

SOUND RECORDING
SPECIAL PAYMENTS FUND AGREEMENT
(February 1, 2006 - January 12, 2015)

AGREEMENT, made and delivered in the City and State of New York, on the date set forth below, by and between the undersigned and such others as shall hereafter agree to contribute to the fund referred to hereafter (individually called "First Party" and collectively "First Parties"), the undersigned Fund Administrator ("Fund Administrator"), and The American Federation of Musicians of the United States and Canada ("Federation").

WITNESSETH:

- (a) Each First Party has executed and delivered this Agreement pursuant to its undertaking so to do as provided by the Sound Recording Labor Agreement (February, 2006 simultaneously herewith entered into with the Federation.
- (b) Each First Party by executing and delivering this Agreement assumes the duties and obligations to be performed and undertaken by each such First Party hereunder. The Fund Administrator has been designated collectively by the First Parties, who have requested it to assume and perform the duties of Fund Administrator hereunder, and it is willing to do so in the manner prescribed herein.

NOW, THEREFORE, in consideration of the premises, of the mutual covenants herein contained, of the undertakings assumed by each First Party, and of the undertakings herein by the Fund Administrator at the request of the First Parties, it is agreed as follows:

- 1. (a) There is incorporated herein and made part hereof, as though fully set forth herein, Addendum A.
- (b) Subject to paragraph 2(e), hereof, each First Party to this Agreement shall make the payments to the Fund Administrator called for in Addendum A, hereto, to provide for:
 - (i) said First Party's contribution to the musicians' share of the Fund as defined under paragraph 2(b) hereof, and
 - (ii) any employment taxes or insurance premiums which may be owing by the First Parties with respect to the distribution of the musicians' share of the Fund.
- (c) Within forty-five (45) days after the end of each calendar half-year (that is within forty-five (45) days after December 31st and June 30th in each year), each First Party will pay to the Fund Administrator such portion of the aforesaid payments as may have accrued hereunder during the preceding half-year, provided that the Fund Administrator may agree with any First Party that semi-annual payments be made with respect to other half-yearly periods ending on dates satisfactory to the Fund Administrator. Each payment hereunder shall be accompanied by a statement, certified by the Treasurer, Controller, or other authorized officer or representative of the First Party making such payment, containing such information as may be reasonably required to ascertain the correctness of the payment made. If such payments are not made when due hereunder, the same shall bear interest at the rate of six percent (6%) per annum from the date when such payment was due.
- (d) Contribution Reports – Each semi-annual payment shall be accompanied by a report in a computer data file format that shows the sales period covered by the report and that includes the following data for each title (i.e., CD or other physical unit in the case of

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physical sales; album or track in the case of downloads) and specify by side letter the extent to which each Company is presently able to comply with this provision:

- Artist
 - Album or track name
 - ISRC and/or Selection Number
 - Date of release
 - Number of physical units sold and number of units sold via download and number of units streamed on an annual and cumulative basis
 - Configuration (e.g., CD, cassette, track download, album download, bundle of tracks, music video download, music video stream, concert DVD download, concert DVD stream, ringtones)
 - Unit exclusion taken
 - Percentage of album being paid on, if less than 100% (i.e., if some of the tracks were recorded outside of the domestic area and not otherwise subject)
 - Manufacturers' suggested retail price or wholesale price
 - Contribution amount
 - Contribution rate
- (e) Each First Party at all times, without limitation to the duration of this Agreement, shall keep full and accurate records and accounts concerning all transactions on which payments to the Fund Administrator are based pursuant to this Agreement, in convenient form and pursuant to approved and recognized accounting practices. The Fund Administrator shall have the right from time to time, without limitation to the duration of this Agreement and at all reasonable times during business hours, to have its duly authorized agents examine and audit such records and accounts, and such other records and accounts as may be necessary, such examination and audit to be made for the purpose of verifying any statements made hereunder by each First Party, or due from such First Party, during a period not exceeding four (4) years preceding such examination and of determining the amount of payments due to the pursuant hereto. It is agreed that the four (4) year period provided herein shall not effect the operation of the applicable statute of limitations. Each First Party agrees to afford all necessary facilities to such authorized agents to make such examination and audit and to make such extracts and excerpts from said records and accounts as may be necessary or proper according to approved and recognized accounting practices. Examinations and audits made pursuant hereto shall be coordinated, to the extent practicable, with examinations and audits made under the Sound Recording Trust Agreements to which First Party is signatory so that inconvenience to the First Party may be minimized.
- (f) Any sale, assignment, lease or license of, or other transfer of title to, or permission to use any device covered by Addendum A to this Agreement whether by operation of law or otherwise, shall be subject to the rights and duties established by this Agreement. The Fund Administrator shall be advised monthly of each purchaser, assignee, lessee, licensee, transferee or user and of the identity of the phonograph record (as defined above) involved. No sale, assignment, lease, license, transfer or permission shall be made or granted by any First Party to any person, firm or corporation doing business within the United States, Canada or Puerto Rico, unless and until such purchaser, assignee, lessee, licensee, transferee, or user, shall become an additional First Party hereto. No other sale, assignment, lease, license, transfer or permission shall be made or granted unless such purchaser, assignee, lessee, licensee, transferee, or user, shall

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promise to make to such First Party the payments required by this Agreement, which said First Party shall pay over to the Administrator, but only to the extent that such First Party has received such payments, (i) in the United States or Canada, or (ii) in United States or Canadian currency or in a currency convertible into United States or Canadian currency, or (iii) in a currency not convertible into United States or Canadian currency, of which such First Party has made beneficial use, or (iv) in an asset other than currency. No such First Party will, without the consent of the Fund Administrator and Federation forgive or compromise such obligation.

- (g) All payments and other communications for each First Party to the Fund Administrator shall be made to the Fund Administrator at its office which shall be located in New York, N.Y.
2. (a) The Fund Administrator accepts the duties hereby assigned to it, and shall establish the proper administrative machinery and processes necessary for the performance of its duties hereunder. The Fund Administrator shall as soon as practicable after May 1st of each year, distribute as herein provided the “musicians’ share of the Fund,” as defined in paragraph 2(b) hereof. Each musician, as collectively referred to in paragraph 1 of the Sound Recording Labor Agreement (February, 2006), shall receive as a special payment a fraction of the total distribution which shall be determined as follows: the numerator of said fraction shall be a sum determined by adding the scale wages payable to such musician by all First Parties hereto; (i) during the immediately preceding calendar year weighted or multiplied by 100 percent, (ii) during the immediately preceding calendar year less one weighted or multiplied by 80 percent, (iii) during the immediately preceding calendar year less two weighted or multiplied by 60 percent, (iv) during the immediately preceding calendar year less three weighted or multiplied by 40 percent, and (v) during the immediately preceding calendar year less four weighted or multiplied by 20 percent; the denominator of said fraction shall be a sum determined by adding the scale wages payable to all such musicians during the same calendar years as aforesaid by all said First Parties hereto similarly weighted or multiplied as set forth above. In the case of arrangers and orchestrators scale wages for all purposes of this paragraph 2(a) shall be deemed to be 150 percent of the scale wages paid to an instrumentalist for each session on which the arranger or orchestrator performed services. For purposes of this paragraph, scale wages will not include wages for recording a Phonograph Record where the Administrator determines, in his/her sole discretion, that the Phonograph Record was recorded primarily for the purpose of qualifying for Fund distribution and/or not recorded for legitimate commercial purposes.

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By way of illustration but not limitation:

Example:

If the scale wages payable to a musician participating in the 1997 distribution have been \$500 in 1996, \$1,000 in 1995, \$700 in 1994, none in 1993, and \$300 in 1992, and if the total scale wages payable to all musicians during the same five years have been \$100,000 in 1996, \$90,000 in 1995, \$70,000 in 1994, \$50,000 in 1993 and \$50,000 in 1992, the fraction of the distribution payable to that musician would be determined as follows:

Year	Musician's scale wages	Total scale wages payable to all musicians
2005	\$500 x 100% = \$ 500	\$100,000 x 100% = \$100,000
2006	\$1,000 x 80% = 800	90,000 x 80% = 72,000
2007	\$700 x 60% = 420	70,000 x 60% = 42,000
2008	0 x 40% = 0	50,000 x 40% = 20,000
2009	300 x 20% = <u>60</u>	50,000 x 20% = <u>10,000</u>
	\$1,780	\$244,000

The musician's 2010 special payment would be 1,780/244,000 of the "musicians' share of the Fund."

- (b) For purposes of this Agreement, the "musician's share of the Fund" shall be an amount equal to:
- (i) All sums received by the Fund Administrator up to April 30 of the year of distribution, with respect to sales of phonograph records made:
 - (A) During the preceding calendar year, or,
 - (B) At any time prior to the preceding calendar year, if the payment with respect to such sales, was received by the Fund Administrator on or after May 1 of the preceding calendar year.
 - (ii) Less:
 - (C) All expenses reasonably incurred in the administration of the Fund, including the compensation of the Fund Administrator herein provided, and appropriate bonding premiums.
 - (D) Amounts reasonably reserved by the Fund Administrator as an operating Fund, and for contingencies, and,
 - (E) An amount (hereinafter referred to as the "share of the Fund") equal to the total of any Social Security Tax, Federal and/or State Unemployment Insurance Tax, other employment taxes, Disability Insurance premiums, and/or Workers' Compensation premiums, which may be owing by the First Parties, individually or collectively, and/or by the Fund Administrator, as Employer or Employers, with respect to the distribution of the musicians' share of the Fund.
- (c) Notwithstanding the provisions of paragraphs 2(a) and 2(b) above, any amount otherwise due a musician (or beneficiary) that is less than \$25 (before the application of any payroll taxes) shall be regarded as "de minimis" and shall be added to a reserve fund, to be paid to the musician only if, when added to any distribution due such musician in either of the two following years, the total amount equals at least \$25. Any

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such amounts that remain undistributed at the close of the fiscal year that ends in the third calendar year following the calendar year in which the distribution list became due shall be redeposited in the “musicians’ share of the Fund” as defined in paragraph 2(b) for distribution as therein provided.

- (d) The First Parties, individually and collectively, hereby irrevocably designate the Fund Administrator as their agent to pay from the Manufacturers’ share of the Fund, any Social Security Tax, Federal and/or State Unemployment Insurance premiums, and/or Workers’ Compensation premiums, which may be owing by the First Parties individually and/or collectively, as Employer or Employers, with respect to the distribution of the musicians’ share of the Fund.
- (e) Notwithstanding any other provisions of this Agreement, a First Party may, at the time it makes its annual payment to the Fund, request that the Fund Administrator refund to it such proportion of such payment as:

- (i) The total of any taxes and insurance premiums which may be payable under paragraph 2(b)(ii)(E) hereof, with respect to the distribution of the musicians’ share of the Fund in the year of payment, bears to
- (ii) The total payments made to the Fund by First Parties in said year.

Any such refund shall be made by the Fund Administrator to the First Party requesting the refund not later than September 1st of the year of payment.

If a refund is made to a First Party under this subparagraph, the Fund Administrator shall not be responsible in said year, for payment of said First Party’s share of any taxes and insurance premiums payable under paragraph 2(b)(ii)(C), hereof, with regard to the distribution of the musicians’ share of the Fund.

- (f) The Federation has agreed to furnish to the Fund Administrator, and to cause its local unions to furnish to the Fund Administrator, all data in the possession or subject to the control thereof, which is necessary and proper to assist in the orderly and accurate distribution to musicians as provided herein and to request the Trustees of the American Federation of Musicians and Employers’ Pension Fund to do likewise upon reimbursement of all costs reasonably incurred thereby in so doing.
- (g) The Fund Administrator shall indemnify and hold the First Parties harmless out of the Fund against any liability for making any of the payments to the musicians under paragraph 2(a), hereof, or any payments of employment taxes and insurance premiums which may be required to be made by the Fund Administrator under paragraph 2(d), hereof, it being the express intent of the parties that all such payments are to be made out of the Fund with no further cost or expense of any kind whatsoever to the First Parties. Without limitation of the foregoing, the Fund Administrator also shall furnish a surety bond with a responsible surety company satisfactory to the First Parties and to the Federation, to guarantee the full and faithful performance of its duties as herein described.
- (h) In making distribution to musicians hereunder, the Fund Administrator shall clearly and legibly display the following legend on all checks, vouchers, letters or documents of transmittal: “This is a special payment to you under a collectively negotiated agreement between the American Federation of Musicians and recording company signatories.”
- (i) In the event of the death of a musician entitled to a distributive share hereunder, the Fund Administrator shall distribute such share to the beneficiary designated by such

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musician on a form provided by the Fund Administrator for such purpose or, if no such beneficiary is so designated, then to the surviving spouse of such musician; and if there be no such person, to the musician's estate, or if the Fund Administrator reasonably determines that there is no estate, shall be redeposited in the musician's share of the Fund as defined in paragraph 2(b) above for distribution as therein provided.

- (j) If a musician for whom a distributive share has been set apart cannot be found, or if payment under this Agreement has been tendered but is not completed after efforts which the Fund Administrator deems reasonable, the Fund Administrator shall add such amounts to a reserve Fund and hold the same therein pending receipt of claim or until the end of the fiscal year that ends in the third calendar year following the calendar year in which the distribution first became due. All such amounts remaining unclaimed at that date shall be redeposited in the "musicians' share of the Fund" as defined in paragraph 2(b) for distribution as therein provided.
 - (k) If for any reason a distribution is made to any person from the Fund in excess of the amount which is due and payable, the Fund Administrator shall have full authority, in its sole and absolute discretion, to recover the amount of any overpayment (plus interest and costs). That authority shall include, but shall not be limited to, (i) the right to reduce amounts payable in the future to the person who received the overpayment, (ii) the right to reduce benefits payable to that person's beneficiary following the death of that person, and/or (iii) the right to initiate a lawsuit or take such other legal action as may be necessary to recover any overpayment (plus interest and costs).
3. (a) In the event that any First Party shall default in the payment of any sums to the Fund Administrator when the same shall become due pursuant to this Agreement, the Fund Administrator shall have the duty, right and power forthwith to commence action or to take any other proceedings as shall be necessary for the collection thereof, including the power and authority to compromise and settle with the Federation's consent. The Fund Administrator's reasonable expenses, attorney's fees and other disbursements incurred in the collection of any such overdue sums shall be paid to the Fund Administrator by the First Party so defaulting and such payment shall be added to the Special Payments Fund.
- (b) Nothing contained herein shall create any cause of action in favor of any musician as defined in the Sound Recording Labor Agreement (February, 2006) against any First Party but the Federation may enforce distribution of any payments distributable hereunder in behalf of the individual musicians.
 - (c) The Fund Administrator shall deposit all money and property received by it, with or without interest, with any bank or trust company, insured by the Federal Deposit Insurance Corporation and having capital, surplus and undivided profits exceeding \$5,000,000; provided, however, that in the event that Canadian dollars are receivable by the Fund Administrator and it is not feasible or desirable to convert such Canadian dollars into the United States funds, such Canadian funds and any securities purchased therewith may be deposited in a Chartered Bank of the Dominion of Canada, anything herein to the contrary notwithstanding. Except as modified by the provisions of paragraph 3(d) hereof, the Fund Administrator shall have the right and power to invest and reinvest the said money and property only in short term investments (not to exceed one year in duration), bonds and other direct obligations of the United States of America and of the Dominion of Canada, high grade commercial paper, insured bank

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certificates of deposit, and commingled investment funds managed by banks or trust companies.

The Fund Administrator shall promptly appoint for a reasonable fee an investment manager or managers which manager or managers shall render all decisions regarding the management, acquisition, or disposal of any assets of the Fund described in this paragraph 3(c) and in paragraph 3(d) hereof.

- (d) In connection with the collection of any sums due to it hereunder, the Fund Administrator may consent to and participate in any composition of creditors, bankruptcy, reorganization or similar proceeding, and in the event that as a result thereof the Fund Administrator shall become the holder of assets other than money, obligations to pay money conditioned only as to the time of payment, or property of the class specified in paragraph 3(c) hereof (which assets are in this subsection (d) called “property”), the Fund Administrator may consent to and participate in any plan of reorganization, consolidation, merger, combination, or other similar plan, and consent to any contract, lease, mortgage, purchase, sale or other action by any corporation pursuant to such plan and accept any property which might be received by the Fund Administrator under any such plan, whether or not such property is of the class in which the Fund Administrator by paragraph 3(c) hereof, is authorized to invest the Fund: The Fund Administrator may deposit any such property with any protective, reorganization or similar committee, delegate discretionary power thereto, and pay part of its expenses and compensation and any assessment levied with respect to such property; the Fund Administrator may exercise all conversions, subscription, voting and other rights of whatsoever nature pertaining to any such property, and grant proxies, discretionary or otherwise, in respect thereof and accept any property which may be acquired by the Fund Administrator by the exercise of any such rights, whether or not such property is of the class in which the, Fund Administrator by paragraph 3(c) hereof, is authorized to invest the Fund. Anything to the contrary contained in this paragraph 3(d) notwithstanding, the Fund Administrator shall reasonably endeavor to dispose of any such property in order that the Fund, to the fullest extent possible, at all times shall be comprised as specified in paragraph 3(c) hereof.
- (e) Parties dealing with the Fund Administrator shall not be required to look to the application of any monies paid to the Fund Administrator.
- (f) The Fund Administrator has consented to act as Fund Administrator hereunder upon the express understanding that it shall not in any event or under any circumstances be liable for any loss or damage resulting from anything prudently done or omitted, and further, that this understanding shall not be limited or restricted by any reference to or inference from any general or special provisions herein contained or otherwise. In particular, and without limiting the foregoing, Fund Administrator shall not be subject to any personal liability for monies received and expended in accordance with the provisions hereof.
- (g) Within ninety (90) days after the end of each fiscal year, the Fund Administrator shall furnish a statement for such fiscal year of its operations to each First Party hereto making payments to the Fund Administrator and to the Federation. Such statements shall set forth in detail the properties and monies on hand and the operations of the Fund Administrator during the immediately preceding fiscal year, including without limitation the details of any compromise or settlement made by the Fund Administrator with any First Party, and such other information and data as shall be appropriate to

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inform fully the recipients of such statements and shall be certified by an independent certified public accountant.

- (h) The Fund Administrator, at all times without limitation to the duration of this Agreement, shall keep full and accurate records and accounts concerning all transactions involving the receipt and expenditure of monies hereunder and the investment and reinvestment thereof, all in convenient form and pursuant to approved and recognized accounting practices. Each First Party and the Federation shall have the right from time to time, without limitation to the duration of this Agreement, and at all reasonable times during business hours, to have their respective duly authorized agents examine and audit the Fund Administrator's records and accounts for the purpose of verifying any statements and payments made by the Fund Administrator pursuant to this Agreement, during a period not exceeding two (2) years preceding such examination. The Fund Administrator shall afford all necessary facilities to such authorized agents to make such examination and audit and to make extracts and excerpts from said records and accounts as may be necessary or proper according to approved and recognized accounting practices.
 - (i) The Fund Administrator shall recognize and honor lawful assignments to the Federation of a portion of the payments to which any musician shall become entitled hereunder.
4. (a) The Oversight Committee ("Committee") will consist of up to one (1) Company representative appointed by each Company listed on p.89 of the Sound Recording Labor Agreement (up to a maximum of four (4) persons). The representatives of the Committee shall select a Chair from amongst themselves. A representative or representatives of the AFM (but not exceeding three (3) such representatives) appointed by the AFM President shall serve as liaison(s) to the Committee and may attend all Committee meetings on a non-voting basis.
- (b) The Committee shall have the authority to take whatever measures the Committee, in its sole discretion, determines are necessary to ensure that the Fund Administrator is conducting the affairs of the Fund and incurring expenses in the administration of the Fund in a reasonable manner consistent with the provisions of this Agreement including, without limitation, the Committee shall have the authority to retain accountants and other professionals to audit the books and financial records of the SPF and to interview SPF employees. Further, the Committee shall have the power to take whatever corrective actions the Committee, in its sole discretion, determines are necessary, including, but not limited to, the removal of the Fund Administrator or any other employee of the Fund and the commencement of legal action on behalf of the Fund.
 - (c) Notwithstanding any other provisions of this Agreement, the Fund Administrator may enter into agreements with service providers (e.g., for legal and accounting services) and may make purchases for the benefit of the Fund of \$10,000 or greater (e.g. computer equipment) only with the advance written approval of the Committee, who shall consult with the AFM liaison(s) before granting such approval.
 - (d) The annual budget for the costs associated with the operation of the Fund, including the compensation of the Fund Administrator, shall be approved by the Committee after consultation with the AFM liaison(s), and paid out of the corpus of the Fund. The Committee's approval of the budget may be withheld only if the Committee reasonably

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determines that the budgeted amounts with which the Committee disagrees do not in a cost-effective manner further the purposes for which the Fund is maintained.

- (e) The Committee will meet at periodic intervals at least annually. The Fund shall pay for all reasonable expenses incurred by the Committee members and the AFM liaison(s) in carrying out the Committee's activities.
 - (f) The Committee members and the AFM liaison(s) will be covered by any necessary or advisable liability insurance policy, which will be paid for by the Fund. Each of the Committee members and the AFM liaison(s) has consented to act in his or her respective position with respect to the Fund upon the express understanding that he or she shall not in any event or under any circumstances incur any personal liability arising from his or her activities relating to the Fund, except for liability arising from his or her dishonest, fraudulent or criminal acts or omissions. To the extent permitted by applicable law, each of the Committee members and the AFM liaison(s) shall be indemnified and held harmless by the Fund for any claims, losses or liabilities imposed or asserted against them in carrying out their functions with respect to the Fund, except where such claims, losses or liabilities are imposed directly against a Committee member or liaison for his or her dishonest, fraudulent or criminal acts or omissions.
 - (g) Each appointing Company will have the right to replace the representative on the Committee that it has appointed by written notice to the Fund Administrator and to the President of the AFM, and the AFM President will have the right to replace any AFM liaison(s) to the Committee by written notice to the Fund Administrator and to the Committee members.
5. (a) The Fund Administrator may resign at any time by thirty (30) days written notice to the Committee and the Federation. A successor Fund Administrator shall thereupon be appointed by the Committee.
- (b) The Fund Administrator shall be subject to removal by the Committee.
- (c) In the event of the death of the Fund Administrator, if an individual, or the removal of the Fund Administrator, a successor Fund Administrator shall be appointed by the Committee.
- (d) No Fund Administrator under this Agreement shall be a representative of labor, or of any union, or of employees within the meaning of Section 302(b) of the Labor Management Relations Act, 1947.
6. Any person, firm, corporation, association or other entity may apply to become an additional First Party to this Agreement by executing and delivering to the Fund Administrator three (3) counterparts of Schedule 1 hereto attached. The Fund Administrator shall indicate acceptance of such application by appropriately completing such application, executing three (3) such counterparts, and delivering one (1) such counterpart to such additional First Party at the Fund Administrator's office in the City of New York and one (1) such counterpart to the Federation. The Fund Administrator shall forthwith advise the Federation of the execution and delivery of such Agreement, and shall regularly advise all other First Parties thereof.

This Agreement shall be governed, construed and regulated in all respects by the laws of the State of New York.

ADDENDUM A

1. For the purposes of this Agreement, the terms “phonograph record” and “record” shall include phonograph records, audio digital files, wire or tape recordings, or other devices reproducing sound, and the term “master record” shall include any matrix, “mother,” stamper or other device from which another such master record, phonograph record, wire or tape recording, or other device reproducing sound, is produced, reproduced, pressed or otherwise processed.
2. (a) Each First Party shall make payments to the Fund Administrator in the amounts computed as stated below, with respect to the sale during the period specified in 3 below (except where otherwise specified), of phonograph records, produced from master records containing music which was performed or conducted by musicians covered by, or required to be paid pursuant to, a collective bargaining agreement with the Federation known as Sound Recording Labor Agreement (February, 2006) (but specifically excluding services solely as arranger, orchestrator or copyist) where such phonograph records are sold during said period by such First Party, or, subject to the provisions of paragraph 1 (e) of the main text of this Agreement, by purchasers, lessees, licensees, transferees, or other users deriving title, lease, license, or permission thereto, by operation of law or otherwise, by, from or through such First Party.
- (b) For product produced during the term of this Agreement, as to foreign receipts the obligations of the First Party shall not accrue until the First Party shall either have the right to freely use such foreign currency, or the First Party has the right to transmit to the United States to the First Party such foreign currency from such foreign country or territory. If such currency may be utilized or transmitted as aforesaid it shall be deemed to have been converted to United States dollars at the rate of exchange at which such currency was actually transmitted to the United States as aforesaid, or if not actually transmitted, then at the prevailing free market rate of exchange at the time such right to use or to transmit occurs. Frozen foreign currency shall be deemed to be unblocked on the basis of “first in, first out”, unless otherwise allocated by local foreign fiscal authorities. Allocation of such unblocked funds as between revenue which serves as the basis of determining payments hereunder and other revenue, shall be on a proportional basis, subject to different earmarking by local foreign fiscal authorities. Payments of amounts accruing hereunder shall be made semiannually on the basis of the reports to the Administrator required in paragraph 1(c) of the main text of this Agreement. Foreign retail price shall be accounted for in U.S. dollars at the rate of exchange at which receipts are actually converted and remitted.

With respect to foreign sales, the First Party shall pay only that proportion of the amount provided for in paragraph 7, as the adjusted foreign receipts bears to the total foreign receipts. For purposes hereof, adjusted foreign receipts shall be computed, as follows: total foreign receipts less (1) value added taxes or other taxes, whatever called, which the consumer pays and which are not segregated from the retail price and (2) repatriation taxes or withholding taxes or other foreign taxes, whatever called; provided, however, that taxes shall not reduce foreign receipts to the extent that such taxes constitute income taxes which are credited as a foreign tax credit on the First Party’s consolidated U.S. Corporation Income tax. For purposes hereof, an income tax will not be treated as credited as a foreign tax credit in a given year except to the extent of the excess of the First Party’s allowed foreign tax credits computed pursuant to SS 901 and 904 of the Internal Revenue Code of 1986, as amended, for such year over the

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amount of such First Party's foreign tax credits which would have been allowed for such year if computed without reflecting the foreign receipts and related income taxes and expenses. The determination of whether an income tax will be treated as credited as a foreign tax credit shall take into account any carryback or carry forward of foreign income taxes to such year; provided, however, if the First Party makes a good faith determination that the First Party expects to be entitled to a foreign tax credit for a tax for the years subject to audit, an income tax will be treated as a foreign tax credit three years from the payment date of the royalty statement date which reflected such tax. The First Party shall not be responsible for loss or diminution of foreign receipts as a result of any matter or thing not reasonably within the control of the First Party. The Federation, the Fund Administrator, or the Special Payments Fund, as the case may be, and the musicians shall be bound by any arrangements made in good faith by the First Party, or for its account, with respect to the deposit or remittance of foreign revenue. Frozen foreign receipts shall not be considered trust funds and the First Party may freely commingle the same with other funds of the First Party. No sums received by way of deposits or security need be included until earned from net sales.

3. Except where otherwise specified, the payments provided for in this Agreement shall be made with respect to the sales of any phonograph record produced from a master record described in paragraph 2, of this Addendum A which take place during the period commencing with the calendar year during which a phonograph record produced from such master record is first released for sale and terminating at the end of the tenth calendar year thereafter. The year of such release shall be counted as the first year of the ten years. (By way of illustration but not limitation, if a phonograph record produced from a master record made pursuant to the Phonograph Record Labor Agreement (February, 1996), is first released for sale in May, 1996, payments shall be made with respect to sales of said record which take place during the calendar years 1996–2005 inclusive. If said phonograph record is first released for sale in April, 1998, payments shall be made with respect to sales of said record which take place during the calendar years 1998–2007 inclusive.)
4. The report to the Fund Administrator required in paragraph 1(c) of the main text of this Agreement shall be accompanied by the Contribution Report in the form specified in paragraph 1(d) of the main text of this Agreement.
5. Despite anything to the contrary contained in this Agreement, it is specifically agreed that the First Party reserves the right, by written notice to the Fund Administrator, effective with the effective date of any termination, modification, extension or renewal of the said Sound Recording Labor Agreement (February, 2006), to terminate or change any of the terms of this Special Payments Fund Agreement, but no such termination or change shall be effective unless the First Party has secured the prior written approval thereto by the Federation. It is agreed, however, that no such change may have any retroactive effect.
6. Anything to the contrary herein contained notwithstanding, it is agreed that if the Sound Recording Labor Agreement (February, 2006), or any successor agreement is not renewed or extended at or prior to its expiration date, and if a work stoppage by members of the Federation ensues, then all payments otherwise due to the Fund Administrator based on sales for the period of such work stoppage, and only for such period, shall not be made to the Fund Administrator. In lieu thereof, equivalent amounts shall be paid by each First Party as an additional contribution to the Trustee under the Sound Recording Trust Agreement (February, 2006) unless otherwise determined as a condition for the cessation of such work stoppage.

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I. PAYMENTS TO FUND ADMINISTRATOR FOR PHYSICAL PRODUCT SALES OF PHONOGRAPH RECORDS

7. The payments to the Fund Administrator shall be computed as follows:
- (a) .54% of the manufacturer's suggested retail price for each record when such price does not exceed \$3.79.
 - (b) .52% of the manufacturer's suggested retail price for each record when such price exceeds \$3.79, to a maximum suggested retail price of \$8.98 for each record.
 - (c) .522% of the manufacturer's suggested retail price for each wire or tape recording or other device, to a maximum suggested retail price of \$8.98 for each wire or tape recording or other device. In the case of compact discs, such maximum suggested retail price shall be \$10.98. The term "compact disc" shall include Audio Digital Versatile Discs (Audio-DVD) and Super Audio Compact Discs (SACD) for all purposes under this Agreement.
 - (d) For sales of records, tapes, cartridges, compact discs and other devices in excess of the first 300,000 units of each title, the percentage of the manufacturer's suggested retail price shall be .53% effective February 1, 1996 and .54% effective August 1, 1997 for each unit, up to the maximum applicable suggested retail price set forth in paragraphs 7(a) through 7(c). [It is further agreed that the first 300,000 units of each title shall be calculated in the same manner that the 25,000 unit allowance under Addendum A, 8(c) is calculated—namely, by combining all configurations (per side letter of 2/13/96 available on request from AFM).]
 - (e) For sales of records, tapes cartridges, compact discs and other devices in excess of the first 1,000,000 royalty-bearing units of each title, the percentage of the manufacturer's suggested retail price shall be .55% on records produced on or after February 1, 2002, and .56% on records produced on or after August 1, 2006, up to the maximum suggested retail price set forth in paragraphs 7(a) through 7 (c). It is further agreed that the first 1,000,000 royalty-bearing units of each title shall be calculated in the same manner that the 25,000 unit allowance under Addendum A, 8 (c) is calculated—namely, by combining all configurations.
- For packages which contain more than one (1) record or tape or wire equivalent, the maximum suggested retail price shall be \$8.98 (in the case of compact discs, \$10.98) multiplied by the number of units in the package
- With respect to a phonograph record produced after January 31, 2006, both from master records described in paragraph 2, of this Addendum A and recorded under the Sound Recording Labor Agreement (February, 2006) for which payments are due hereunder and from other master records, First Party shall pay that proportion of the amount provided for above as the number of such master records recorded under said Agreement bears to the total number of master records embodied in the phonograph record.
- (f) Effective for all unresolved audits as of February 1, 2002, no payments shall be required with respect to physical product sales of any cutouts or any singles, defined as any record containing (i) no more than four different titles (songs) and (ii) no more than eight sides (versions).
8. For the purposes of computing payments to the Fund Administrator:

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- (a) Each First Party will report 100% of net sales.
 - (b) Each First Party will have an allowance, with respect to singles sold before February 1, 1996, of the first 100,000 records sold for each title.
 - (c) Each First Party will have an allowance, with respect to albums, tapes, compact discs and other devices, of the first 25,000 units of a title.
 - (d) Each First Party will have a packaging allowance in the country of manufacture or sale of 20% of the suggested retail list price for phonograph records and 30% of the suggested retail list price for tapes, cartridges, and compact discs.
 - (e) Each First Party will have an absolute “free record” allowance with respect to records, tapes, cartridges and compact discs regardless of mix (except for record clubs which are dealt with separately below), of 25% of the total records distributed.
 - (f) With respect to its record clubs, if any, each First Party will have an allowance of “free” and “bonus” records, tapes, cartridges and compact discs actually distributed of up to 50% of the total records, tapes, cartridges and compact discs distributed by or through the clubs; and with respect to such “free” and “bonus” records, tapes, cartridges and compact discs distributed by its clubs in excess thereof, each First Party will pay the full rate on 50% of the excess of such “free” and “bonus” records, tapes, cartridges and compact discs so distributed.
9. Schedules of current manufacturer’s suggested retail prices for each record in each First Party’s catalogue shall be furnished by each First Party to the Fund Administrator upon the execution and delivery of this Agreement and amendments and additions thereto shall be so furnished as and when established. For the purposes of determining the amounts payable hereunder, such suggested retail prices shall be computed exclusive of any sales or excise taxes on the sale of phonograph records subject to this Agreement. If any First Party discontinues the practice of publishing manufacturer’s suggested retail prices, it agrees that it will negotiate a new basis for computing payments hereunder which shall be equivalent to those required above.

II. PAYMENTS TO FUND ADMINISTRATOR FOR DIGITAL EXPLOITATIONS OF PHONOGRAPH RECORDS

10. Definitions and Scope

This section shall set forth the specific terms agreed to by the parties regarding the digital exploitation of phonograph records through Downloads or Non-Permanent Downloads (as defined herein) (each of the foregoing, a “Covered Exploitation”). For the avoidance of doubt, nothing herein shall be construed as covering the commercial digital exploitation of Audio Streams, the promotional digital exploitation of any phonograph records or Traditional Music Videos or transmissions that are subject to the compulsory statutory license established by 17 U.S.C. Section 114.

- (a) The term “Permanent Audio Download” shall be defined as a phonograph record which is sold via digital transmission in the U.S. and abroad in a manner which provides a permanent copy. For clarification, “Downloads” shall include master ringtones.
- (b) The term “Non-Permanent Audio Download” shall be defined as a phonograph record which is sold via digital transmission in the U.S. and abroad on a temporary, tethered, conditional or “timed out” basis.

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- (c) The term “Audio Stream” shall be defined as a phonograph record which is sold via digital transmission in the U.S. and abroad using streaming technology and leaving no residual copy on the receiving device.
- (d) For clarification, “digital transmissions” shall include digital transmissions via the internet, digital cable or similar networks, e.g., the delivery of ringtones or traditional music videos to mobile phones. The parties have agreed upon a side letter, set forth in Appendix D to the Sound Recording Labor Agreement, with respect to issues arising under satellite radio and other new technologies (if any).
- (e) The term “Wholesale Price” shall be defined as the per unit wholesale price (without deductions) actually received by the Company from a digital service provider in connection with a Covered Exploitation. In circumstances where there is no per unit wholesale price, “Wholesale Price” shall be defined as the monies actually received by the Company from a digital service provider that are attributable to such Covered Exploitation. By way of illustration, the parties acknowledge that percentage of gross service revenue payments, percentage of advertising revenue payments, per-subscriber payments and per-use payments will generally be within the types of revenues that would be included within the calculation of “wholesale price.” The parties further acknowledge that content origination fees, digitization fees and advances not offset by actual digital transmissions are not generally within the types of revenues that would be included within the calculation of wholesale price.
- (f) Audio streams that are subject to the compulsory license created by 17 U.S.C. Section 114 will be governed by the provisions of Section 114. Audio Streams that are made pursuant to interactive or other non-statutory licenses granted by the Company pursuant to Section 114, are covered by the 1994 Memorandum of Agreement. Ringbacks shall be covered by, and payments shall be made pursuant to, either this Agreement or the 1994 Memorandum of Agreement (as may be amended).

11. Payment Terms – Permanent Audio Downloads

- a. Rate: Effective February 1, 2006, pay .55% of the Wholesale Price on Permanent Audio Downloads produced on or after February 1, 2006, after applying applicable exclusions. The contribution rate shall remain .5% for Permanent Audio Downloads produced prior to February 1, 2006, after applying applicable exclusions.
- b. Exclusion: There shall be a 10,000 unit exclusion for Permanent Audio Downloads of singles. The exclusion for Permanent Audio Downloads of albums shall be modified to be included within the 25,000 exclusion applicable to physical product sales.
- c. Ten Year Limitation: Payments for Permanent Audio Downloads shall commence with the calendar year during which the phonograph record is first released for sale in any form (or where the release is digital only, with no physical product, from the date of the first release) and terminating at the end of the tenth calendar year thereafter. The year of such release shall be counted as the first year of the ten years.
- d. MPF: There shall be no Music Performance Fund contributions on Permanent Audio Downloads.

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- e. For Permanent Audio Downloads occurring on or after January 1, 2004 through January 31, 2006, the payment terms are set forth in the 2004 Digital Distribution Memorandum of Agreement (attached to the SRLA as Exhibit G).

12. Payment Terms – Non-Permanent Audio Downloads*

- a. Rate: Effective February 1, 2006, pay .55% of the Wholesale Price on Non-Permanent Audio Downloads produced on or after February 1, 2006. The contribution rate shall remain .5% for Non-Permanent Audio Downloads produced prior to February 1, 2006. In no event shall the Company be obligated to make any payments on Non-Permanent Downloads that have already been paid under the terms of the 1994 Memorandum of Agreement.
- b. Exclusion: There shall be no exclusions for Non-Permanent Audio Downloads.
- c. Limitation: The limitation, if any, on the period during which payments shall be owed on Non-Permanent Audio Downloads shall be subject to negotiations between the parties in the context of the negotiations for a successor agreement to the 1994 Memorandum of Agreement.
- d. Recipient Fund: The fund to which such payments shall be made shall be subject to negotiations between the parties in the context of the negotiations for a successor agreement to the 1994 Memorandum of Agreement. Pursuant to paragraph 4 of the 2012 Agreement to Modify the 1994 Memorandum of Agreement, until such time as the parties determine otherwise, such payments owed as of the effective date of that Agreement and thereafter shall be made to the AFM-EPF, and such payments shall not constitute a contribution on behalf of any particular musician. For the avoidance of doubt, nothing in this Term Sheet governs the method of distribution of the payments made pursuant to this Paragraph 3.
- e. MPF: There shall be no Music Performance Fund contributions on Non-Permanent Audio Downloads.
- f. For Non-Permanent Audio Downloads occurring on or after January 1, 2004 through January 31, 2006, the parties agreed in a Side Letter to the Digital Distribution Memorandum of Agreement to make payments in accordance with the terms set forth in the 1994 Memorandum of Agreement.

*Although this provision does not embody a payment obligation to the Special Payments Fund, the parties have placed it here for convenience.

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