

Memorandum of Agreement

2012-2014 AFTRA NATIONAL CODE OF FAIR PRACTICE FOR SOUND RECORDINGS

The following terms and conditions have been agreed to by and among Warner Brothers Records, Atlantic Recording Corporation, Sony Music Entertainment, UMG Recording, Inc., Capitol Records, LLC (f/k/a Capitol Records, Inc.) and Hollywood Records, Inc. (each hereinafter the "Company") and the American Federation of Television and Radio Artists, AFL-CIO ("AFTRA"), subject to final ratification by AFTRA.

All terms of the 2007-2010 AFTRA National Code of Fair Practice for Sound Recordings (the "Code"), and the 2010-2011 extension thereto, shall remain in effect except as modified by the 2012-2014 changes outlined below:

1. Term (Preface):

January 1, 2012 through December 31, 2014.

2. Minimum Rates (Par. 6; Par. 8, Par. 9):

Increase all rates in Paragraphs 6 and 8, and contractor rates in Paragraph 9 as follows:

Effective January 1, 2012: 2%

Effective January 1, 2013: 2%

Effective January 1, 2014: 2%

Conform rates in paragraph 8B to those provided in Paragraph 6G

3. AFTRA Health and Retirement (Par. 34, Section 2):

A. Effective January 1, 2012, increase Royalty Artists' contribution rate to 11.75%.

B. Effective January 1, 2013, increase Royalty Artists' contribution rate to 12%.

C. Effective January 1, 2014, increase Royalty Artists' contribution rate to 12.5%.

D. Effective January 1, 2012, amend Letter of Agreement #5 (and its Supplement) to increase the Special Payment maximum to \$6,500 per enrolled roster artist and newly signed artist. Further amend Letter of Agreement #5 to update all relevant dates and eliminate obsolete language.

E. Add new paragraph to Section 34: "The Company shall report all audit settlements to the AFTRA Health and Retirement Funds, along with the required Health and Retirement contributions (if any) at the next Schedule C reporting period or within 60 days of payment to the artist, whichever comes later."

4. Digital Exploitations of Covered Product (Appendix B)

1. Definitions and Scope

The following sets forth the specific terms agreed to by the parties regarding the digital exploitation of (A) Covered Sound Recordings (as defined herein) through Permanent Downloads or Non-Permanent Downloads and (B) Music Videos (as defined herein) through Permanent Downloads, Non-Permanent Downloads or Video Streams (each of the foregoing, a "Covered Exploitation"). For the avoidance of doubt, nothing herein shall be construed as covering (C) the commercial digital exploitation of Audio Streams, (D) the promotional digital exploitation of Covered Sound Recordings or Music Videos or (E) transmissions that are subject to the compulsory statutory license established by 17 U.S.C. Section 114.

- a. For purposes of this Appendix B, a "Covered Sound Recording" shall include a digital file containing one (1) or more tracks or songs ~~containing performances of non-Royalty background singers recorded on or after December 15, 1974~~ produced by a signatory record company pursuant to the AFTRA Sound Recordings Code.
- b. The term "Music Video" shall be defined as an audio visual product that includes an audio element produced from a Covered Sound Recording, and a visual element of the type or genre traditionally aired on television for promotional purposes, e.g. MTV, VH1, BET, CMT, etc.
- c. The term "Permanent Audio Download" shall be defined as a Covered Sound Recording which is sold via digital transmission in the United States only in a manner which provides a permanent copy. The term "Permanent Video Download" shall be defined as a Music Video which is sold via digital transmission in the United States only in a manner which provides a permanent copy. "Permanent Audio Downloads" and "Permanent Video Downloads" are collectively referred to as "Downloads." For clarification, "Downloads" shall include master ringtones.
- d. The term "Non-Permanent Download" shall be defined as a Covered Sound Recording or a Music Video which is sold via digital transmission in the United States only on a temporary, tethered, conditional or "timed out" basis.
- e. The term "Audio Stream" shall be defined as a Covered Sound Recording which is sold via digital transmission in the United States only using streaming technology and leaving no residual copy on the receiving device.
- f. The term "Video Stream" shall be defined as a Music Video which is sold via digital transmission in the United States using streaming technology and leaving no residual copy on the receiving device.
- g. The term ~~"Wholesale Price"~~ "Receipts" 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 sold within the United States only. In circumstances where there is no per unit

wholesale price, "~~Wholesale Price~~" "Receipts" shall be defined as the monies actually received by the Company from a digital service provider that are attributable to a Covered Exploitation sold within the United States only. 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 attributable to United States sales will generally be within the type of revenues that would be included within the calculation of ~~Wholesale Price~~" "Receipts." 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~~" "Receipts."

h. The terms set forth herein shall only apply to Downloads, Non-Permanent Downloads and Video Streams and shall not cover terms for Audio Streams. 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 parties' 1994 Memorandum of Agreement or a successor agreement thereto.

i. Payment Terms-Permanent Audio Downloads

a. Rate: Effective for Permanent Audio Downloads occurring on or after January 1, 2008~~12~~, pay .07% of Receipts, ~~after applying applicable exclusions. Upon the sale of 1,000,000 Permanent Audio Downloads, pay .4% of the Wholesale Price.~~

b. ~~Exclusions: There shall be a 280,000 unit exclusion for Permanent Audio Downloads sold on or after January 1, 2008 (whether sold individually or in a digital album configuration).~~

c. ~~Duration: Payments for Permanent Audio Downloads shall commence with the calendar year during which the Covered Sound Recording is first released for sale in any form and terminating at the end of the tenth (10th) calendar year thereafter (the year of release shall be counted as the first of ten (10) years), provided, however, that all Covered Sound Recordings produced prior to January 1, 2008 shall be subject to the exclusions and payment terms hereunder for a new ten (10) years from 2008.~~

d. ~~Duration Extension: All Covered Sound Recordings which sell over 1,000,000 Permanent Audio Downloads on or after January 1, 2008 and within the initial ten (10) year period shall earn a new ten (10) year payment term at the end of the initial term.~~

e. ~~b. All of the payments required to be made hereunder shall be made to the AFM/AFTRA Intellectual Property Rights Distribution Fund (the "AFM/AFTRA Fund"). (TBD) Fund for distribution to non-royalty performers.~~

Remainder of Appendix B to remain unchanged, except that the term "receipts" to replace "wholesale price" and the term "TBD Fund" to replace

"AFM/AFTRA Fund" wherever those terms appear in Appendix B.

5. Reuse of Recordings: Preamble and New Letter of Agreement #7

Add new paragraph following the third full paragraph of the Preamble as follows: "(Refer to Letter of Agreement #7 and Supplement to Letter of Agreement #7 for terms and conditions and warranty language required in certain circumstances)." b

Add new Letter of Agreement # 7, to read as follows:

In the event a covered master is made available for use in another medium as provided in the Preamble beginning on page 1 of this Code, in addition to the notification and warranty provisions provided in the Preamble, the following provisions shall apply to certain licenses as outlined in this Letter of Agreement:

- A. If a covered master is licensed for \$7,500 or less for use in a program for local television broadcast, regional cable exhibition, or exhibition on basic cable networks other than those specifically listed on the attached exhibit, or a motion picture with a budget of less than \$1,000,000; the total conversion payment payable to the performers on such recording shall be an amount equal to six (6%) percent of the license fee, or \$150, whichever is greater, which shall be divided among and paid to the performers identified by AFTRA on the recording. In addition, AFTRA Health and Retirement Contributions at the non-royalty rate shall be paid to the AFTRA Health & Retirement Funds on behalf of the performers.
- B. If a covered master is licensed for non-traditional use, which shall be defined as the use of a digital chip (or its equivalent) in connection with a consumer product (including novelty products covered by the 2010 Hallmark Settlement Agreement) or in an audio/visual program made for initial exhibition in "new media" (e.g., webisodes, video podcasts, etc.); the conversion fee paid shall be 3% of the label's revenue from such license (including license fee, per item royalty or other form of payment for such license). Non-traditional use under this provision shall not include use of recordings in educational children's books. Said 3% shall be paid to the TBD Fund, which shall distribute monies to performers. Duplicate copies of the payment reports shall be sent to AFTRA. As a result of this provision, effective January 1, 2012, the 2010 Hallmark Settlement Agreement shall have no further effect.
- C. Video Games (aka Interactive Media): Covered masters licensed for use in a video game shall be covered under the provisions of the Preamble. However, if a covered master is licensed for use as "supplemental content" for a video game, the conversion fee for such "supplemental content" shall be 3% of the label's revenue from such license (including license fee, per item royalty or other form of payment for such license). Said 3% shall be paid to the TBD Fund, which shall distribute monies to performers. Duplicate copies of the payment reports shall be sent to AFTRA.
- D. The conversion payment may be paid directly by either the licensee or the label. If a covered master is licensed for use outside of those defined in Paragraph A above, and the license agreement has been signed and contains the warranty and representations required by page 1 of the Code and AFTRA has been provided notice of the license as required by the Code, AFTRA shall look only to the licensee

for such payment. The conversion fee shall not be considered in determining the amount of the license.

- E. Provided that the license agreement contains the warranty and representations required by page 1 of the Code and AFTRA has been provided notice of the license as required by the Code, AFTRA, on behalf of itself and its members, waives any claim against any Company for conversion payments for licensing covered recordings for any use described in paragraphs a – c at any time before the execution of this Agreement. Nothing herein, however, precludes AFTRA from collecting conversion payments from any licensee.

6. Recording of Live Performances (Concerts, Nightclubs, etc.) (Paragraph 6(D))

Add the following sub paragraph to Paragraph 6D:

Promotional live performances shall be defined as promotional in-store, music conferences (e.g., SxSW), radio performances, or similar live performances made to promote the artist or recording, where no admission charge or cover charge for the purpose of hearing the artist(s) is required. For purposes of the preceding sentence, payment of a general per event fee that provides general access to a conference or large event shall not be considered an admission or cover charge. The rate below shall apply to non-royalty artists, who are otherwise on tour or associated with the royalty artist and located in the city of the appearance.

For such performances, each session artist shall be paid an amount equal to 65% of the applicable two-hour minimum call rate. Such payment shall cover audio or audio-visual release of up to six "sides" as defined in this paragraph. For each additional six (6) sides released, an additional payment of 65% of the applicable two hour minimum call shall be paid. For purposes of this provision, the term "side" means an individual song, regardless of length of such song. When practicable, Company will give AFTRA advance notice of such recordings and provide a Schedule A/B form.

Should the released recording reach the relevant physical contingent scale threshold, contingent scale payments as provided in Appendix A shall be made and shall be based on the full side rate at the time of the release. The provisions of Appendix B (digital downloads) shall apply.

In consideration of the terms and conditions mutually agreed upon in the negotiations culminating in the provisions regarding promotional live performances in the 2012-2014 Sound Recordings Code, it is specifically agreed that this Agreement shall be in full settlement of any claims regarding such promotional live appearances and AFTRA shall waive and release any claims against any signatory company for live promotional performances as described above which occurred prior to the execution of this Agreement.

7. Audits: Health and Retirement Funds

AFTRA and the major Labels agree to schedule a meeting with the Executive Staff of the AFTRA H&R Funds not later than ninety (90) days following ratification of the Agreements to explore ways to streamline and expedite the processes on future audits.

8. **TBD Fund:** The parties agree that the term TBD Fund refers to a jointly trustee fund to be established by the parties for the purpose of collecting and distributing the monies referred to in this Memorandum of Agreement. When the Fund is created and named, the parties' collective bargaining agreement will be modified to reflect the new Fund's name.

**For WARNER BROTHERS RECORDS, ATLANTIC RECORDING CORPORATION,
SONY MUSIC ENTERTAINMENT, UMG RECORDING, INC., CAPITOL RECORDS,
LLC and HOLLYWOOD RECORDS, INC.**

By: _____

Bernard M. Plum

For AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS

By: _____

Kim Roberts Hedgpeth

EXHIBIT A - EXCLUDED CABLE NETWORKS

Network Name

A&E
ABC Family Channel
AMC
Animal Planet
BET
Bravo
Cartoon Network
CMT
CNBC
CNN/HLN
Comedy Central
C-SPAN
Discovery Channel
Disney Channel
Disney XD
E! Entertainment Television
ESPN/ESPN HD
ESPN2
ESPNU
Food Network
FOX News
FX Network
G4
Golf Channel
Hallmark Channel
HGTV
History
Independent Film Channel
Investigation Discovery
Lifetime Movie Network
Lifetime Television
LOGO
MSNBC
MTV
Nick Jr.
Nickelodeon/Nick At Nite
OWN: Oprah Winfrey Network
Oxygen Network
Spike TV
Syfy
TBS
TCM
The Style Network
The Weather Channel
TLC

TNT
Travel Channel
truTV
TV Land
USA
VERSUS
VH1
WE tv