway production is staged, the Broadway agreement shall apply.

D. No music prepared under this agreement may be used in any electronic or recorded medium without payment of the appropriate Local 802 or AFM scale for such use.

E. All Music Preparation Services for productions presented pursuant to this agreement, from the pre-production period through the closing date of Employer's production including recordings, cast albums and electronic medium produced during such period under the control of the Employer, will be rendered by the original Music Preparation personnel, provided such personnel are available.

### XXIII. SUCCESSORS AND ASSIGNS

In the event the Employer sells transfers or assigns his/her/its rights to this production, both the original Employer and any transferee or assignee shall be individually and jointly liable for this complete performance of this Agreement.

### XXIV. RECORDING

- A. No performance shall be recorded, reproduced or transmitted in any manner whatsoever from the place of performance or any other location unless there is a specific written agreement with Local 802 or the American Federation of Musicians (AFM) relating to and permitting such recording, reproduction or transmission.
- B. B-Roll footage may be used without additional compensation under the terms and conditions of the Broadway agreement, language Article XXVI Section G. A copy of that contract has been provided to the Employer.
- C. No musician/employee shall be discharged or penalized in any manner whatsoever if said musician/employee refuses to play or work on a recording, reproduction or transmission of any kind for which there is no written agreement with Local 802 or the AFM.

### XXV. OTHER PRODUCTIONS

- A. In the event the Employer or its successor (pursuant to Article XXIII of this Agreement), mounts another production of this show, the Employer agrees that the musician/employees of said production shall be offered the same position pursuant to an agreement with Local 802 or the American Federation of Musicians (AFM) or another AFM local, whichever is applicable in accordance with AFM rules, regulations and Bylaws.
- B. In the event that a production moves to a theatre covered by the collective bargaining agreement between Local 802, AFM and the League of American Theatres & Producers, or any other Local 802 Agreement, the terms and conditions of that agreement shall automatically attach to the production. In the event that a production moves to a theater where no contract exists, a new agreement shall be negotiated. The Employer agrees to notify the Union at least two weeks prior to any such move.

In the event the parties are unable to reach agreement on the terms and conditions of employment at the new theatre, the prohibitions of Article XVII hereof shall be suspended until an agreement is reached.

### XXVI. SEPARABILITY

In the event that one or more clauses or terms of this Agreement are found to be in violation of the law, all remaining clauses and terms shall remain in full force and effect.

### XXVII. ACKNOWLEDGMENT OF THE UNION

- A. The Employer agrees to insert the following line into the program: "The Musicians employed in this production are members of the Associated Musicians of Greater New York, Local 802 of the American Federation of Musicians" and to include the logo of Local 802 when possible.

B. The names of the regular orchestra members will be included in the Playbill listing in a type no smaller than that afforded the understudies' listing or immediately preceding the "Who's Who in the Company."

C. The Employer agrees that if the cast is introduced, the musicians will also be acknowledged and when possible, the conductor individually.

**XXVIII MOST FAVORED NATION'S CLAUSE**

The Union will not enter into an agreement with another employer covering employment in theatres with a seating capacity of 100-499 in New York City which provides more favorable wages and/or terms of employment than the Agreement without extending the same more favorable wages and/or conditions to the Employers who are bound by the Agreement.

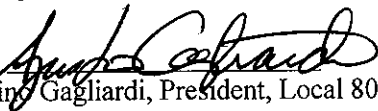
**XXIX. DURATION**

The duration of this Agreement shall be August 16, 2010 through August 15, 2013 except for Article XII, IDENTITY WITH THE PRODUCT, and Article XXV, OTHER PRODUCTIONS, which shall remain in effect for three years following the end of each production's run. Sixty (60) days prior to the termination date of this Agreement either party may contact the other for the purpose of negotiating a new agreement.

**XXX. RATIFICATION**


Once this Agreement is fully executed it will be subject to the ratification of the Local 802 Executive Board. The Employer will be notified of said ratification.

**For the Union:**

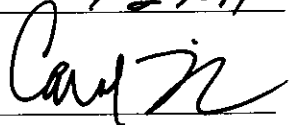
Signed:   
Augustino Gagliardi, President, Local 802, AFM

Date: 5/3/11

**For the Employer:**

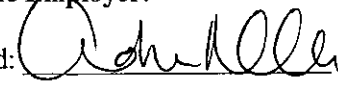
Signed:   
Don-Scott Cooper, Second Stage Theatre

Date: 4-27-11

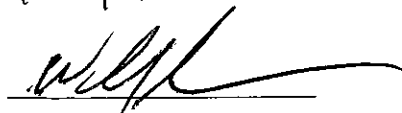
Signed:   
Carol Fishman, Playwrights Horizons

Date: 4/26/11

**For the Employer:**

Signed:   
Andrea Nellis, New York Shakespeare Festival

Date: 4/21/11

Signed:   
William Russo, New York Theatre Workshop

Date: 4-27-11

