



SCALE AGREEMENT

BETWEEN

THE NATIONAL FILM BOARD OF CANADA (NFB)

AND THE

SOCIÉTÉ PROFESSIONNELLE DES AUTEURS
ET COMPOSITEURS DU QUÉBEC (SPACQ)

THIS AGREEMENT WAS WRITTEN IN FRENCH,
WHICH REMAINS THE ONLY OFFICIAL VERSION.
THIS ENGLISH VERSION IS PROVIDED
FOR REFERENCE PURPOSES ONLY.

End date: April 24, 2013

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NFB/SPACQ SCALE AGREEMENT

PREAMBLE

The parties declare as follows:

First:

The NFB is an agent of the federal Crown, constituted under the National *Film Act*, R.S.C. 1985, c. N-8, with the mandate to produce and distribute films and other audiovisual works designed to interpret Canada to Canadians and to other nations.

The NFB has its principal place of business in Montreal, at 3155 Côte de Liesse Road.

Second:

The SPACQ is a body constituted under Part III of the Quebec *Companies Act*, R.S.Q., c. C-38.

The SPACQ is certified by the Canadian Artists and Producers Professional Relations Tribunal in accordance with the certificate order issued on May 17, 1996, and all subsequent amendments thereto.

Third:

The rules hereinafter set out apply only to the matters expressly referred to in the Scale Agreement.

CHAPTER 1

DEFINITIONS

The following definitions shall apply in interpreting this Scale Agreement:

101 ADAPTATION (*ADAPTATION*)

Creation of Music from pre-existing musical works in respect of which the NFB holds a licence or adaptation rights.

102 SELF-PUBLICITY (*AUTOPUBLICITÉ*)

Promotional publicity for the NFB or a Production made using photographs or audio or visual sequences recorded during filming, whether excerpts of the original Production or made expressly by the NFB. However, the NFB may not develop any commercial activity, such as the sale of a derivative product, under the pretext of Self-publicity.

1.03 MASTER TAPE (*BANDE MAÎTRESSE*)

The recording of the commissioned Music after the final version thereof has been approved by the NFB, being the process consisting of the orchestration, arrangement and conducting by the Composer, in the studio, for the purpose of recording the commissioned Music, with musicians, singers and/or choral singers, in Synchronization with the Production, in accordance with the agreements between the NFB and various associations of artists.

1.04 COLLECTION (*COLLECTION*)

Productions that have been divided into broad themes or according to title.

1.05 COMPOSER (*COMPOSITEUR*)

A lyricist, composer or lyricist-composer, within the meaning of the certification order made on May 17, 1996, and any subsequent amendment made thereto by the Canadian Artists and Producers Professional Relations Tribunal, as required by the context.

1.06 COMPOSING FEE (*CACHET DE COMPOSITION*)

Amount paid to the Composer for the Music composition services commissioned and for acquisition by the NFB of the Use Rights set out in the Scale Agreement.

1.07 FEE (*CACHET*)

Total of the amounts payable for the services of the Composer, including composition of the Music and services relating to the delivery of the Master Tape.

1.08 CONTRACT (*CONTRAT*)

Individual written agreement between each Composer and the NFB (Appendix A).

1.09 CO-PRODUCTION (*COPRODUCTION*)

Production in respect of which the NFB is not solely responsible for production

1.10 INTERNATIONAL CO-PRODUCTION (*COPRODUCTION INTERNATIONALE*)

Production in respect of which the NFB is not solely responsible for production and all of the co-producers of which are not residents of Canada in accordance with the rules of interpretation set out in Interpretation Bulletins issued under the tax laws that are applicable in Canada at the time the Contract is signed.

1.11 USE RIGHTS (*DROITS D'EXPLOITATION*)

Rights granted to the NFB in the form of an exclusive licence for the use and exploitation of the Music.

1.12 PRODUCTION (*ENREGISTREMENT*)

Audiovisual work, regardless of the medium on which it is fixed.

1.13 SPONSORED PRODUCTION (*ENREGISTREMENT DE COMMANDITE*)

Production made for and financed by the federal government, a Crown corporation or a not-for-profit organization, and including Productions of public service announcements.

1.14 ANIMATION PRODUCTION (*ENREGISTREMENT D'ANIMATION*)

Production using techniques for the frame-by-frame reconstitution of movement (e.g. by animated drawings, pixillation, puppets, etc.).

1.15 DOCUMENTARY PRODUCTION (*ENREGISTREMENT DOCUMENTAIRE*)

Informational production that is not made specifically for entertainment purposes and in which dramatic or variety show techniques may be used to present information.

1.16 MULTIMEDIA PRODUCTION (*ENREGISTREMENT MULTIMÉDIA*)

Production that exists in the form of a system, technology, medium or product now known or hereafter devised which is capable of storing or transmitting data (text, images and sound) in digital or analog format and which enables the user of the system, technology, medium or product to manipulate or modify the manner in which the creative content is presented simultaneously during use.

1.17 MUSIC CONTENT SHEET OR MUSIC CONTENT SHEET (*FEUILLE DE CONTENU MUSICAL*)

Form set out in Appendix G.

1.18 CREDITS (*GÉNÉRIQUE*)

List of names and functions of the key participants in a Production

1.19 DEMO (MAQUETTE)

Sound sketch, sample or overview of the Music commissioned by the NFB, which must be submitted to the NFB for approval before the Listening Material is produced.

The Demo may be Synchronized with certain images in the Production.

1.20 LISTENING MATERIAL (MATÉRIEL D'ÉCOUTE)

First complete version of the Music, Synchronized with the image in the Production, commissioned by the NFB, which must be submitted to the NFB for approval before the Master Tape is produced.

1.21 MUSIC (MUSIQUE)

Original musical work or Adaptation, commissioned by the NFB, with or without words, in whole or in part, and including the scores and musical themes, in accordance with the delivery schedule set out in the Contract.

1.22 REWRITE (RÉÉCRITURE)

Major change in the structure of the Music necessitating amendment of the requirements set out in the Contract.

1.23 CORRECTIONS (RETOUCHES)

Minor corrections that do not change the structure of the Music and do not necessitate any amendment to the Contract.

1.24 SYNCHRONIZING OR SYNCHRONIZATION (SYNCHONISER OU SYNCHRONISATION)

Making the Music coincide with the images in the Production.

1.25 MUSIC TRACK (TRAME MUSICALE)

All of the musical works, including the Music commissioned under the Scale Agreement, that are incorporated into the Production.

CHAPTER 2

RECOGNITION AND SCOPE

RECOGNITION

- 2.01** In accordance with the certification order made on May 17, 1996, and any subsequent amendments made thereto by the Canadian Artists and Producers Professional Relations Tribunal, the NFB recognizes the SPACQ as the sole representative and bargaining agent for the lyricists, composers and lyricist-composers covered by the Status of the Artist Act, S.C. 1992, c. 33, whose professional services the NFB retains for producing a Production.
- 2.02** The SPACQ recognizes that it is the responsibility of the NFB to manage and direct the activities of the NFB. The NFB is responsible for selecting the Composers whom it retains.

SCOPE

- 2.03** The purpose of the Scale Agreement is to establish the minimum requirements for commissioning Music and for delivering such Music on a Master Tape for Productions, that apply to Composers retained by the NFB. All such commissions shall be the subject of a Contract in the form set out in Appendix A.
- 2.04** The Scale Agreement shall apply notwithstanding that a Composer provides personal services through a company or moral person. The Composer and the company or moral person through which the services are provided shall be jointly and solidarily liable for the performance of the obligations set out in the Contract and the Scale Agreement.
- 2.05** All terms and conditions of the Scale Agreement, including Fees, shall be minimum requirements, and shall not operate to prevent the Composer from agreeing to more advantageous terms and conditions with the NFB. In exceptional circumstances, terms and conditions that are more advantageous to the NFB may be granted to the NFB for a specific Production, with the written approval of the SPACQ.

EXEMPTIONS FROM THE **SCALE AGREEMENT**

- 2.06** **The Scale Agreement shall not apply to:**
- a) *an* NFB employee whose duties include the Composition of songs or music;
 - b) a lyricist when the lyricist is also the writer for the Production, in accordance with the agreements between SARTEC and the WGC and the SPACQ;

- c) a Composer who participates in a Documentary Production and whose participation is limited to demonstrating, explaining or performing his/her ordinary work or professional activity;
 - d) a Co-production in respect of which the financial participation of the NFB is less than forty per cent (40%);
 - e) an International Co-production:
 - where the financial participation of the NFB is lower than forty per cent (40%);
 - where the NFB retains the services of a Composer who is not a resident of Canada, in which case the Scale Agreement may be applied at the option of the NFB; or
 - where the foreign co-producer retains the services of a Composer, whether or not the Composer is covered by the SPACQ's certification.
- 2.07 Where, at the initial stage of a domestic Co-production (i.e. before a Composer has been retained) in which the financial participation of the NFB is greater than forty per cent (40%), the NFB becomes the co-producer of a Production with a producer which is not a member of the APFTQ, the NFB shall require that the co-producer apply rates that are not lower than the minimum rates set out in the NFB/SPACQ Scale Agreement and comply with all other terms and conditions of that Scale Agreement.

CHAPTER 3

PROVISIONS APPLICABLE TO ALL CONTRACTS

GENERAL TERMS AND CONDITIONS

- 3.01 Composing services shall ordinarily be performed based on the audiovisual material in a Production. The NFB shall be responsible for providing the Composer with that audiovisual material when the Contract is signed or on such other date as may be specified in the Contract.
- 3.02 The Composer agrees to provide to the NFB his/her personal services or, where the Composer is a moral person, the personal services of the Composer identified for that purpose in the Contract, to Compose and deliver the Demo, the Listening Material and the Master Tape, on the terms and conditions set out in the Contract and the Scale Agreement.
- 3.03 Where the NFB retains the services of two or more Composers for a single Production and it is impossible to distinguish their respective contributions, they shall be regarded as a single Composer for the purposes of the Scale Agreement. The NFB shall then have discretion as to whether to enter into a single Contract or separate contracts for each of the Composers.

- 3.04 In the situation referred to in article 3.03, the Composers shall agree between or among themselves as to how the minimum Composition Fee shall be divided, and as to the formula for dividing their copyright in the Music, and shall incorporate that agreement in the Contract. In the event of any dispute in this respect, the NFB shall be authorized to pay any disputed amount to the SPACQ and Chapter 9 shall apply in respect of the resolution of the dispute.
- 3.05 The Composers contemplated by articles 3.03 and 3.04 shall then be jointly and solidarily liable for performance of the obligations, and entitled to the Rights, set out therein, except in respect of any over-payment.
- 3.06 The NFB may retain the services of various Composers for a single Production. In that case, each Composer shall be advised of that fact before the Contract is signed, and each Composer shall sign a separate contract.
- 3.07 The Contract shall be signed before the composing work begins. A copy of the Contract shall be sent to the SPACQ and to the NFB.
- 3.08 The Composer shall agree to provide all necessary services and materials that are necessary to the composition of the Music and to delivery of the Master Tape to the NFB.
- 3.09 The Contract shall contain the following specifications:
- a) the approximate length (in minutes) of the Music and of the Production;
 - b) where possible, the qualitative and quantitative characteristics of the Music and of the Master Tape commissioned by the NFB (approximate number and nature of the performers and instruments, whether it is an Adaptation of existing music or original music, genre of music, whether it is a song, theme, background music, etc.);
 - c) the date on which the audiovisual material based on which the Composer's services are to be provided will be delivered to the Composer; where an Adaptation is commissioned, the date on which a sound medium or score of the existing music will be delivered to the Composer;
 - d) the dates on which the Demo, the Listening Material, the Master Tape and the information required by the NFB in order to complete the Music Content Sheet shall be delivered;
 - e) the Composing Fee, the Fee, and the terms and conditions of payment;
 - f) the person authorized by the NFB to accept or reject any material delivered by the Composer; the person so authorized may be replaced by the NFB during the term of the Contract where the NFB has first so informed the Composer;
 - g) inclusion of the Composer in the Credits;

- h) if the Composer is a member of SODRAC or SOCAN, whether the Composer is subject to a publishing contract in respect of the commissioned Music and, where the Composer is subject to such a contract, the name and contact information for the publisher in question.
- 3.10 All delivery deadlines stated in the Contract shall be mandatory. However, the times allowed shall not run during any period when the other party is in default.
- 3.11 The Composer may not enter into any contract with third parties for the provision of the services and materials described in article 3.08 without the prior written authorization of the NFB.
- 3.12 Any amendment or negotiation in relation to the Composer's original Contract as it was prepared under the Scale Agreement shall be in accordance with the Scale Agreement that applied at the time the original Contract was signed.

DELIVERY, ACCEPTANCE, REJECTION

- 3.13 The Composer agrees to deliver the Demo, the Listening Material and the Master Tape to the NFB on the date shown in the Contract for that purpose, for approval by the NFB and agrees to modify the Demo, Listening Material and Master Tape, if necessary, at no additional charge, subject to article 3.17.
- 3.14 Acceptance by the NFB at any step of the delivery schedule shall mean that the Composer may proceed to the next step, and so on until the Master Tape is delivered.
- 3.15 The NFB and the Composer may provide for a deadline, in the Contract, prior to which the NFB may accept or request changes to material delivered at any step.
- 3.16 Any Corrections to the Music requested by the NFB shall be done within the time agreed to by the parties.
- 3.17 No Rewrite of the Music may be done by anyone other than the Composer except a person agreed to by the parties, on terms to be negotiated by them.
- 3.18 Any changes to the requirements set out in the Contract shall be in writing, in the form of an amendment to the Contract duly signed by the Composer and the NFB, a copy of which shall be sent by the NFB to the SPACQ within a reasonable time.

- 3.19** In the event that the NFB rejects a delivery, or the parties are unable to agree, within a reasonable time, on Corrections or on a Rewrite or the terms on which Corrections or a Rewrite are to be done, the NFB shall be entitled to terminate the Contract by sending a written notice to the Composer stating the reasons for the rejection. Such termination shall be governed by the provisions of article 6.06.
- 3.20** The NFB may, at its discretion and at any time, add other musical works or Music to the Music Track of the Production.
- 3.21** The NFB shall be entitled, at its discretion and at any time, to change the music, in whole or in part, in any way.

If the NFB wishes to change the Music after delivery and acceptance of the Master Tape, it shall offer the initial Composer first refusal of the opportunity to make the changes.

The NFB shall make all reasonable efforts to contact that Composer, who shall give notice of acceptance of that offer within forty-eight (48) hours of the offer being made, failing which he/she shall be deemed to have rejected it.

Where the Composer agrees to make the requested changes, the terms on which the changes are made shall be determined by mutual agreement between the Composer and the NFB and shall be the subject of a Contract, a copy of which shall be sent to the SPACQ.

The initial Composer shall be promptly informed of any change to the Music of an initial Composer made by another Composer at the request of the NFB, if possible before the Credits are recorded, to enable the initial Composer to exercise the rights set out in article 3.27.

- 3.22** In all cases in which changes of any kind are made the Music, or in which Corrections or Rewrites are done or Music added to the Production, the Composer waives the right to respect for the integrity of the commissioned Music and agrees not to object to any change that may be made to it.

CREDITS AND PUBLICITY

- 3.23** For the services provided, credit appropriate to the Composer's creative contribution shall be given in the Production Credits, in accordance with the practices followed at the NFB.
- 3.24** In all cases, the Composer shall be credited in the end Credits, and such credit shall precede any credits for pre-existing musical works.

- 3.25 The Composer may not bring any action against the NFB in the event that the NFB unintentionally fails to credit the Composer in the Credits. However, the NFB shall make all reasonable efforts to correct any such omission promptly, where it is possible to do so.
- 3.26 Where more than one Composer has collaborated on the Music, each Composer shall be entitled to recognition of his/her contribution to the Music in the Credits, on the terms and conditions set out in the Scale Agreement.
- 3.27 A Composer may waive entitlement to recognition in the Credits by sending written notice to that effect to the NFB prior to shooting of the Credits.
- 3.28 A waiver of that nature shall not operate to deprive the Composer of the other rights set out in the Scale Agreement and the Copyright Act, R.S.C. 1985, c. C-42, where applicable.
- 3.29 In no case shall the waiver provided for in article 3.27 apply to the credits required to appear on the Music Content Sheet.

NAME AND IMAGE

- 3.30 Subject to article 3.27, the Composer shall grant to the NFB the irrevocable right, in perpetuity, to use, and to authorize third parties to use, worldwide, the Composer's surname and given name, image and biography, for the purposes of any form of use, publicity and promotion of or for the Music, the Master Tape in whole or in part, and the Production.

REPRESENTATIONS AND WARRANTIES

- 3.31 The Composer represents and warrants as follows to the NFB:
- a) the Composer is and shall be the only Composer of the Music he/she is commissioned by the NFB to write;
 - b) the Music and all its constituent elements shall be, to the best of the Composer's knowledge, an original Composition, and shall contain no libellous or defamatory material or infringe any rights, including copyright, privacy right or other right of any nature whatsoever held by any person whatsoever;
 - c) the Composer is the sole holder of all rights and authorizations granted to the NFB, and there are no assignments, licences or agreements of any nature whatsoever, or any other causes, legal facts or extra-contractual obligations that would limit or affect the full enjoyment by the NFB of the rights and authorizations granted under the Scale Agreement or the Contract, all such rights and authorizations being free and clear of any hypothec, charge, option, lien or other claim and of any present or future proceedings, with the exception of and subject to any representations made by the Contractor in the Contract;

d) the NFB shall have the free, quiet and full enjoyment of the rights, benefits and authorizations granted to it under the Scale Agreement and the Contract.

3.32 Any pre-existing musical work used by the Composer, at the request of the NFB, for the purpose of Adaptation is expressly excluded from the representations and warranties set out in article 3.31.

3.33 By signing the Contract, the NFB warrants that, to the best of its knowledge:

a) all musical, literary or dramatic material that it provides to the Composer is free and clear of any rights;

b) all musical, literary or dramatic material that it provides to the Composer contains nothing that would infringe the rights of other persons;

c) no infringement of the copyright or moral rights of other persons will result from the use by the Composer of any musical, literary or dramatic material provided for the purpose of and in support of the Composition of the commissioned Music;

d) in the event that an Adaptation is to be made of a musical work that is not in the public domain, it has obtained the right to adapt the work and to incorporate it into the Master Tape of the Production.

3.34 The parties agree that in the event that a court of competent jurisdiction finds there to have been a breach of any of the representations and warranties set out in article 3.31 or 3.33, or that a claim or action for such breach is received by one of the parties, the party in breach shall indemnify the other party for all legal costs incurred (including reasonable extrajudicial expenses and fees, and expert witness fees) and for all damages awarded in such judgment. The parties agree to cooperate for the purpose of defending such claim or action. Any out of court settlement, transaction or confession to judgment in respect of a claim by a third party may be entered into by the party in breach, provided that the consent of the other party has been obtained.

Except where there is a breach of one of the representations or warranties set out in article 3.31, if legal action is brought or threatened against the Composer as a result of the distribution of the Composer's Music or of the Production containing the Composer's Music, the NFB shall act on behalf of the Composer and indemnify the Composer against any award made against him/her.

ASSIGNMENT OF THE CONTRACT

3.35 The NFB shall be entitled to assign the Contract in whole or in part, and the rights and obligations thereunder, to a third party.

- 3.36 Where an assignment in accordance with the provisions of Appendix B to the Scale Agreement is signed by the NFB, the assignee producer and the Composer, and a copy is provided to the SPACQ, the rights and obligations of the NFB in relation to the Composer shall be assumed by the assignee producer in full.
- 3.37 Assignment shall operate to release the NFB from its obligations under the Contract, provided that the SPACQ has been informed of the assignment.
- 3.38 The Contract shall insure to the benefit of the parties' heirs, successors and assigns and shall be binding on the said heirs, successors and assigns with respect to the rights and obligations that may be validly transferred to them.
- The foregoing shall not apply to any Composing work that remains to be completed, the obligation to complete such work not being transferable.
- 3.39 The Composer shall not be entitled to assign the Contract or the rights and obligations under the Contract, in whole or in part, without the prior written consent of the NFB.

CHAPTER 4

GRANT OF RIGHTS AND PUBLISHING CONTRACT

- 4.01 The Composer is the first owner of the copyright in the Music
- 4.02 In consideration of payment in full of the Fee, an exclusive and irrevocable licence for the use and exploitation of the commissioned Music shall be granted to the NFB in perpetuity, worldwide, in all markets, in any form whatsoever, on any medium now known or hereafter devised, by any process, in whole or in part, now known or hereafter devised, and in all languages, including all Internet use.
- 4.03 Without limiting the generality of the foregoing, the licence shall include the right to reproduce, adapt, translate and publish the Music, perform the Music in public, communicate the Music to the public by telecommunication and make the Music available to the public, whether the Music is Synchronized with the Production or not, including in such a way that everyone can access it from the place and at the time of his/her choice.
- 4.04 This provision shall be subject, in its entirety, to article 4.05 of the Scale Agreement and to any restriction set out in the Contract. In addition, where the Composer is a member of the SODRAC at the time the Contract is signed, this provision shall also be subject in its entirety to the provisions of Appendix C of the Scale Agreement.

- 4.05** The parties hereto acknowledge and agree that the licence granted under the Scale Agreement and the Contract shall nonetheless be subject in all respects to the agreements entered into by the NFB and the Composer with societies, associations of writers, composers and publishers, and any similar organization, whether in Canada or abroad, whose purpose is to collect royalties for public representation or performance, communication to the public by telecommunication and reproduction of the musical work throughout the world, by any means and in any media now known or hereafter devised, including but not limited to copyright collectives such as SOCAN and SODRAC. The Scale Agreement and the Contract shall not in any way alter the respective rights of a publisher and of the Composer to receive and collect moneys allocated and paid to them directly by those societies, associations or organizations.
- 4.06** Rights in the Music under the Scale Agreement shall be acquired by the NFB continually throughout the course of the services provided by the Composer.
- 4.07** Where the NFB agrees with the Composer to enter into a publishing contract in respect of the commissioned Music under the Scale Agreement, the portion of the royalties received from copyright collectives in respect of the commissioned Music that is allocated to the NFB shall not exceed fifty per cent (50%) and the reservation of rights set out in article 4.05 of the Scale Agreement shall be incorporated in the publishing contract and apply to the publishing contract.
- 4.08** Article 4.07 may not be interpreted as recognition by the NFB that the SPACQ has any authority in respect of the publication of the commissioned Music.

USE OF THE MUSIC

- 4.09** The Composer acknowledges that the NFB has no obligation to use the Music and the Master Tape, in whole or in part, in the Production.
- 4.10** The NFB shall have no obligation to produce the Production or to exploit the Master Tape or the Production.
- 4.11** The NFB may also use the Music and the Master Tape in a Production other than the Production contemplated in the Contract. In the event of such use, the NFB shall inform the Composer of the title of such new Production.
- 4.12** In the event that a Production is made as provided in article 4.11, the Composer may, in the Composer's initial contract, negotiate with the NFB to be given first refusal to be retained for the work relating to any new arrangements required for that Production. If such first refusal is negotiated, article 3.21 shall apply to the new commission.
- 4.13** Where such a new Production is made, the rights of the initial Composer as set out in the Scale Agreement, and in particular that Composer's right to be credited in the Credits, shall not be affected.

- 4.14 Rights in the Music and the Master Tape may be reassigned to the Composer if the Music and Master Tape are not reproduced in a Production, in whole or in part, within seven (7) years from the date on which the Contract is signed.
- 4.15 Where rights in the Music and Master Tape are reassigned to the Composer, however, the assignment shall be subject to an agreement negotiated and entered into by the NFB and the Composer, which agreement shall provide for some form of compensation to be received by the NFB. Reassignment of rights shall automatically release the NFB from all obligations assumed by the NFB under the Scale Agreement and the Contract.

CHAPTER 5

RATES

- 5.01 In consideration of all services to be provided by the Composer under the Scale Agreement and the licence granted to the NFB, the NFB shall pay the Composer a Fee.

The portion of the Fee in excess of the Composing Fee shall be negotiated and agreed to by the NFB and the Composer.

- 5.02 The Fee paid to the Composer by the NFB shall apply to all services provided or to be provided by the Composer or by any person whose services are retained by the Composer and to all materials of any nature whatsoever used by the Composer for the purpose of composition of the Music and delivery of the Master Tape, and the Rights granted under Chapter 4. Notwithstanding the foregoing, the NFB shall pay for the musicians' services for production of the Music out of the Fee in accordance with any agreement between the NFB and any association representing the musicians.
- 5.03 The rates hereinafter set out do not include GST or other applicable taxes, which shall be paid by the NFB in addition to those rates.
- 5.04 The Composing Fee shall be calculated based on the minutes commissioned, as set out in the Contract, at the following minimum rates (in addition to the payments for services of the musicians for recording):
- a) Two hundred and fifty-six dollars (\$256) from the date of signing (two hundred and sixty-two dollars [\$262] as of April 24, 2010, two hundred and sixty-nine dollars [\$269] as of April 24, 2011) per minute for music without lyrics, for the first twenty (20) minutes;

And

- b) One hundred and fifty-four dollars (\$154) from the date of signing (one hundred and fifty-eight dollars [*\$158*] as of April 24, 2010, one hundred and sixty-two dollars [*\$162*] as of April 24, 2011) per minute for each subsequent minute;

Or

- c) Two hundred and fifty-six dollars (\$256) from the date of signing (two hundred and sixty-two dollars [*\$262*] as of April 24, 2010, two hundred and sixty-nine dollars [*\$269*] as of April 24, 2011) per minute commissioned, for the lyrics to a song;

And

- d) Two hundred and fifty-six dollars (\$256) from the date of signing (two hundred and sixty-two dollars [*\$262*] as of April 24, 2010, two hundred and sixty-nine dollars [*\$269*] as of April 24, 2011) per minute commissioned, for the music for a song.

5.05 In the event that the NFB retains the services of more than one (1) Composer for the Music, the NFB shall in no circumstances be required to pay, to all of the Composers together for all of the minutes commissioned, more than two hundred and fifty-six dollars (\$256) from the date of signing (two hundred and sixty-two dollars [*\$262*] as of April 24, 2010, two hundred and sixty-nine dollars [*\$269*] as of April 24, 2011) for the first twenty (20) minutes and one hundred and fifty-four dollars (\$154) from the date of signing (one hundred and fifty-eight dollars [*\$158*] as of April 24, 2010, one hundred and sixty-two dollars [*\$162*] as of April 24, 2011, one hundred fifty dollars [*\$150*]) for each subsequent minute, regardless of whether the NFB signed one Contract with the Composers or separate Contracts with each Composer.

5.06 The Fee shall be apportioned and paid to the Composer as follows:

- a) Ten per cent (10%) when the Contract is signed;
- b) Twenty-five per cent (25%) within fifteen (15) days following acceptance of the Demo by the NFB;
- c) Thirty per cent (30%) within fifteen (15) days following acceptance of the Listening Material by the NFB;
- d) Thirty-five per cent (35%) within fifteen (15) days following acceptance of the Master Tape and Music Content Sheet by the NFB.

CHAPTER 6

DEFAULT. TERMINATION

- 6.01 A Contract entered into under the Scale Agreement may be terminated in the following circumstances:
- a) by mutual agreement in writing, a copy of which shall be sent to the SPACQ;
 - b) in the event of any circumstances involving *force majeure*;
 - c) in the event of the death of the Composer or the physical or mental incapacity of the Composer as attested by a medical certificate;
 - d) any other situation expressly set out in the Scale Agreement.
- 6.02 In the event that either of the parties to the Contract fails or refuses to comply with any of its obligations under the Scale Agreement and fails to remedy such default within twenty (20) business days following receipt of a written notice from the other party describing the default and the means by which to remedy it, the party who is not in default may terminate the Contract immediately and without further notice upon expiration of the notice period.
- 6.03 The period of twenty (20) business days provided in article 6.02 shall be reduced to forty-eight (48) hours in the event of failure by the Composer to deliver the Demo, the Listening Material or the Master Tape of the Music to the NFB by the agreed dates.
- 6.04 Subject to article 7.08, and without limiting the generality of the foregoing, failure by the NFB to pay the Composer the required Fee in respect of work that is delivered and accepted at one step shall release the Composer from the obligation to proceed to the next step until the NFB has made payment.
- 6.05 In the event that the Contract is terminated as provided in subparagraph 6.01b) or c), the Composer shall be paid for the last step accepted by the NFB. In the event of termination under subparagraph 6.01a), the Composer shall be paid at least for the last step accepted and may not be denied the benefit of the minimum terms that have become applicable under the Scale Agreement at that point.
- 6.06 In the event of termination under article 3.19:
- a) if the termination occurs before acceptance of the Demo, the Composer shall not be entitled to any payment other than the payment made when the Contract was signed;
 - b) if the termination occurs after acceptance of the Demo, the Composer shall be entitled to receive the Fee for the last step accepted by the NFB;

- c) in addition, in the event of termination resulting from failure to agree on changes or failure to agree on the terms and conditions for delivery of the changes to be made, where termination occurs after acceptance of and payment for the Demo, the NFB shall pay twenty-five per cent (25%) of the Fee for the Listening Material step. If termination occurs after acceptance of the Listening Material, the NFB shall pay fifty per cent (50%) of the Fee for the delivery of the Master Tape step.

6.07 In the event of termination under article 6.02 or 6.03:

- a) if the Composer is in default, he/she shall receive one hundred per cent (100%) of the Fee for the last step accepted by the NFB;
- b) if the NFB is in default, the NFB shall pay the Composer one hundred per cent (100%) of the Fee for the step then in progress;
- c) in both cases, either party may also claim any damages resulting from the other party's default from that other party.

6.08 Subject to article 6.10, termination of the Contract shall not result in termination of the rights and licences granted to the NFB for the portion of the Composer's services that have then been accepted by the NFB.

6.09 In the event that the NFB fails to fulfil any of its obligations under the Scale Agreement, the Composer may not in any circumstances prevent the use, in any way whatsoever, of the Music, the Master Tape or the Production, and the remedies available to the Composer shall be strictly limited to damages.

6.10 Notwithstanding the foregoing, in the event that the NFB fails to pay the Fee, in whole or in part, pursuant to an arbitration decision ordering it to make such payment, the Composer may oppose any use of the Music other than as part of the Production, and any payment to the NFB, as publisher, of any royalties generated by the use of the Music whether as part of the Production or otherwise. The Composer shall cease any such opposition upon the NFB remedying its default.

CHAPTER 7

CONTRIBUTIONS, DEDUCTIONS AND REPORTS

7.01 The NFB shall file with the SPACQ any contract signed under the Scale Agreement within thirty days following the date on which the Contract is signed by the NFB and the Composer.

7.02 The NFB shall pay a contribution equal to eleven per cent (11%) of fifty per cent (50%) of the Fee. That contribution shall be remitted to the SPACQ, which shall forward it to the trustee of its choice to be used for benefits (pension, insurance).

- 7.03 The NFB shall deduct professional dues equal to two per cent (2%) of fifty per cent (50%) of the Fee in the case of a Composer who is a member of the SPACQ, and four per cent (4%) of fifty per cent (50%) of the Fee in the case of a Composer who is not a member of the SPACQ.
- 7.04 The NFB shall apply any change made by the SPACQ to the rates set out in article 7.03, provided that the Manager, Staff Relations for the NFB has been informed at least thirty (30) days before the date on which such change comes into effect.
- 7.05 The NFB shall pay to the SPACQ the contributions and deductions set out in articles 7.02 and 7.03 no later than twenty-one (21) days after the end of the month in which the NFB paid the Fee. The NFB shall submit a list of the Composers with the contributions and deductions, providing a breakdown of the deductions for each Composer, in the form provided in Appendix D to the Scale Agreement.
- 7.06 The SPACQ may have the accounting information, books or reports kept or prepared by the NFB concerning the payments provided in articles 7.02 and 7.03 examined by an expert chosen by the SPACQ, once a year, upon making an appointment at least fifteen (15) days in advance. If the parties fail to agree on a date for the inspection, the inspection shall take place within twenty (20) business days after the date on which the NFB receives written notice that the inspection is to be conducted. The SPACQ shall be responsible for all costs associated with the inspection. The SPACQ shall take appropriate measures to ensure that the information collected in the course of the inspection is transmitted on an individual and confidential basis.
- 7.07 In the event that the NFB is late in making any payment that it is required to make to the Composer under the Contract, the SPACQ or the Composer shall inform the NFB in writing. In the event that the NFB is late in making any payment that it is required to make to the SPACQ under the Scale Agreement, the SPACQ shall inform the NFB in writing.
- 7.08 If the NFB fails to make the payment in question within seven (7) days following receipt of such notice, it shall pay interest on the amount in question, calculated annually at the average Bank of Canada bank rate plus three per cent (3%), for each day beginning on the first day *on* which payment was late, *to* the Composer or the SPACQ, as the case may be.

CHAPTER 8

JOINT COMMITTEE, GRIEVANCES AND ARBITRATION

JOINT COMMITTEE

- 8.01 The NFB and the SPACQ agree to establish a Joint Committee composed of two members to which they may each add one representative where needed. The Committee shall be responsible for examining any matter for which the Scale Agreement fails to make provision or for which the provision made in the Scale Agreement is unsatisfactory in the opinion of either of the parties. The Committee may make recommendations to the NFB and the SPACQ where it reaches unanimous agreement on those recommendations. The parties agree that where such recommendations are accepted by the NFB and the SPACQ, they may be incorporated in this Scale Agreement as an appendix.
- 8.02 The NFB and the SPACQ, meeting as the Joint Committee, may in certain cases agree not to apply the Scale Agreement, in whole or in part, or to negotiate special terms.

GRIEVANCE SETTLEMENT

- 8.03 Any dispute between the NFB and the SPACQ, a Composer or a group of Composers concerning the interpretation or implementation of the Scale Agreement or of a Contract entered into under the Scale Agreement may be formulated as a complaint or grievance.

Disputes relating to credits in the Credits and situations governed by article 3.04 shall not be subject to this procedure

- 8.04 The NFB and the SPACQ agree to favour expeditious and efficient settlement of any dispute that may arise between them, without recourse to the formal grievance procedure, and accordingly any dispute may be settled by the SPACQ and the Manager, Staff Relations for the NFB at the time it arises.
- 8.05 Grievances may be filed at the head office of the SPACQ or the principal place of business of the NFB and may be filed only by the parties to the Scale Agreement, on behalf of their organization or the persons whom they represent.
- 8.06 A party to the Scale Agreement may file written notice of a complaint with the other party within thirty (30) days from the date on which the act or omission complained of comes to the party's attention.
- 8.07 The Joint Committee shall have twenty (20) days in which to attempt to settle the complaint.

- 8.08 The parties agree to provide the Joint Committee with all documents that the Joint Committee may need in order to determine whether the complaint is founded and be informed of all the facts and information relating to the complaint submitted.
- 8.09 If the complaint is not settled within the time set out in article 8.07, the party which filed the complaint shall then have ten (10) business days in which to submit the matter for arbitration by filing a grievance in proper form and a notice of arbitration with the other party.
- 8.10 The grievance form shall identify the nature of the grievance, the main articles that it is alleged have been violated or misinterpreted and the disposition sought.
- 8.11 The parties agree to appoint an Arbitrator within seven (7) days following the date on which the notice of arbitration is received, and if they fail to do so they shall apply to the Minister under section 36 of the Status of the Artist Act.
- 8.12 The Arbitrator shall hear and decide the case within thirty (30) days after being appointed, if possible. The decision of the Arbitrator shall be final and binding.
- 8.13 In deciding a grievance, the Arbitrator may not add to, subtract from or alter the Scale Agreement or the Contract.
- 8.14 The parties shall pay the Arbitrator's fees and expenses in equal shares
- 8.15 The filing of a grievance shall not delay the production schedule for a Production or the use of the Production.
- 8.16 The Arbitrator shall have all powers that may be needed to dispose of a grievance fully and finally. The Arbitrator may grant all remedies that may be necessary and appropriate in order to restore the rights of the complainant, by declaration, order, award of compensation or otherwise, in accordance with the terms and conditions of the Scale Agreement in effect at the time the Contract was signed.

CHAPTER 9

CREDIT ARBITRATION

- 9.01 Any dispute concerning the crediting of Composers in the Credits and any case governed by article 3.04 may be submitted in writing to the Credit Arbitration Committee within ten (10) business days after the date on which the facts out of which the dispute arises come to the attention of the Composers.
- 9.02 The dispute may be submitted by the NFB, the SPACQ, the Composer or one of the Composers.

- 9.03** The Credit Arbitration Committee shall be composed of three (3) persons designated by the SPACQ. A copy of the list of persons approved by the SPACQ to sit on the Committee as Arbitrators shall be sent to the NFB each year. Where the dispute is between a member of the SPACQ and a non-member or an employee of the NFB, the Committee shall be composed of persons approved by the SPACQ and the NFB, who must be or have been professional composers.
- 9.04** The Committee shall control its own process. It may summon witnesses and require that the Composers produce all documents it may deem appropriate.
- 9.05** The Committee shall meet as soon as possible after the request for arbitration is filed and shall issue its decision in writing within fourteen (14) days after the hearing. The decision shall be final and binding on the parties, the NFB, the SPACQ and the Composers.

CHAPTER 10

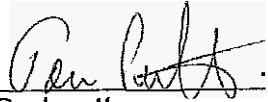
FINAL PROVISIONS

- 10.01** The Scale Agreement shall come into effect on the date on which it is signed, and shall govern relations between the parties for a period of four (4) years from that date.
- 10.02** *No Music* commission agreed to by the NFB and the Composer before this Scale Agreement comes into effect shall be governed by this Scale Agreement.
- 10.03** The Scale Agreement shall be renewed for one (1) year unless a party gives notice of non-renewal no later than sixty (60) days before expiration.
- 10.04** The terms and conditions of the Scale Agreement shall be in effect until a new Scale Agreement is signed to replace it.
- 10.05** In calculating all times set out in the Scale Agreement or a Contract, the day on which time starts to run shall not be counted, but the day on which the time ends shall be counted; non-business days shall be counted, but where the last day is not a business day, the time shall be extended to the next business day. Saturday shall be considered to be a non-business day.
- 10.06** Any notice required to be given under the Scale Agreement shall be given in writing and be deemed to have been sufficiently and validly communicated to the recipient where it is delivered by hand or sent by registered mail, facsimile or electronic mail. Notice given by a Composer shall be delivered to the person named in the Contract to represent the NFB.

10.07 Notice that is given in accordance with the foregoing shall be deemed to have been received when it is delivered, three (3) business days after the envelope was mailed or the next business day following the day on which it was sent by facsimile or electronic mail, as the case may be.

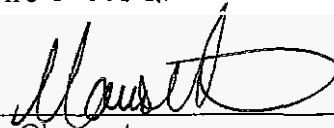
And the pasties have **signed at Montreal this 24th day of April 2009.**

For the NFB:

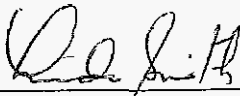


Tom Perlmutter
Government Film Commissioner

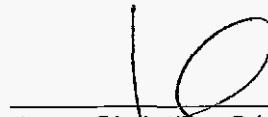
For the SPACQ:



Mario Chenart
President




Linda Smith
Manager, Staff Relations



Jean-Christian Céré
General Manager



René Chénier
Executive Producer



Colette Matteau
Lawyer, Spokesperson

**LETTER OF AGREEMENT
BETWEEN
THE NATIONAL FILM BOARD (NFB)
AND
THE SOCIETE PROFESSIONNELLE DES AUTEURS ET COMPOSITEURS DU
CANADA (SPACQ)**

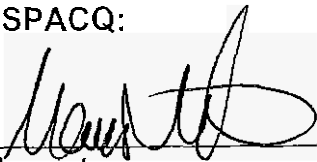
Whereas the parties have agreed on a Scale Agreement for a duration of four years
Whereas the SPACQ wished to come to an understanding on a minimum fee for all
of the services required by the Composer for the Scale Agreement
Whereas the SPACQ has accepted to withdraw this request to not delay the
implementation of the Scale Agreement

The parties agree that :

1. The NFB accepts to start negotiating, with diligence and good faith, upon the SPACQ's request which could be made as of January 1st, 2010.
2. This negotiation would focus on determining an appropriate minimum fee for the services rendered by the Composers beyond Composing and which are covered by the certification of the SPACQ.
3. The present letter of agreement is appended to the Scale Agreement to be an integral part thereof.

In witness whereof the parties through their authorized representatives have signed at Montreal, this 24th day of April 2009.

For the SPACQ:



Mario Chenart
President

For the NFB:



Tom Perlmutter
Government Film Commissioner




Jean-Christian Céré
General Manager



Linda Smith
Manager, Staff Relations



Colette Matteau
Lawyer, spokesperson



René Chénier
Executive Producer



Appendix A
MUSIC AND MASTER TAPE CONTRACT

BETWEEN

Name and address of Composer:

(the "Composer")

AND

NATIONAL FILM BOARD OF CANADA

3155 Côte de Liesse Road

Montreal (Québec) H4N 2N4

("the NFB")

Represented by: _____

(the producer)

Member:

SPADQ N° :	SOCAN N° :	SCDRAC N° :
N.A.S. :	Is the Composer subject to GST? <input type="radio"/> yes <input type="radio"/> no	GST N° :
		Project N° :

THE PARTIES AGREE AS FOLLOWS:

1. SCALE AGREEMENT:

This Contract shall be governed by the provisions of the Scale Agreement made between the National Film Board of Canada and the Société professionnelle des auteurs et des compositeurs du Québec ("SPAQ") which came into effect on April 24th, 2009 (the "Scale Agreement"). The provisions of the Scale Agreement, and in particular but not limited to articles 4.02 and 4.05, shall be an integral part of this Contract as if they were set out herein in full.

2. PARTIES :

In the event that the Composer is represented by a company or moral person for the purposes of this Contract, the Composer agrees to provide the personal services of _____, in addition, _____ certifies that it has retained _____ hereinafter the "Composer" to be its duly authorized agent for the purposes of this Contract.

3. TITLE OF PRODUCTION:

PROJECT NO. _____

4. NATURE OF PRODUCTION:

5. APPROXIMATE LENGTH OF PRODUCTION: n.p.

6. APPROXIMATE LENGTH OF MUSIC: n.p.

7. STATUS OF COMPOSER:

If other Contract(s):

Contract No.

Name of Joint Composers

In titles : _____

3. CHARACTERISTICS OF MUSIC:

ORIGINAL COMPOSITION

(i) Description: Length (min.): Details:

Theme (opening and closing):
 Bridges and transitions:
 Songs:
 Other characteristics:

(ii) Delivery date for audiovisual material needed for Composing the Music:

ADAPTATION

(i) Description: _____

Title of pre-existing work: _____

Name of Composer of pre-existing work: _____ Length of pre-existing work: _____

Musical genre of Adaptation (where applicable): _____

Other characteristics of Adaptation:

(ii) Delivery date for pre-existing music needed for Adaptation (audio medium or score):

Approximate total time in minutes of the Adaptation commissioned:

9. FEE:

Amount:

Terms and conditions for payment of Fee:

- 10% when Contract is signed
- 25% within 15 days after acceptance of Demo by NFB;
- 20% within 15 days after acceptance of Listening Material by NFB;
- 25% within 15 days after acceptance of Master Tape and Music Content Sheet by NFB;

Initials: _____

10. DELIVERY:

Person authorized to accept or reject any material delivered by Composer:

SCHEDULE:	Date	Delivery method (medium, score):
DEMO	<input type="text"/>	_____
LISTENING MATERIAL	<input type="text"/>	_____
MASTER TAPE	<input type="text"/>	_____
MUSIC CONTENT SHEET	<input type="text"/>	_____

Deadline for NFB to accept or to request changes:
 Under the Scale Agreement; By mutual agreement on the following terms (article 9.16):

The Composer shall be credited in the Credits as follows:

11. REPRESENTATIONS AND WARRANTIES:

(i) The Composer represents and warrants as follows to the NFB:

- (a) the Composer is and shall be the only Composer of the Music he/she is commissioned by the NFB to write;
- (b) the Music and all its constituent elements shall be, to the best of the Composer's knowledge, an original Composition, and shall contain no libelous or defamatory material or infringe any rights, including copyright, privacy right or other right of any nature whatsoever held by any person whatsoever;
- (c) the Composer is the sole holder of all rights and authorizations granted to the NFB, and there are no assignments, licences or agreements of any nature whatsoever, or any other causes, legal facts or extra-contractual obligations that would limit or affect the full enjoyment by the NFB of the rights and authorizations granted under the Scale Agreement or the Contract, all such rights and authorizations being free and clear of any hypothec, charge, option, lien or other claim, and of any present or future proceedings, with the exception of and subject to any representations made by the Contractor in the Contract;
- (d) the NFB shall have the free, quiet and full enjoyment of the rights, benefits and authorizations granted to it under the Scale Agreement and the Contract.

(ii) By signing the Contract, the NFB warrants that, to the best of its knowledge:

- (a) all musical, literary or dramatic material that it provides to the Composer is free and clear of any rights;
- (b) all musical, literary or dramatic material that it provides to the Composer contains nothing that would infringe the rights of other persons;
- (c) no infringement of the copyright or moral rights of other persons will result from the use by the Composer of any musical, literary or dramatic material provided for the purpose of and in support of the Composition of the commissioned Music;
- (d) in the event that an Adaptation is to be made of a musical work that is not in the public domain, it has obtained the right to adapt the work and to incorporate it into the Master Tape of the Production.

In total: _____

12. TAXES:

The Fee shall be exclusive of GST, which will be paid by the Producer in addition to the Fee. The Producer shall remit the applicable GST to the Composer, who agrees to remit it to the appropriate federal taxation authorities.

The Producer certifies that the services commissioned in this Contract are for the benefit of the Producer and will be paid for out of public funds, and accordingly the said services are not subject to Quebec sales tax.

SPECIAL AND ADDITIONAL TERMS:

In witness whereof, the parties have signed at this _____

COMPOSER

NATIONAL FILM BOARD OF CANADA

Name of Composer

Name of Producer

Signature of Composer

Signature of Producer



Appendix A
MUSIC AND MASTER TAPE CONTRACT

BETWEEN

AND

MORAL PERSON

L'OFFICE NATIONAL DU FILM DU CANADA

Name: _____

3155 Côte de Liesse Road

Address: _____

Montreal, Québec H2N 2N4

("the NFB")

Tel. (home): _____ Tel. (off.): _____

Represented by: _____

Fax: _____

(the producer)

Represented by: _____

(the "Composer")

Member:

SPACO No.:	SOCAN No.:	SODRAC No.:
Is the Composer subject to GST? <input type="radio"/> yes <input type="radio"/> no		GST No.:
Register No.:	Corp. No.:	

THE PARTIES AGREE AS FOLLOWS:

SCALE AGREEMENT:

This Contract shall be governed by the provisions of the Scale Agreement made between the National Film Board of Canada and the Société professionnelle des auteurs et des compositeurs du Québec ("SPACO") which came into effect on April 24th, 2003 (the "Scale Agreement"). The provisions of the Scale Agreement, and in particular but not limited to articles 4.02 and 4.03, shall be an integral part of this Contract, as if they were set out herein in full.

2. PARTIES:

In the event that the Composer is represented by a company or moral person for the purposes of this Contract, the Composer agrees to provide the personal services of _____, in addition, _____ certifies that it has retained _____ hereinafter the "Composer" to be its duly authorized agent for the purposes of this Contract.

3. TITLE OF PRODUCTION:

PROJECT NO.:

4. NATURE OF PRODUCTION:

5. APPROXIMATE LENGTH OF PRODUCTION: mic

6. APPROXIMATE LENGTH OF MUSIC: mic

7. STATUS OF COMPOSER:

Other Contract(s):

Contract No.

Name of Joint Composers

Initiales _____

8. CHARACTERISTICS OF MUSIC:

ORIGINAL COMPOSITION

(i) Description: _____ Length (min.): _____ Details _____

Theme (opening and closing): _____

Bridges and transitions: _____

Songs: _____

Other characteristics: _____

(ii) Delivery date for audiovisual material needed for Composing the Music: _____

ADAPTATION

(i) Description: _____

Title of pre-existing work: _____

Name of Composer of pre-existing work: _____ Length of pre-existing work: _____

Musical genre of Adaptation (where applicable): _____

Other characteristics of Adaptation: _____

Approximate total time in minutes of the Adaptation commissioned: _____

(ii) Delivery date for pre-existing music needed for Adaptation (audio medium or score): _____

9. FEE:

Amount:

Terms and conditions for payment of Fee:

- 10% when Contract is signed
- 25% within 15 days after acceptance of Demo by NFB:
- 30% within 15 days after acceptance of Listening Material by NFB
- 25% within 15 days after acceptance of Master Tape and Music Content Sheet by NFB

Initials: _____

13. DELIVERY:

Person authorized to accept or reject any material delivered by Composer:

SCHEDULE:	Date	Delivery method (medium, score)
DEMO	<input type="text"/>	<input type="text"/>
LISTENING MATERIAL	<input type="text"/>	<input type="text"/>
MASTER TAPE	<input type="text"/>	<input type="text"/>
MUSIC CONTENT SHEET	<input type="text"/>	<input type="text"/>

Deadline for NFB to accept or to request changes:
 Under the Scale Agreement; By mutual agreement on the following terms (Article 9.15):

The Composer shall be credited in the Credits as follows:

14. REPRESENTATIONS AND WARRANTIES:

- (a) The Composer represents and warrants as follows to the NFB:
 - (i) the Composer is and shall be the only Composer of the Music herein as commissioned by the NFB to write;
 - (ii) the Music and all its constituent elements shall be, to the best of the Composer's knowledge, an original Composition, and shall contain no libelous or defamatory material, or infringe any rights, including copyright, privacy right or other right of any nature whatsoever held by any person whatsoever;
 - (iii) the Composer is the sole holder of all rights and authorizations granted to the NFB, and there are no assignments, licenses or agreements of any nature whatsoever, or any other causes, legal facts or extra-contractual obligations that would limit or affect the full enjoyment by the NFB of the rights and authorizations granted under the Scale Agreement or the Contract, all such rights and authorizations being free and clear of any hypothec, charge, option, lien or other claim and of any present or future proceedings, with the exception of and subject to any representations made by the Contractor in the Contract;
 - (iv) the NFB shall have the free, quiet and full enjoyment of the rights, benefits and authorizations granted to it under the Scale Agreement and the Contract.
- (b) By signing the Contract, the NFB warrants that, to the best of its knowledge:
 - (i) all musical, literary or dramatic material that it provides to the Composer is free and clear of any rights;
 - (ii) all musical, literary or dramatic material that it provides to the Composer contains nothing that would infringe the rights of other persons;
 - (iii) no infringement of the copyright or moral rights of other persons will result from the use by the Composer of any musical, literary or dramatic material provided for the purpose of and in support of the Composition of the commissioned Music;
 - (iv) in the event that an Adaptation is to be made of a musical work that is not in the public domain, it has obtained the rights to adapt the work, and to incorporate it into the Master Tape of the Production.

Initiales: _____

12. TAXES:

The Fee and the exclusive of GST, which will be paid by the Producer in addition to the Fee. The Producer shall remit the applicable GST to the Composer, who agrees to remit to the appropriate federal taxation authorities.

The Producer certifies that the services commissioned in this Contract are for the benefit of the Producer and will be paid for out of public funds, and accordingly the said services are not subject to Quebec sales tax.

SPECIAL AND ADDITIONAL TERMS:

In witness whereof, the parties have signed at this

COMPOSER

NATIONAL FILM BOARD OF CANADA

Name of Composer

Name of Producer

Signature of Composer

Signature of Producer

Representative of the moral person, for the services of the Composer, intervenes personally in this Contract for the purpose of having in due thereof, declares that he/she is satisfied therewith and agrees to comply with each and every one of the representations and warranties and to personally perform each and every one of the obligations assumed by the Composer under this Contract and the Code Agreement to which it is subject.

Name of person who performed services

APPENDIX B

Assignment of Contract
(article 3.35 of the Scale Agreement)

WHEREAS _____ ("the NFB") has entered into a contract with _____ ("the Composer") under the NFB/SPACQ Scale Agreement for the commissioning of Music and a Master Tape for a Production entitled _____

WHEREAS the rights granted to the NFB under that Contract have been transferred to _____ (the "Assignee Producer");

WHEREAS the parties agree that the rights and obligations of the NFB shall be assumed in full by the Assignee Producer from and after the date on which the transfer occurs;

NOW THEREFORE THE PARTIES HERETO AGREE AS **FOLLOWS**:

1. The Assignee Producer shall be bound by the terms of the NFB/SPACQ Scale Agreement as they apply to the Contract as if he/she had entered into that Contract with the Composer at the time it was signed. Without limiting the generality of the foregoing, the Assignee Producer agrees to assume all obligations originally assumed by the NFB when the Music and Master Tape Contract entered into with the Composer was signed, on _____ including but not limited to payment of the Fee.
2. The SPACQ and the Composer hereby release the NFB from all obligations assumed by the NFB under the Music and Master Tape Contract.

SIGNED AT _____ THIS _____

NFB Producer

Composer

Assignee Producer

Moral Person, if represented

c.c. SPACQ

APPENDIX C
of the 2009-2013 Scale Agreement between the *NFB* and the *SPACQ*

LICENCE AGREEMENT
entered into on this 24th day of April 2009

BETWEEN: **SODRAC 2003 inc.**; and
Society for Reproduction Rights of Authors, Composers and
Publishers in Canada (**Sodrac**) Inc.
(collectively referred to hereinafter as "SODRAC")

and: National Film Board of Canada, in its capacity as a producer
(hereinafter called the "NFB")

and: Societe **professionnelle** des auteurs et **compositeurs du** Quebec
(hereinafter called the "SPACQ")

WHEREAS SODRAC is a collective society as contemplated in section 70.1 of the *Copyright Act* (R.S.C. 1985, c. C-42);

WHEREAS the authors and composers members of SODRAC assign to SODRAC when they join it the right to authorize or prohibit the reproduction of all of their current or future musical works for whatever purpose whatsoever;

WHEREAS the SPACQ has been recognized as the representative of all authors and composers of musical works commissioned by producers subject to the *Status of the Artist Act*;

WHEREAS the NFB is a mandatory body of the Crown established pursuant to the *National Film Act* (R.S.C. 1985, c. N-8) that retains the services of authors and composers, some of whom are members of SODRAC, for the composition of musical works with or without lyrics;

WHEREAS the SPACQ and the NFB have agreed on a 2009-2013 Scale Agreement (hereinafter called the "Scale Agreement") which provides for the granting to the NFB of an exclusive, irrevocable licence for the use and exploitation including the reproduction of musical works commissioned from members of SODRAC (hereinafter called the "SPACQ Licence");

WHEREAS SODRAC intervenes in the Scale Agreement in order to authorize the granting of certain rights conceded by the SODRAC member Composers;

WHEREAS as consideration for its intervention in the Scale Agreement as noted in this Appendix, SODRAC requires the NFB to pay it a royalty for the benefit of the SODRAC member Composers ;

WHEREAS the SPACQ and SODRAC do not accept the principle that this royalty be deducted from the Composer's Fee;

WHEREAS the parties have reached a stalemate concerning the payment of the royalty to be paid to SODRAC but do not wish to further delay the signing of the Scale Agreement;

WHEREAS the NFB agrees for the purposes of settling the stalemate concerning the payment of the royalty to SODRAC to pay a royalty to SODRAC for the benefit of the Composers members of SODRAC, subject to the aforesaid royalty being payable from the Fee payable to the SODRAC member Composers ;

WHEREAS the Scale Agreement provides for a minimum rate solely for the Composition Fee;

WHEREAS the SPACQ and SODRAC agree in order to settle the stalemate that the royalty payable to SODRAC be deducted from the Fee;

WHEREAS the parties wish to conclude the Scale Agreement without this Appendix constituting a precedent at the time of subsequent renewals of the Scale Agreement or an admission;

CONSEQUENTLY, THE PARTIES HEREBY AGREE THAT:

1. **Preamble:** The preamble is an integral part of this Agreement. The definitions stipulated in the Scale Agreement apply to this Appendix, in particular those of a Recording, a Composer, Music and a Fee.
2. **Authorization:** In consideration of the obligations of the NFB stipulated in this Appendix, SODRAC, on behalf of the authors and composers who are current and future right-holders of SODRAC, hereby grants the authorization to the NFB acting solely in its capacity as the producer of the Recording to incorporate the musical works that are commissioned pursuant to the Scale Agreement ("Music Commissioned") into the Recording for the purpose of exploiting the aforesaid Recording for the duration of the copyright on the Music Commissioned worldwide and in respect of all markets known to date in whatever form whatsoever, on any medium known or to be invented, by any process, in whole or in part, known or to be invented, in any language, including any exhibition on the Internet, and the right to engage in any promotion and advertising of the Recording and the presentation in festivals, competitions and other events of the same nature (hereinafter called the "Authorization").
3. **Synchronization:** Considering that the NFB already pays the Composer a Fee, the SPACQ agrees that SODRAC receive from the NFB, from the aforesaid Fee payable to the SODRAC member Composers, the sum of one hundred dollars (\$100) per Recording or in the case of a television series a sum of two hundred dollars (\$200) per segment of 13 episodes for the synchronization payable in a single payment within fifteen (15) days of the submission to the NFB of the music cue-sheet. The Contract for the Music and the master tape must clearly indicate the status of the Composer as a SODRAC member and the royalty paid to SODRAC must appear in the submission form as it appears in Appendix D of the Scale Agreement.

For clarification, the notion of synchronization includes the reuse of the aforesaid Recording by the NFB incorporating the Music Commissioned, with or without re-editing, in compilations or boxed sets.

4. Subsequent reproduction: The NFB recognizes and accepts that the Authorization defined in this Appendix is subject to subsequent reproduction rights on any physical or digital, sound or audiovisual, known or to be discovered medium held by SODRAC in respect of which any user other than the NFB, except if the NFB itself is the distributor, must pay or negotiate the royalties payable to SODRAC or to one of the foreign societies with which SODRAC has agency agreements, in accordance with existing or future agreements or rates. On the date of signing of this Appendix, SODRAC recognizes that the NFB is inserting a clause according to terms similar to those stipulated below in its distribution agreements:

“a) All synchronization rights pertaining to musical works contained in the *Film* have been paid and *all of* the execution or reproduction rights pertaining to these musical works:

i) are controlled by the Society of Composers, Authors and Music Publishers of Canada (SOCAN), the Society for Reproduction Rights of Authors, Composers and Publishers in Canada (*Sodrac*) Inc. or their affiliates worldwide;

ii) are in *the* public domain; or

iii) belong to the NFB or are controlled by the NFB to the necessary extent to allow *the* Distributor to use the Film.

6) *It* is incumbent upon the Distributor to pay SOCAN and/or SODRAC, through *their* affiliated companies or their representatives in *the* Territory, or to *the* entity authorized in the Territory, all of *the* execution and mechanical reproduction royalties pertaining to *the* public execution and reproduction of the Film in *the* Territory.”

SODRAC recognizes, on the other hand, that the NFB, still acting in its capacity as producer of the Recording, is not obliged to pay fees to SODRAC in respect of the exploitation of musical works previously integrated into the Recording. However, all transactions undertaken by the NFB concerning these subsequent reproductions in respect of third parties will be null, void and unenforceable against SODRAC and the NFB recognizes that it remains entirely responsible for these unauthorized transactions, without limiting additional recourse by SODRAC.


5. Music cue-sheet: The NFB undertakes to submit to SODRAC within thirty (30) days of the delivery of the final version of the Recording the complete music cue-sheet of this Recording or any other Recording as stipulated in article 4.12 of the Scale Agreement. The NFB also undertakes to remit to SODRAC the music cue-sheets for the different versions of the original Recording in the event that the musical content is modified.
6. Assignment prohibited: The NFB may not assign this authorization from SODRAC to anyone without the written authorization of SODRAC on the understanding that such assignment does not cover the coproduction of the Recording.
7. Arbitration: Any disagreement concerning the application or interpretation of this Appendix between the NFB and SODRAC shall be settled by binding arbitration, without possible appeal and to the exclusion of regular law courts.

8. Duration: This Appendix C will come into force on the date the Scale Agreement shall become in force and shall remain in force until four (4) years thereafter. It will be extended beyond that term as long as the Scale Agreement shall continue to be in force and effect. However, SODRAC or the NFB may upon sixty (60) days' written notice, end this agreement after April 24, 2014.

9. Proviso: The provisions in this Appendix C may not constitute a precedent at the time of subsequent renewals of this agreement. Except for the purposes of the very application of Appendix C and the Scale Agreement, the amount stipulated in article 3 and its deduction from the Fee may not be invoked during negotiations or before a judicial, quasi-judicial or administrative proceeding as a precedent, admission, reference price or otherwise concerning commissioned or pre-existing musical works.

IN WITNESS WHEREOF, the parties have signed on this 24th day of April 2009.

For SODRAC inc.; and
SODRAC 2003 inc.



Alain Lauzon
Director General

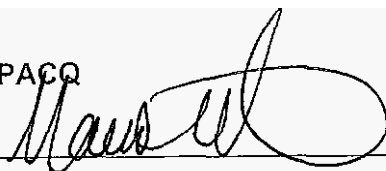
For the NFB



Tom Perlmutter
Government Film Commissioner




Linda Smith
Manager, Staff Relations

For the SPACQ


Mario Chenart
President



Jean-Christian Céré
Director General



Colette Matteau
Lawyer, Spokesperson

APPENDIX D

Payment Slip

APPENDIX E

Music Session Sheet

APPENDIX F

Music Content Sheet