

Memorandum of Agreement

AMERICAN FEDERATION OF MUSICIANS
SOUND RECORDING LABOR AGREEMENT

The following is subject to ratification by the AFM

By terms of this Memorandum of Agreement, dated October 27, 2011, the existing Sound Recording Labor Agreement, as extended and modified by the January 14, 2009 Memorandum of Understanding by and among the undersigned (the "SRLA") shall be further extended as set forth below.

1. Term – 3 Years from the date of ratification.
2. Scale Wages - Increase wages effective the first Monday following ratification as follows:
 - a. Year 1 – 2.0%
 - b. Year 2 – 1.5%
 - c. Year 3 – 1.0%
3. SPF Payments and Audit Committee – A committee shall be established to review the current SPF payment structure (including AFM Proposals Number 7 and 8) and audit process. The committee's responsibilities will be to review all current outstanding audits and shall work to achieve a mutually agreed upon process for the efficient and prompt resolution of all such outstanding audits. This committee shall meet initially no later than 30 days after ratification.
4. Low Budget and Informal Recordings
 - a. Modify Exhibit D, Paragraph 1 to provide that the applicable budget maximum for any project containing less than 12 tracks may be prorated on a per-track basis. No track recorded under this provision may be used in any album that is not within the full Low Budget budget maximum.
 - b. Exhibit D, Paragraph 5 ("Experimental Low Budget") shall be deleted.
 - c. Create a new provision in Exhibit D to provide for "Low Budget Location Recordings" covering recordings of live performances made in other than a traditional studio setting made to promote an artist or recording, where tickets to the performance are not purchased for the purpose of hearing any particular artist. Non-exclusive examples are performances at an Apple Store and music conferences such as SXSW.

- i. Low Budget Location Recordings shall be subject to the terms of the current low budget side letter except as modified herein:
 1. The maximum budget (as defined in the side letter) for projects under this provision shall be \$20,000.
 2. The Companies will give advance notice of such recordings when practicable.
 3. B-forms will be prepared and provided to the AFM and the applicable Local.
 4. Companies will provide unit sales and distribution platforms data to AFM at same time of SPF reporting.
 5. The rate for Low Budget Location Recordings shall be \$83.34/hour (\$250 for a three hour minimum) to each musician (except as set forth below) which shall permit release of up to 60 minutes of music and image. Each additional increment of 7.5 minutes of music and image (or fraction thereof) may be released for an additional payment of \$30 to each musician.
 6. Any musicians not affiliated in some manner with the featured artist will receive 150% of the rates set forth in 4(c)(i)(5) above.
 - d. Add a new provision to the SRLA to provide that recordings of informal, non-revenue generating performances where no tickets are sold for the performance (e.g., audio or video taken on the "Back of the Bus" during a tour) may be used as bonus material and for other promotional purposes at no cost. . If a product is sold consisting solely of informal performance recordings, the terms of the Low Budget Location Recording shall apply and B- Forms will be prepared and provided to the Federation and applicable Local.
 - e. The AFM, on behalf of itself and its members, waives any claim for payment under the SRLA (and any other claim the AFM is entitled to waive on behalf of musicians) for recordings that fall under the definition of Low Budget Location Recordings and/or Informal Performance Recordings for any time before the execution of the Memorandum of Agreement.
5. New Use - Modify Article 21 of the SRLA to provide for the following:
- a. Video Games -
 - i. If the Company licenses, re-licenses, or extends a license (each a "license" for the purpose of this Agreement) a Phonograph Record that contains a performance of a musician into a Videogame and the Company receives a flat fee payment of less than \$30,000, the

payment required by Paragraph 21 will be 3% of the license fee received by the Company (2% to the AFM-EPPF, which will not constitute contributions made on behalf of any particular musician, and 1% to the MPF). If the license flat fee payment is \$30,000 or above, the Company shall pay to those non-royalty musicians who rendered services in the recording of the Phonograph Record \$198 each plus other applicable payments (e.g., leader, overdubs, and doubling) as set forth in the SRLA, and a pension contribution at the rate of 14.17%).

- ii. If the Company licenses a Phonograph Record that contains a performance of a musician into a Videogame for which the Company receives a contingent payment of any kind (e.g., a per unit payment or a scaled payment based on sales), the payment required by Paragraph 21 shall be determined as follows:
 1. If the payments received by the Company at any point within five quarters of reporting by the licensee after the release of the game equal or exceed \$30,000 per unit license, then the Company shall pay to those non-royalty musicians who rendered services in the recording of the Phonograph Record \$198 each, plus other applicable payments (e.g. leader, overdubs and doubling) as set forth in the SRLA) and a pension contribution at the rate of 14.17%).
 2. If the Company has received less than \$30,000 within five quarters of reporting by the licensee after the release of the game, there shall be a one-time payment of 3.25% of the Company's income from licensing the Phonograph Record (2.25% to the AFM-EPPF, which will not constitute contributions made on behalf of any particular musician, and 1% to the MPF).
- iii. In the event that a musician receives the \$198 new use payment for a license, no further payments shall be owed for that license or any extension or renewal thereof.
- iv. The Company will provide to the AFM and AFM-EP on a quarterly basis, an electronic report in a writeable file format (e.g. Excel) containing a) the title of each licensed Phonograph Record for which the full new use payment under this section has not yet been made; b) the name of the royalty artist; c) the ISRC; d) the name of the licensee and its address, phone, fax or e-mail address; e) the name of the videogame, including the version, into which the Phonograph Record was licensed; f) the type of license (i.e. flat

fee or per unit) and its term; g) the gross revenue received by the Company pursuant to the license during the reporting period and cumulatively.

- v. If the videogame is for a flat fee payment of \$30,000 or more, payment shall be made within 60 days of payment to the Company. All other payments for videogame licenses shall be made on a semi-annual basis in accordance with the schedule for payments to the Special Payments Fund.

b. Consumer Products and New Media

- i. If the Company licenses a Phonograph Record that contains a performance of a musician for use either: (a) in a digital chip (or its equivalent) which is to be used in connection with a consumer product, or (b) for consumer-based internet synch licensing (e.g., JibJab, photo slide shows, flickr, etc.), provided that such use in (a) or (b) above is not otherwise a phonograph record or a video game, the new use payment shall be 3% of the Company's income, 2% of which shall be payable to the AFM-EPF, which will not constitute contributions made on behalf of any particular musician, and 1% of which shall be payable to the MPTF.
 - ii. The Company will provide to the AFM, and AFM-EP on a quarterly basis, an electronic report in a writeable file format (e.g. Excel) containing a) the title of each licensed Phonograph Record for which the full new use payment under this section has not yet been made; b) the name of the royalty artist; c) the ISRC; d) the name of the licensee, and its address, phone fax or e-mail address; e) the name of the product, including the version, into which the Phonograph Record was licensed; f) the type of license (i.e. flat fee or per unit) and its term; g) the gross revenue received by the Company pursuant to the license during the reporting period and cumulatively.
 - iii. Payments for such licenses shall be made on a semi-annual basis in accordance with the schedule for payments to the Special Payments Fund.
- c. The payments required for video games, consumer products, and new media by this provision shall not be considered in determining the amount of the license. The required payments shall be made by the Company or by the licensee, except that the reporting requirements of Paragraph 24 (b) are replaced by the terms set forth herein.

d. The AFM, on behalf of itself and its members, waives any claim for "new use" payments for licensing of master recordings into videogames, consumer products, new media other than a phonograph record under Article 21 of the SRLA or on any other basis for any time prior to the execution of the Memorandum of Agreement. Nothing herein, however, shall preclude the AFM from collecting payment from licensees for which either (a) it has a separate collective bargaining agreement requiring such payment, or (b) it has, prior to the execution of this agreement, sought such payment in writing.

6. Low Budget Traditional New Use, and New Use for Licensing into an Audio-visual Program other than a Commercial Made for Initial Exhibition in "New Media" of a Duration of 15 Minutes or Less (e.g. a webisode, video podcast) - refer to mid-term negotiations and include new terms in SRLA if an agreement is reached. This committee shall meet initially no later than 30 days after ratification.

7. Soundtrack Albums

The provisions of the 2009 Basic Theatrical Motion Picture and Television Film Labor Agreement shall be incorporated into the SRLA, and the Industry may "me-too" any future changes to the Basic Theatrical Motion Picture and Television Film Labor Agreement.

8. Health and Welfare

Increase contribution amount to \$24 effective on ratification and to \$19 for each additional service that day.

9. MPF

Amend Sound Recording Trust Agreement as may be necessary to allow for contributions to the MPF pursuant to AFM Agreements other than the SRLA and from sources other than AFM employers (e.g. co-sponsors, charities or other grantors).

10. Miscellaneous

- a. Conform internal dates as appropriate to reflect new Agreement term.
- b. Continue existing sideletters and conform internal dates as appropriate to reflect term of the new Agreement.