

## **Online Access Agreement**

August 27, 2003

(Revised: May 11, 2007)

### **I. Introduction**

This Online Access Agreement (this "Agreement") contains the terms that govern your use of the Participants' Private Area of the [www.fmsmf.org](http://www.fmsmf.org) Website. In this Agreement we will use the word "Service" to refer to this private area.

You may use the Service to either access, establish or change the following:

- Your past and current member's statements (this option may be viewed only).
- Beneficiary information.
- Name, address or other census information.
- Tax Profile (exemptions) (Note to HR: if claiming zero exemptions must send in an actual signed form each year).
- Direct Deposit of your annual check.
- Go Paperless
- Other functions and Online Services, which may be introduced from time to time.

By using the Service you are agreeing to the terms of this Agreement.

In this Agreement, the words:

- "we," "us," "our" and "the Fund" are used to refer to the Film Musicians Secondary Markets Fund;
- "you" or "your" is used to refer to a participant of the Fund or an authorized representative;
- "authorized representative" is used to refer to a person with authority of any kind with respect to your information;
- "Online Services" is used to refer to individual functions or services provided within the Service, including but not limited to change of beneficiary information, or change of address information, or reviewing past statements or Go Paperless.

### **II. Access**

You may access the Service at the Fund website at <http://www.fmsmf.org/> (called the "Website") to obtain statement history and Online Services.

At certain times, the Service or one or more portions of the Service may not be available due to system maintenance or circumstances beyond our control. During these times, you may contact the Fund by phone or in writing to obtain information or provide information that you would otherwise obtain or provide via the Service.

### III. Electronic Mail (E-mail)

One way of communicating with us is by sending an e-mail. The Service has provided e-mail forms for you to ask questions about your account(s) or give comments on the Service. These e-mail forms are accessible after you sign on with your password to a secure session of the Service. To ensure the security of your information, we recommend that you use only these e-mail forms when asking specific questions about your private information. You cannot use e-mail to initiate or change a beneficiary, change of address, tax profile or direct deposit, or access your member's statement or Go Paperless. For these transactions, please use the appropriate functions within the Service or contact the Fund by phone or in writing.

### IV. Online Services

You may use the Service to obtain such services as are then available through the Service as then disclosed at the Website. This includes the ability to access, establish or change the following:

- Your past and current member's statements (this option may be viewed only).
- Beneficiary information.
- Name, address or other census information.
- Tax Profile (exemptions) (Note to HR: if claiming zero exemptions must send in an actual signed form each year).
- Direct Deposit of your annual check.
- Go Paperless
- Other functions, which may be provided from time to time. The Fund may, from time to time, introduce new Online Services. When this happens we will update our Website to include them.

By using an Online Service, you agree to be bound by the terms contained in this Agreement at that time.

### V. Security (IMPORTANT: PLEASE READ)

You will be given a personal Username and a PIN (Personal Identification Number, or password) that will give you access to your information through the Service. This PIN can be changed within the Service. We recommend that you change your PIN regularly. **We are entitled to act on instructions received under your PIN. For example, we are entitled to change your address information or beneficiary information based on information received under your PIN by using the Service without an original signature.** For security purposes, it is recommended that you memorize the PIN, destroy any written copies of it, and do not write it down. You are responsible for keeping your PIN statement information confidential, and you agree to accept responsibility for all actions that occur under your PIN. If you believe that your PIN may have been lost or stolen, or that someone has used it to access the Service without your permission, or if you suspect any fraudulent activity on your account, notify the Fund **immediately**.

**IMPORTANT PASSWORD INFORMATION:** If you elect to change your password (pin), it must not exceed 10 characters - so please make sure your password is 10 characters or less if you change it.

Write to: Film Musicians Secondary Markets Fund  
Attn: Participant Services  
12001 Ventura Place, 5th Floor  
Studio City, CA 91604  
Or Call: 818-623-4300 Fax: 818-755-7778  
Or Email: [access@fmsmf.org](mailto:access@fmsmf.org)

## **VI. Liability**

A. **DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY.** The Website is provided by us on an "as is" and "as available" basis. We make no representations or warranties of any kind, express or implied, as to the operation of the Website or the information, content, materials, or products included on the Website. You expressly agree that your use of the Website is at your sole risk.

To the full extent permissible by applicable law, we disclaim all warranties, express or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose. We do not warrant that this site, its servers, or e-mail sent from us are free of viruses or other harmful components. We will not be liable for any damages of any kind arising from the use of this site, including, but not limited to direct, indirect, incidental, punitive, and consequential damages.

Certain state laws do not allow limitations on implied warranties or the exclusion or limitation of certain damages. If these laws apply to you, some or all of the above disclaimers, exclusions, or limitations may not apply to you, and you might have additional rights.

We will not be obligated to honor, in whole or in part, any transaction or instruction which:

- is not in accordance with any term or condition applicable to the relevant Online Service;
- we believe may not be authorized by you or any third person whose authorization we believe is necessary or involves funds subject to a hold, dispute, restriction or legal process we believe prevents their disbursement;
- is not in accordance with any other requirement of our applicable policies, procedures or practices; or
- we have reasonable cause not to honor for our or your protection.

B. INDEMNIFICATION. Except to the extent that we are liable under the terms of this Agreement, you agree to indemnify and hold us, our directors, officers, employees and agents harmless from all loss, liability, claims, demands, judgments and expenses arising out of or in any way connected with the use or performance of an Online Service. This indemnification is provided without regard to whether our claim for indemnification is due to the use of the Service by you or your authorized representative.

C. THIRD PARTIES. Except as specifically provided in this Agreement or where applicable law requires a different result, neither we nor our service providers or other agents will be liable for any loss or liability resulting in whole or in part from any act or failure to act of your equipment or software, or that of an Internet browser provider such as Netscape (Netscape Navigator browser) or Microsoft (Microsoft Explorer browser), by an Internet access provider, by an online service provider or by an agent or subcontractor of any of them, nor will we or our service providers or other agents be responsible for any direct, indirect, special or consequential, economic or other damages arising in any way out of your access to or use of, or failure to obtain access to Online Services through the Service.

## **VII. General Provisions**

A. TERMINATION. Unless otherwise required by applicable law, the Fund may terminate this Agreement and/or your access to any Online Service through the Service, in whole or in part, at any time. Access to the Service, in whole or in part, may be reinstated by us, at our discretion, at any time. If reinstated, the then current terms of this Agreement will control. If you do not access the Service for any eighteen (18) month period, we may terminate your Service. We may terminate the Service or this Agreement immediately if you violate any of the terms or conditions of the Service of this Agreement. You may terminate the Service at any time by selecting "Terminate Service" from the main menu of Participant's Private Area of the [www.fmsmf.org](http://www.fmsmf.org) Website. The termination of Service or this Agreement will not terminate your obligations or our rights arising under this Agreement before such termination.

B. CHANGES. Except as otherwise required by law, rule, or regulation, we may change the terms of this Agreement from time to time and at any time. When changes are made we will update this Agreement at the Website. The Website will be updated on the effective date, unless an immediate change is necessary to maintain the security of the system or unless a law, rule or regulation requires that it be updated an earlier time. If such a change is made, and it can't be disclosed without jeopardizing the security of the system, this Agreement will be updated within thirty (30) days after the change. As always, you may choose to accept or decline changes by continuing or discontinuing to use the Service.

C. ASSIGNMENT. We may assign or delegate certain of our rights and responsibilities under this Agreement to independent contractors or other third parties. This Agreement and your rights and obligations under this Agreement are not assignable by you without our prior written consent.

D. NOTICES. All notices required by this Agreement shall be sent in writing or by a telecommunications device capable of creating a written record and delivered or mailed to you at the address we have on file for you and to us at the address set forth herein or to such other address as such party may designate from time to time. All notices shall be effective upon receipt.

E. FEES. THE SERVICE. There are no monthly or transaction fees for accessing the Service. Other fees may be assessed and billed separately by your Internet and/or telephone service provider.

**F. COMMENCEMENT. Before receiving the Service, you must complete, sign, and deliver to us a signed copy of this Online Access Agreement and such other documents and instruments as we may request. We will inform you when the Service is operational for you.**

G. SECURITY. YOU SHALL ASSUME THE ENTIRE RESPONSIBILITY AT ALL TIMES FOR THE SUPERVISION, MANAGEMENT, CONTROL AND CONFIDENTIALITY OF YOUR ACCESS CODE AND YOUR PASSWORD AND ASSUME THE ENTIRE RISK FOR THE FRAUDULENT OR UNAUTHORIZED USE OF YOUR ACCESS CODE OR YOUR PASSWORD. YOU UNDERSTAND THAT FAILURE TO PROTECT YOUR ACCESS CODE AND YOUR PASSWORD MAY ALLOW AN UNAUTHORIZED PERSON OR ENTITY TO ACCESS THE SERVICE. You also agree to notify us immediately if you know or suspect that the confidentiality of your ACCESS CODE or your password has been breached.

H. CHANGES IN SERVICES. You agree to follow the procedures, instructions and conditions for the use of the Service contained in this Agreement and in any notices, guides, manuals, materials, documents or instructions furnished to you by us. We may at any time withdraw, modify or change the procedures for using the Service. You will be notified of major modifications to the Service or instructions for using the Service at least 15 calendar days before such modifications to the Service are made. Your use of the Service after any such modification becomes effective will evidence your acceptance of the modification. If you do not accept any modification, you may terminate the Service or this Agreement as provided in the TERMINATION Section of this Agreement.

I. DISPUTE RESOLUTION. At the request of either party, any dispute concerning the Service shall be decided by arbitration in Los Angeles, California pursuant to the commercial arbitration rules of the American Arbitration Association. The arbitrator's award shall be binding and may be entered as a judgment in any court of competent jurisdiction.

J. GOVERNING LAW. You agree that this Agreement, and the performance by you and us under this Agreement, will be governed by the laws of the State of California (without regard to any conflict of laws provisions).

K. ENTIRE AGREEMENT. This Agreement, the Enrollment Form, and any other disclosures (including without limitation any modification to this Agreement) that we may provide to you from time to time make up the entire and only agreement between you and us concerning the subject matter of this Agreement. If any provision of this Agreement or the Enrollment Form is held unenforceable, the remaining provisions of this Agreement and the Enrollment Form will still be enforceable unless doing so would defeat the purpose of this Agreement. There are no third party beneficiaries of this Agreement or the Enrollment Form.

\_\_\_\_\_  
(Print your Name on the line above)

\_\_\_\_\_  
Last 4 digits of your SSN

\_\_\_\_\_  
Street Address

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Date of Birth  
mm/dd/year

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Telephone number

\_\_\_\_\_  
E-mail Address

\_\_\_\_\_  
(Sign on the line above)

\_\_\_\_\_  
Date Signed

**Note:** We are sorry, but we will not accept faxed or other copies of this form. We must have an original signature on a copy of this agreement on file in our offices before issuing Usernames and PINs for Private Area access.

Signed and completed forms should be sent to the address below:

Film Musicians Secondary Markets Fund  
Attn: Participant Services  
12001 Ventura Place, 5th Floor  
Studio City, CA 91604

<End>