

Memorandum of Agreement

2015-2017 SAG-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 and Hollywood Records, Inc. (each hereinafter the “Company”) and SAG-AFTRA, subject to final ratification by SAG-AFTRA and subject to approval by each Company.

All terms of the 2012-2014 AFTRA National Code of Fair Practice for Sound Recordings (the “Code”) shall remain in effect except as modified below:

1. Term (Preface):

January 1, 2015 through December 31, 2017.

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 July 1, 2015: 2%

Effective January 1, 2016: 2%

Effective January 1, 2017: 2%

3. AFTRA Health and Retirement (Par. 34):

- A. Effective January 1, 2017, modify Paragraph 34, Section 1 and Section 2 to increase the AFTRA Health and Retirement Funds contribution rate to 12.75%.
- B. Effective July 1, 2015, amend Letter of Agreement #5 (and its Supplement) to increase the Special Payment maximum to \$9,000 per enrolled roster artist and newly signed artist. Further amend Letter of Agreement #5 to update all relevant dates and eliminate obsolete language.
- C. Effective July 1, 2015, modify Paragraph 34, Section 2(b)(2) Fund cap for groups of three (3) or more from \$160,000 to \$180,000.

4. Definition of “Receipts”

The term “Receipts” shall be defined as the per unit wholesale price (without deductions) actually received by Company in the United States in connection with the applicable use or exploitation of a covered recording. In circumstances where there is no per unit

wholesale price, “Receipts” shall be defined as the monies actually received by Company in the United States that are attributable to the applicable use or exploitation of a covered recording. By way of illustration, the parties acknowledge that percentage of gross service revenue payments, percentage of advertising revenue payments, per-subscriber payments, per-unit royalty, and per-use payments will generally be within the type of revenues that would be included within the calculation of “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 “Receipts.”

5. Digital Exploitations of Covered Product (Appendix B)

Modify the current Appendix B as follows:

1. Definitions and Scope

The following sets forth the terms agreed to by the parties regarding digital commercial exploitations of covered recordings. For the avoidance of doubt, nothing herein shall be construed as covering promotional digital exploitations of covered recordings or 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 covered recordings.
- 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 a manner which provides a permanent copy. The term “Permanent Audio Downloads” includes master ringtones.
- d. The term “Permanent Video Download” shall be defined as a Music Video which is sold via digital transmission in a manner which provides a permanent copy. The term “Permanent Video Downloads” includes video ringers.
- e. The term “Non-Permanent Audio Download” shall be defined as a Covered Sound Recording which is sold via digital transmission on a temporary, tethered, conditional or “timed out” basis.
- f. The term “Non-Permanent Video Download” shall be defined as a Music Video which is sold via digital transmission on a temporary, tethered, conditional or “timed out” basis.

- g. The term “Audio Stream” shall be defined as a Covered Sound Recording which is sold via digital transmission using streaming technology and leaving no residual copy on the receiving device or a Non-Permanent Audio Download.
- h. The term “Video Stream” shall be defined as a Music Video which is sold via digital transmission using streaming technology and leaving no residual copy on the receiving device or a Non-Permanent Video Download.
- i. Effective January 1, 2016, Paragraph 2 of the 1994 Memorandum of Agreement shall no longer apply to, and have no further effect with respect to, covered recordings, except that the Trustees of the SRDF shall continue to be authorized, pursuant to this agreement, to deduct reasonable administrative costs of distribution from the receipts received from the Companies.
- j. Audio Streams that are subject to the compulsory license created by 17 U.S.C. Section 114 will continue to be governed by the provisions of Section 114 rather than this agreement.

2. Payment Terms-Permanent Audio Downloads

- a. Rate: Effective for Permanent Audio Downloads exploited in the United States occurring on or after January 1, 2012, pay .07% of Receipts.
- b. All of the payments required to be made hereunder shall be made to the SAG-AFTRA and Industry Sound Recordings Distribution Fund (“SRDF”) for distribution to non-Royalty Artists.
- c. Payments made by the Company to the SRDF for non-Royalty Artists with respect to Permanent Audio Downloads shall be subject to AFTRA H&R Fund contributions at the rate set forth in Paragraph 34, Section 1 of the Agreement. Company shall remit such contributions directly to the AFTRA H&R Fund, and the SRDF will advise the AFTRA H&R Fund of the allocation of such contributions to individual participants

3. Payment Terms – Audio Streams

- a. Effective as of January 1, 2016, each Company shall pay the SRDF 0.36% of Receipts for Audio Streams exploited throughout the world, subject to the limits prescribed in the subparagraph 3(b) below.
- b. Company’s contributions to the SRDF pursuant to this paragraph 3 shall be no greater than 0.55% of Receipts for Audio Streams exploited in the United States and no less than 0.5% of Receipts for Audio Streams exploited in the United States.
- c. Fifteen percent (15%) of the above referenced payments made by Company to the SRDF for non-Royalty Artists with respect to Audio Streaming shall

be subject to AFTRA H&R Fund contributions at the rate set forth in Paragraph 34, Section 1 of the Agreement. Company shall remit such contributions to the AFTRA H&R Fund, and the SRDF will advise the AFTRA H&R Fund of the allocation of such contributions to individual participants.

4. Payment Terms – Music Video Exploitations

- a. Rate: Effective for Permanent Video Downloads, Non-Permanent Downloads of Music Videos and Video Streams exploited in the United States occurring on or after January 1, 2008, pay .55% of the Receipts for the first ten (10) years from release; pay .3% of the Receipts for the next five (5) years.
 - b. Exclusion: None.
 - c. Duration: Payments for Permanent Video Downloads, Non-Permanent Downloads of Music Videos and Video Streams shall commence with the calendar year during which the Music Video is first released for sale in any form and terminating at the end of the fifteenth (15th) calendar year thereafter. The year of such release shall be counted as the first year of the fifteen (15) years. For purposes of calculating the 15 year period for exploitations of Music Videos produced prior to January 1, 2008, the first year shall be 2008.
 - d. All of the payments required to be made hereunder shall be made to the SRDF, accompanied by a statement which identifies the covered recordings for which the payments are being made.
5. Effective for the period commencing January 1, 2012, the payments required to be made under APPENDIX B shall be made by each Company to the SRDF in six (6) month intervals (January 1 – June 30 and July 1 – December 31). Payments shall be made within three (3) months following the end of each six (6) month period, i.e. by March 31 or September 30. If such payments are not made when due hereunder, after written notice of the delinquency, each Company shall have ninety (90) days to cure such delinquency. If the payments are not made within such cure period, the Company shall pay interest on such payments at a rate equal to the Prime Interest Rate in effect at the time of the expiration of the cure period, plus one percent (1%), with a maximum interest rate not to exceed six percent (6%) per annum from the expiration of the cure period.

6. Reuse of Recordings: Preamble and Revised Letter of Agreement #7

Add to the Preamble [EXACT LOCATION TBD]:

SAG-AFTRA will use the best evidence available to identify all Artists on the licensed recording (which best evidence shall, for any “Non-Royalty” Artists, usually be the session report, when available), and its good faith determination will be presumed correct absent a *bona fide* dispute based on reasonable evidence or explanation to the contrary. If alternative evidence is considered by SAG-AFTRA in making its good faith determination, the absence of a “session report” will not be used as the sole basis for denying payment under this provision. In the event a Producer continues to dispute the obligation to pay an Artist identified by SAG-AFTRA, the issue will be discussed among SAG-AFTRA, the Company, and the Producer.

Modify Letter of Agreement # 7, to read as follows:

In the event a covered recording 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:

A. Low Fee Traditional Uses

Replace Article 5(A) of the 2012 MOA effective January 1, 2016 with the following:

- a. If the Company licenses a covered recording for use in the United States in a program for television broadcast, cable exhibition, or in a motion picture at a fee of \$7,500 or less (each such license, a “Low Fee Traditional Use License”), the total conversion payment payable in connection with each such license shall be the greater of 7% of the Company’s revenue received by Company pursuant to such license or \$165. In addition, Company will also make AFTRA Health and Retirement Contributions in respect of each such license at the non-Royalty Artist rate.
- b. Company shall condition the rights granted to the licensee under each Low Fee Traditional Use License on such licensee’s payment of the conversion fee prescribed in subparagraph (a) above and the corresponding applicable H&R contribution.
- c. Company shall send each licensee under a Low Fee Traditional Use License a single invoice showing the license fee, the conversion fee, and the H&R contribution payable in respect of such license, unless the licensee requests that Company send separate invoices – one showing the license fee, and one showing the conversion fee and H&R contributions. Company will advise the Union of each licensee that has requested separate invoices.

- d. For each Low Fee Traditional Use License issued during the quarter concerned, the Company will provide the Union with a quarterly report showing the recording name, featured artist name, the licensee, the specific nature of the use (including the title, if possible), the date of the license and, in addition to these “Page 1” license reporting requirements, the amount of the licensee fee.
- e. The Company shall remit any conversion fees and H&R contributions payable in connection with a Low Fee Traditional Use License that it receives under this provision to the SAG-AFTRA and Industry Sound Recordings Distribution Fund (“SRDF”) on a semi-annual basis, in the same manner as Company is required hereunder to remit Schedule C payments. The fees and contributions Company remits hereunder shall be accompanied by a report indicating the name of each licensed recording for which it is remitting such monies, the title of the use, and the amount being remitted for each such recording. Company’s efforts to collect the conversion fees and H&R contributions payable pursuant to Low Fee Traditional Use Licenses hereunder will be comparable in all material respects with the Company’s efforts to collect the license fees payable pursuant to such licenses. Under no circumstances will Company be required to pay any conversion fees or H&R contributions payable pursuant to a Low Fee Traditional Use License if such fees have not been paid to Company by the licensee. In the event Company receives the license fee payable pursuant to a given Low Fee Traditional Use License, but does not also receive the conversion fee and/or H&R contribution payable in respect of such Low Fee Traditional Use License, and Company’s efforts to collect the conversion fee and/or H&R contribution payable pursuant to such license were not comparable to Company’s efforts to collect such license fee, then in this limited circumstance only, Company shall be required to remit to the SRDF the full amount of the unpaid conversion fee and/or H&R contribution payable pursuant to such license despite the fact that Company did not receive such fees from the licensee concerned.
- f. The SRDF shall remit the H&R contributions and associated reporting of data to the AFTRA H&R Fund.
- g. The remaining money received by the SRDF shall be distributed as determined by the trustees, except that performers who, between January 1, 2013 through December 31, 2014, (“two year period”), received conversion fees for the use of a covered recording in a television broadcast, cable exhibition or in a motion picture, collectively, “Priority Licenses” shall, to the extent practicable, receive substantially the same distribution on a per-license basis as the average conversion fee he/she received for such Licenses during the two year period, provided that Priority Distributions received by a performer in any year shall not exceed that performer’s average annual

earnings from conversion fees for Licenses during the two year period. It is understood that this distribution method may reduce and/or eliminate distributions to other performers and/or that there may be insufficient contributions to fund all Priority Distributions, in which case the trustees shall decide how to proceed.

B. Non-Traditional Uses

- a. If a covered recording is licensed for Non-Traditional Uses (as defined below) in the United States, the conversion fee payable for such uses shall be 3% of Receipts from such licenses (including license fee, per unit royalty or other form of payment for such license).
- b. “Non-Traditional Uses”, as used herein, 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.). Non-traditional uses under this provision shall not include the use of recordings in educational children’s books.
- c. Company shall pay such conversion fees to the SRDF, and the SRDF shall distribute such conversion fees. As a result of this provision, effective January 1, 2012, the 2010 Hallmark Settlement Agreement shall have no further effect.

C. Video Games (a/k/a Interactive Media)

- a. Covered recordings licensed for use in video games distributed in the United States shall be covered under the provisions of the Preamble.
- b. However, if a covered recording is licensed for use as “supplemental content” for a video game distributed in the United States, the conversion fee payable for such “supplemental content” uses shall be 3% of Receipts from such licenses (including license fee, per item royalty or other form of payment for such license).
- c. Company shall pay such conversion fees to the SRDF, and the SRDF shall distribute such conversion fees.

D. Mobile Applications

- a. Notwithstanding any other provision of the Sound Recordings Code or this Side Letter, if a covered recording is licensed for use in a Mobile Application (as defined below) in the United States, Company will only be required to pay a conversion fee if Company receives Receipts pursuant to such licenses. If

Company receives Receipts for such uses, the conversion fee payable for such uses shall be 3% of Receipts from such licenses.

- b. A “Mobile Application”, as used herein, shall mean mobile applications of any kind (other than music players or other applications designed for the primary purpose of playing covered recordings) on the IOS and Android mobile operating systems and any other similarly functioning mobile operating systems requested by Company that SAG-AFTRA approves, which approval SAG-AFTRA shall not unreasonably withhold.
- c. Company shall pay such conversion fees to the SRDF, and the SRDF shall distribute such conversion fees.
- d. The terms of this provision shall expire and have no further effect on December 31, 2017, except this sunset provision will not impact any license granted prior to December 31, 2017. All such licenses prior to December 31, 2017 shall continue to be governed by the terms of this Agreement.

E. Low Fee Life-Cycle and Similar Licenses

- a. If a covered recording is licensed for \$2,500 or less for use exclusively (i) in audio/visual productions of life cycle or other similar personal or non-commercial videos (e.g., weddings, bar/bat mitzvahs, quinceañeras, yearbooks, photo montages, etc.) whether through direct licensing to consumers, third-party videographers, aggregation services, or other means, or (ii) in or at business conferences or presentations, where such licenses do not permit such uses to be made publicly available in any form, the conversion fee payable shall be 3% of Receipts from such licenses.
- b. Company shall pay such conversion fees to the SRDF. SAG-AFTRA and Company hereby direct the trustees of the SRDF to use such funds to offset the general administrative expenses of the SRDF unless and until the trustees determine, in their reasonable discretion, that the amount of such funds received is sufficient to justify the administrative cost of distributing individual payments.
- c. In the event the SRDF trustees determine to make individual payments, they shall promptly inform Company. Effective as of the first day of the six-month reporting period that commences at least 30 days after the SRDF informs Company, contributions to the SRDF shall be subject to AFTRA H&R Fund contributions at the rate set forth in Paragraph 34, Section 1 of the Agreement. Company shall make such contributions to the SRDF, and the SRDF shall then remit such contributions to the AFTRA H&R Fund.

F. Foreign Use Licenses

Effective January 1, 2016:

- a. Conversion fees for covered recordings that are licensed for use in programs for television broadcast, programs for cable exhibition, motion pictures, commercials and video games that are created and exploited exclusively outside the United States and its territories (“Foreign Traditional Use Licenses”) shall be as set forth in this paragraph. The term “used exclusively outside the United States” shall include availability on the Internet in the United States, provided that such Internet availability in the United States is incidental to the primary licensed use (e.g., a foreign television commercial that can be accessed on an advertiser’s website).
- b. With respect to Foreign Traditional Use Licenses for commercials, the conversion fee payable shall be 4% of Receipts from such licenses, subject to a minimum of \$150 and a maximum of \$3,500. Effective December 31, 2017, AFTRA Health and Retirement Contributions will be made for each such license payment at the non-Royalty Artist rate.
- c. With respect to all other Foreign Traditional Use Licenses, the conversion fee payable shall be 3% of Receipts from such licenses, subject to a minimum of \$100 and a maximum of \$3,500. Effective December 31, 2017, AFTRA Health and Retirement Contributions will be made for each such license payment at the non-Royalty Artist rate.
- d. Conversion fees for covered recordings that are licensed for any non-traditional use provided for in Paragraphs B-D above but created and exploited exclusively outside the United States and its territories shall be under the same terms and conditions as set forth in those paragraphs, however, the maximum conversion fee for any such use shall be \$3,500.
- e. With respect to all licenses under this provision, Company shall provide its foreign affiliates an “Union Obligations Letter” in the form attached hereto as Exhibit ___ and shall work with the foreign affiliate to have the foreign affiliate provide the Union Obligations Letter with each license of a covered recording.
- f. The Union Obligations Letter shall include language directing licensee to pay such conversion fees (and H&R contributions when applicable) to the SRDF, and the SRDF shall distribute such conversion fees, and shall remit such H&R contributions (when applicable) and associated reporting of data to the AFTRA H&R Fund.

- g. Nothing in this provision shall modify any independent obligation that a signatory to the SAG-AFTRA Commercials Contracts may have.
- G. Company shall provide SAG-AFTRA with copies of each payment report it provides to the SRDF in connection with the payments remitted hereunder.
- H. Except as set forth in Paragraph A above, the conversion payment may be paid directly by either the licensee or Company. If a covered recording 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 SAG-AFTRA has been provided notice of the license as required by the Code, SAG-AFTRA shall look only to the licensee for such payment. The conversion fee shall not be considered in determining the amount of the license.
- I. Provided that the license agreement contains the warranty and representations required by page 1 of the Code and SAG-AFTRA has been provided notice of the license as required by the Code, SAG-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, D, E and F at any time before the execution of this Agreement. Nothing herein, however, precludes SAG-AFTRA from collecting conversion payments directly from any licensee.

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 SAG-AFTRA

By: _____

David P. White

EXHIBIT __ - Foreign License Union Obligation Letter

Dear Licensee:

The recording **[INSERT TITLE]** by **[INSERT ARTIST]** is a covered recording under the United States SAG-AFTRA Sound Code. As such, you are obligated to pay certain union fees under that collective bargaining agreement. These fees are to be paid directly to the SAG-AFTRA and Industry Sound Recordings Distribution Fund (“SRDF”).

The payment due is calculated as follows:

- 1) License fee _____
- 2) United States Company Share _____
- 3) SAG-AFTRA Fee:
 - a) ____ Commercial Use: 4% - \$150 minimum/\$3,500 maximum
 - b) ____ All Other Uses: 3%
 - i) ____ Television, Movies, and Video Games - \$100 minimum/\$3,500 maximum
 - ii) ____ Other uses – no minimum/\$3,500 maximum
- 4) AFTRA Health & Retirement Contribution (12.75% on top of SAG-AFTRA fee, effective for licenses after December 31, 2017)

Please remit the total union fees of \$_____ to the SRDF at the following: **[INSERT CONTACT INFO/BANK INFO]**