

Before the  
COPYRIGHT ROYALTY JUDGES  
LIBRARY OF CONGRESS  
Washington, D.C.

In the Matter of

Mechanical and Digit Phonorecord Delivery Rate  
Adjustment Proceeding

Docket No. 2006-3 CRB DPRA

Second Corrected Roger Faxon Rebuttal Statement  
(with Exhibits A-L)

**PUBLIC VERSION**

**COPYRIGHT ROYALTY JUDGES**

<b>In the Matter of</b>	)	
	)	
<b>Mechanical and Digital Phonorecord</b>	)	<b>Docket No. 2006-3 CRB DPRA</b>
<b>Delivery Rate Adjustment Proceeding</b>	)	
<hr/>	)	

**SECOND CORRECTED REBUTTAL STATEMENT OF ROGER FAXON**

**I. Introduction**

1. My name is Roger Faxon and I am Chairman and Chief Executive Officer (“CEO”) of EMI Music Publishing (“EMI MP”), a division of EMI Group Limited. I am submitting this written rebuttal statement to the Copyright Royalty Judges (“CRJs”) in support of the written rebuttal case of National Music Publishers’ Association, Inc., the Songwriters Guild of America, and the Nashville Songwriters Association International (collectively the “Copyright Owners”). I testified orally during the direct phase of this proceeding based on my written direct statement, which was filed on November 30, 2006, in support of the Copyright Owners’ case.

My rebuttal statement:

(a) Responds to certain testimony during the direct phase of this proceeding by the Recording Industry Association of America (“RIAA,” which together with the Digital Media Association are, collectively, the “Copyright Users”);

(b) Responds to certain questions raised during the RIAA’s case in the direct phase of this proceeding; and

(c) Updates certain EMI MP financial data introduced in my written direct statement and my oral testimony.

**II. The Continuing Decline in Mechanical Royalty Income for EMI MP and Its Songwriters Supports a Higher Mechanical Rate**

2. During my cross-examination by the RIAA on January 30, 2008, the RIAA introduced a spreadsheet containing EMI MP financial data, RIAA Trial Exhibit (“RIAA Tr. Ex.”) 8, and asked me about EMI MP’s mechanical royalty income. In particular, there was a question and assertion to the effect that during the nine-year period covered by RIAA Tr. Ex. 8, EMI MP’s mechanical income remained “steady.” As I pointed out in my response to this question, these data had to be considered in light of the fact that during this period, EMI MP took action to increase its market share, including by improving its success at identifying successful songwriters, increasing its investment in these songwriters, and through acquisitions of rights to additional musical compositions. Therefore, it was not appropriate to assume increases in the statutory mechanical rate had fully offset the decline in mechanical revenues due to decreased CD sales. 1/30/08 Trial Transcript (“Tr.”) at 576:6-578:12. I did not have the specific information or data at that time to respond fully to that question.

3. Exhibit A to this statement provides a specific update of EMI MP’s mechanical revenues through the first 11 months of our current 2007/2008 Fiscal Year (“FY 07/08”), and also provides a comparison of these data to EMI MP’s mechanical income in the first 11 months of FY 06/07. Exhibit A was prepared at my direction by EMI MP’s Finance Department based on actual EMI MP data. The exhibit demonstrates that in FY 07/08, EMI MP’s mechanical royalty income has continued to decline. For the first 11 months of FY 07/08, mechanical royalty income declined to [REDACTED] from [REDACTED] during the comparable period in

FY 06/07, a reduction of approximately [REDACTED]. This follows a decline between FY 05/06 and FY 06/07 from [REDACTED] to [REDACTED], or approximately [REDACTED]. These numbers show that EMI MP and its songwriters continue to be injured by declining music sales, particularly declining CD sales, which reduce songwriter income and the incentive to create new musical compositions. An increased mechanical rate is required to restore these diminished songwriter incomes and incentives.

**III. Voluntary Agreements Entered Into by EMI MP Are Evidence of the Mechanical Rates Each Party Considered to be a Fair Return**

4. In my written direct statement and oral testimony, I described a number of licensing agreements entered into voluntarily through arms-length negotiations between EMI MP and music labels or digital service providers. These included ringtone and mastertone agreements, New Digital Media Agreements (“NDMAs”) with three of the four major record companies, and agreements with the digital services Skype and Spiral Frog. As I explained, these agreements, which included rates that clearly were above the existing statutory mechanical rate, evidenced the terms each party believed would provide it with a fair economic return, which is one of the criteria the Court is applying in this proceeding under Section 801(b)(1) of the Copyright Act.<sup>1</sup> During the direct phase of this proceeding, the Copyright Users introduced evidence claiming, for various reasons (cited below), that the rates in these agreements were not appropriate benchmarks for the mechanical royalty rate being set by this Court. In this section of my rebuttal statement I address these claims. I also describe more recent voluntary agreements entered into by EMI MP that provide additional support for increasing the statutory mechanical

---

<sup>1</sup> Statement of Roger Faxon, CO Tr. Ex. 3, at ¶¶ 53-72; 1/29/08 Tr. at 447:4-13, 459:20-460:3, 471:20-472:3 (Faxon).

rate while also showing that the rates proposed by the Copyright Users are well below the rates achieved in these voluntary agreements.

**(a) Contrary to the RIAA Expert's Testimony, Ringtone/Mastertone Agreements Are an Important Part of EMI MP's Digital Business**

5. In response to a question from Chief Judge Sledge, the RIAA's expert economist, Dr. David Teece, said he rejected testimony by the Copyright Owners' expert, Professor William Landes, that ringtone licenses are a benchmark, because ringtones are a marginal business that are not representative of the value of musical compositions. 2/19/08 Tr. at 3651:11-14 ("And I don't think . . . Ringtone licenses are comparable and you would not want to have the tail wag the dog in terms of those rates necessarily . . .").<sup>2</sup>

6. In fact, ringtone/mastertone licenses have been and continue to be a major source of digital income for EMI MP and its songwriters. Exhibit B to this statement is a chart showing EMI MP income in the U.S. from DPD and ringtone/mastertone licenses between 2003 and 2007. It was prepared under my direct supervision by EMI MP's Finance Department. Exhibit B shows that between 2004 and 2007, ringtones/mastertones accounted for between 85.7% and █████ of EMI MP's combined ringtone/mastertone and DPD income. For the entire five-year period, this percentage is █████. Moreover, in 2007, when the percentage of EMI MP's digital income accounted for by ringtones/mastertones fell to █████ due to increasing DPD sales, ringtones/mastertones accounted for more than █████ in revenue, a █████ increase since 2004 and an increase of over █████ between 2006 and 2007. As these figures show, EMI MP's ringtone/mastertone licenses are a substantial part of our digital business, and we expect

---

<sup>2</sup> See also 2/20/08 Tr. at 3960:12-13 (Wilcox) ("[F]rom the reports I've been hearing, it has been dropping, the ringtone business.").

this to continue to be the case for the foreseeable future, even as other sources of digital income grow.

**(b) The Mastertone Rates in the NDMA's Reflect Rates Agreed Upon in Previous Arms-Length Agreements, and All Three Major Labels that Entered into an NDMA with EMI MP Have Agreed to Extend Their Agreements and Continue to Pay These Rates**

7. RIAA witnesses Ron Wilcox and Andrea Finkelstein both testified that the royalty rates for mastertones in the NDMA that EMI MP entered into with SonyBMG were part of a "package deal" in which, in return for concessions obtained on the DualDisc and other products, SonyBMG agreed to mastertone royalty rates that were "too high."<sup>3</sup> As I explained in my written direct statement and oral testimony, the mastertone rates in EMI MP's NDMA with SonyBMG, as well as in the NDMA's with Universal and Warner, (*i.e.*, [REDACTED] [REDACTED] [REDACTED]) all reflected the rates negotiated by EMI MP in dozens of ringtone agreements entered into prior to the NDMA's, including ringtone agreements that covered monophonic and polyphonic ringtones as well as mastertones.<sup>4</sup> One of these ringtone agreements was entered into by Warner Strategic Marketing, an affiliate of Warner Music, and had rates equal to the greater of 10% of the retail price or a 20 cent minimum, well above the

---

<sup>3</sup> See, e.g., Written Direct Testimony of Ron Wilcox, RIAA Tr. Ex. 70, at 27 ("The NDMA's Were A Package Deal – We would not have agreed to such rates in isolation."); *id.* at 28 ("To get the deal we wanted on DualDisc and videos, we agreed to pay mastertone rates that are too high."); Written Direct Testimony of Andrea Finkelstein, RIAA Tr. Ex. 61, at 13 ("[W]e were forced in our New Digital Media Agreements to agree to high rates for mastertones as the price for getting DualDiscs licensed at the statutory rate."); 2/14/08 Tr. at 3349:1-3350:6 (A. Finkelstein) (as part of an overall compromise, SonyBMG agreed to pay "the very preferable ring tone rate that had been established for mono and poly ring tones.").

<sup>4</sup> See Statement of Roger Faxon, CO Tr. Ex. 3, at ¶¶ 60-64, 71; 1/29/08 Tr. at 453:11-16 (Faxon); CO Tr. Exs. 3-219, 3-220 and 3-221.

NDMA minimum rate.<sup>5</sup> Another ringtone agreement EMI MP entered into with Sony Music provided for a rate equal to the higher of 10% of retail price or a minimum of 10 cents, similar to the NDMA rate.<sup>6</sup> The NDMA rates therefore are consistent with or lower, not higher, than rates that were the product of these arms-length, voluntary agreements.

8. Moreover, as I indicated during my oral testimony, SonyBMG, Universal and Warner all have agreed to extensions of these NDMA's. 1/29/08 Tr. at 451:7-13, 454:13-22, 459:8-12. Copies of these extension agreements are attached as Exhibit C to this statement. I approved and am familiar with the terms of each of these documents and the negotiations that resulted in their execution. Notwithstanding the fact these extensions were entered into after the Register of Copyright's October 2006 ruling that ringtones are covered by Section 115 of the Copyright Act (and that by this time the DualDisc had failed commercially and no longer was a relevant product), [REDACTED]

[REDACTED]. The SonyBMG NDMA agreement extends the term of the NDMA for mastertones through June 30, 2008. (¶¶ 7, 10). [REDACTED]

[REDACTED] The Universal NDMA extension agreement is similar, extending the term for mastertones through December 31, 2008 [REDACTED]

---

<sup>5</sup> See January 1, 2002 Agreement with Warner Strategic Marketing, CO Tr. Ex. 3-218; 1/29/08 Tr. at 436:13-14, 458:6-15 (Faxon).

<sup>6</sup> See October 8, 2003 Agreement with Sony Music, a Group of Sony Music Entertainment, CO Tr. Ex. 3-218.

[REDACTED]

[REDACTED]. (¶¶ 6, 8).

9. The parties amended the Warner NDMA by executing a term sheet that extends the mastertone rates through August 31, 2008 with [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10. In short, the NDMA mastertone rates reflect then existing market rates, and the agreement of the labels [REDACTED]

[REDACTED]

[REDACTED] shows that they are the result of arms-length, voluntary negotiations. These rates also reflect the parties' assessment of what was a fair return with respect to some of the rights that are at issue in this proceeding.

**(c) Voluntary License Agreements EMI MP Has Entered Into Since My Written Direct Statement Contain Rates That Support an Increased Mechanical Rate**

11. The following license agreements entered into since my written direct statement provide evidence that when EMI MP has been able to license the rights at issue in this proceeding, or similar rights, in voluntary negotiations, the parties have agreed to rates that demonstrate the current statutory mechanical rate is too low.

(i) Agreement with MusicNet, Inc.

12. On January 31, 2007, EMI MP entered into a two-year license agreement with MusicNet, Inc. ("MusicNet") for conditional downloads and on-demand streams. A copy of this agreement is attached as Exhibit D to this statement. I approved and am familiar with the terms of this agreement. The agreement includes a guaranteed advance of [REDACTED] payable in four equal installments over 18 months and a royalty rate of [REDACTED] on the sale of conditional downloads embodying compositions controlled by EMI. The parties agreed that the rate for on-demand streams would be [REDACTED]. (¶ 7).<sup>7</sup> The [REDACTED] rate for conditional downloads is equivalent to the [REDACTED] of retail price rate in the ringtone and NDMA agreements.

(ii) Agreement with imeem, Inc.

13. On November 7, 2007, EMI MP entered into a license agreement with imeem, Inc. ("Imeem") for on-demand video streams of label produced videos, user-generated videos and on-demand audio streams. The agreement has a two-year term from the July 1, 2007 effective date. A copy of the agreement and a letter agreement also executed on November 7, 2007 are attached as Exhibit F to this statement. I approved and am familiar with the terms of this agreement and executed the agreement on behalf of EMI MP. I also am familiar with the negotiations regarding the terms of the agreement. The negotiations took several months as EMI MP was the first publisher to license Imeem. [REDACTED]

---

<sup>7</sup> The agreement also provides for a [REDACTED] payment for [REDACTED] (¶ 9).

[REDACTED]

[REDACTED]

[REDACTED]. Although a number of the rates in the agreement remain subject to EMI MP entering into agreements with the labels, including rates for user-generated label videos (*i.e.*, a user creates a video but uses a sound recording released by a label), the agreement includes one rate relating to a situation in which Imeem is licensing both the musical composition and the sound recording, namely for label produced videos licensed by independent record labels. The rate payable to EMI MP for such videos is [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(iii) Agreement with LTDnetwork, Inc. (Qtrax)

14. EMI MP entered into a license agreement with LTDnetwork for its Qtrax service in August 2006, and entered into an amendment in February 2008. The license is for “audition” downloads (*i.e.*, conditional downloads) and “authorized” streams (*i.e.*, on-demand streams) being offered in an advertisement-supported service. Copies of the original agreement and the amendment are attached as Exhibit G to this statement. I approved and am familiar with the terms of this agreement and executed the amendment on behalf of EMI MP. The royalty rate for these downloads is [REDACTED]

[REDACTED] This rate

exceeds the [REDACTED] in the ringtone agreements and NDMA's, and the [REDACTED] rates for conditional downloads in the Spiral Frog agreement and the Skype agreement [REDACTED]

[REDACTED]

[REDACTED]<sup>8</sup> [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Under the amendment, the rates in the agreement are extended through January 25, 2010 and [REDACTED]

[REDACTED]. These rates are the product of voluntary, arms-length negotiations.

(iv) Conclusion

15. The rates in the additional agreements described above, which are summarized in a chart attached to this statement as Exhibit H (prepared under my supervision by counsel), are greater than or equal to the rates discussed in my written direct statement in the ringtone, NDMA, Skype and Spiral Frog agreements, and provide evidence supporting an increased statutory mechanical rate. Moreover, *all* of the agreements I have discussed both in my written direct statement and this rebuttal statement demonstrate that the voluntary, arms-length negotiations in which EMI MP has engaged have produced rates well in excess of those proposed by the RIAA (7.8% of wholesale revenue, equal to 5% of retail revenue) and DiMA (4%-6% of retail revenue).

---

<sup>8</sup> See Statement of Roger Faxon, CO Tr. Ex. 3, at ¶¶ 66-69; CO Tr. Exs. 3-222, 3-223.

#### IV. Controlled Composition Clauses Do Not Represent Arms-Length Agreements on Mechanical Royalties

16. During the direct phase of the case, there was testimony by RIAA witnesses suggesting that the discounted rates negotiated in controlled composition clauses were the result of arms-length agreements that could serve as a market benchmark.<sup>9</sup> Based on my experience both in music publishing (including my familiarity with the terms of the controlled composition clauses signed by singer/songwriters who contract with EMI MP), and as an executive who has had responsibility for music labels during most of the past 14 years, this is incorrect for several reasons. First, controlled composition clauses are the product of negotiations between a label and a singer/songwriter, including new singer/songwriters who are just starting their careers and attempting to get their songs recorded. The clauses have been developed in an industry dominated by four major labels that account for approximately 85% of recorded music sales.<sup>10</sup> Given this small number of competitors, each of which easily can follow the policies and practices of the others, it is not surprising that, as a number of songwriter witnesses testified, virtually all labels require controlled composition clauses that include reduced rates of 75% of the statutory rate and/or song caps.<sup>11</sup>

---

<sup>9</sup> See, e.g., 2/14/08 Tr. at 3333:16-21 (A. Finkelstein) (“Q: Are all of the controlled composition clauses in Sony’s contracts identical? A: No. There is a fair amount of variation; it’s a pretty heavily negotiated part of the contract form.”); 2/14/08 Tr. at 3504-16-20 (Kushner) (“[Controlled composition clauses] are always negotiated. The cap is negotiated. The percentages are negotiated. We often agree to escalations of those mechanical royalties. We often agree to full rate in competitive deals.”).

<sup>10</sup> In 2007, the four majors accounted for 86.52% of total album sales and 85.17% of digital track sales. See Press Release, Nielsen SoundScan, 2007 U.S. Music Purchases Exceed 1.4 Billion (Jan. 3, 2008), <http://www.reuters.com/article/pressRelease/idUS220330+03-Jan-2008+BW20080103>.

<sup>11</sup> 1/28/08 Tr. at 207:5-18 (Carnes) (has no choice but to sign a deal with a 75% reduced rate); 1/28/08 Tr. at 256:4-257:18 (Bogard) (must sign controlled composition clause or you don’t get song cut); 1/31/08 Tr. at 886:7-11 (Sharp) (“Q: Why do you accept control [sic] composition clauses? A: I have accepted it because it was made very clear to me that if I didn’t accept it that I wasn’t going to have a record deal.”).

17. In addition, the reduced mechanical rate under a controlled composition clause must be understood as one element of a singer/songwriter's entire contract. In general, the singer/songwriter is most concerned about the total amount he or she will be paid. The record label, on the other hand, has a strong interest in reducing the mechanical rate because the rate agreed to by the singer/songwriter also affects the compensation paid to other songwriters who want to appear on the singer/songwriter's album. If Singer/Songwriter A wants to include a song on his or her album written by Songwriter B, who is not subject to a controlled composition clause, Singer/Songwriter A must (a) pay the difference between the statutory rate and the controlled rate for that song, (b) convince Songwriter B to accept the controlled rate, or (c) find another songwriter who will do so. The result is that songwriters who have no seat at the table in the negotiation process that results in a controlled composition clause are caught in the web of its effects, to their detriment and to the benefit of the label. The record label's strong incentive to negotiate a reduced mechanical rate, its leverage and ability to impose such a term, and the singer/songwriter's lack of bargaining power to resist such a term (until they become successful) all but guarantee that in the vast majority of artist contracts, the reduced mechanical rate in the controlled composition clause cannot be viewed as the product of arms-length bargaining, or as an appropriate stand-alone benchmark for mechanical rates.<sup>12</sup>

---

<sup>12</sup> The RIAA's expert, Dr. David Teece, recognizes that controlled composition clauses represent a transfer of value from the mechanical royalty rate to other components of the singer/songwriter's contract. See Written Testimony of Professor David J. Teece, RIAA Tr. Ex. 64, at 29 ("Sometimes, in the course of negotiating a recording contract, artists who are also songwriters will agree to a lower fee royalty for a mechanical license. (Such a contractual provision is generally referred to as a 'controlled composition clause.'). Economic theory suggest [sic] that artist-songwriter [sic] would agree to do so only in exchange for other financial benefits, such as a higher 'advance' payment or a higher artist royalty rate.").

**V. Agreements on Rates for the First Use of a Composition Do Not Represent Arms-Length Agreements on Mechanical Royalties**

18. The RIAA also offered testimony to the effect that rates negotiated for the “first use” of a musical composition, which are not subject to the compulsory license in Section 115 of the Copyright Act, are market rate agreements that are never above, and sometimes are below, the statutory rate.<sup>13</sup> This is incorrect for many of the same reasons that apply to controlled composition clauses. First and foremost, a substantial portion of first uses are covered by controlled composition clauses (and the reduced rates in those clauses). To the extent no controlled composition clause applies, the rate almost invariably will be at the statutory rate because, at that point, the songwriter’s main objective is to get the song into the marketplace so he or she can realize future earnings, not to create a rate that will serve as a benchmark for the future value of the song. Further, in my experience, labels simply will not pay more than the statutory rate for a first use license, even for a major songwriter. Given these circumstances, agreements on first use are not an arms-length benchmark for the value of mechanical rates.

**VI. Transaction Costs Do Not Prevent EMI MP from Granting Discounts Below the Statutory Rate**

19. During its direct case, the RIAA presented testimony claiming that record labels are not able to negotiate reduced mechanical rates with music publishers because of high transaction costs.<sup>14</sup> Of course, in many instances the labels already are enjoying a reduced rate

---

<sup>13</sup> 2/14/08 Tr. at 3335:21-3336:3 (A. Finkelstein) (“Q: Are publishers free to seek a rate higher than the statutory rate for first use? A: Yes. I believe so. I believe so. Q: Do they often do that? A: No.”).

<sup>14</sup> Written Testimony of Andrea Finkelstein, RIAA Tr. Ex. 61, at 10 (“Conversely, on frontline products, we seldom ask for a lower rate in our dealings with publishers, because the transaction costs of negotiation are high, and experience has taught us that it is usually futile. If we do ask for a lower rate, it is usually for use with specific products, such as a particular budget release. Even if there is a compelling argument as to why tracks on a certain album might be good candidates for reduced rates, we know that in order to obtain such rates we will have to contact

under controlled composition clauses negotiated with a singer/songwriter. Apart from controlled composition clauses, however, EMI MP frequently grants reduced rate licenses for reduced price and special products such as free downloads, budget and compilation products. For example, EMI MP routinely grants free licenses to digital services and other licensees, including for front-line product, for special promotions such as iTunes' free Single of the Week, Wal-Mart's Weekly Free Download, Starbuck's Song of the Week, and other similar promotions. A list identifying close to 40 free licenses granted between January and March 2008 is attached as Exhibit I to this statement, which was prepared at my direction by EMI MP's Copyright Department. EMI grants such licenses to increase awareness of our songwriters' work and to drive additional revenues for all parties involved, including in particular our songwriters, as well as for charitable purposes.

20. In addition, EMI receives hundreds of requests for reduced rates annually from labels that specialize in compilations and/or budget products. See Exhibit J to this statement (showing the principal labels that request reduced rates making a total of almost [REDACTED] requests in 2007 for over [REDACTED] EMI MP songs, and almost [REDACTED] requests in 2006 for over [REDACTED] EMI MP songs). Exhibit J was prepared at my direction by EMI MP's Copyright Department. EMI generally grants these requests, and offers a reduced rate of [REDACTED] of the statutory rate, if the proposed product for which the reduction is being requested meets our pricing guidelines (*i.e.*, it must be a reduced price product), and the licensee pays a modest advance, generally of [REDACTED] [REDACTED] per product (*i.e.*, [REDACTED] total for a compilation CD regardless of the number of copies of

---

each publisher who has any share of a work."); 2/21/08 Tr. at 4129:12-4131:7 (Barros) ("Q: Mr. Barros, I think you started to talk about another example of your concerns about the current rate structure? A: . . . The problem is, of course, if you put three CDs and, say, 50 tracks and tried to price it at 19.98 or less you're, paying \$5 worth of publishing. And to try and negotiate that rate down, you would be spending countless hours because again, very often there is a different publisher or more than one publisher for each track. So you're negotiating, you know, with many different entities, some of which aren't that easy to find at times. And it's a very difficult process, so we just don't even try. It's just not even worth the effort.").

that CD that is sold). In 2006 and 2007, EMI MP granted approximately [REDACTED] of these requests. Further, obtaining these licenses is not difficult or time-consuming. The licensee submits a request to EMI MP's Copyright Department, which typically is acted on within one week. Even when multiple parties are involved, these are relatively straight-forward negotiations in which standard licenses are used, only a few terms are at issue (reduction in rate, length of time, and perhaps the number of units), and the negotiation is on a most favored nation's basis, so that all parties must accept the same terms.

21. In short, EMI MP is quite willing to grant requests for reduced rates, frequently does so when asked, and transaction costs are not a barrier to receiving such reduced rate licenses from EMI MP.

#### **VII. The RIAA Expert's Testimony That His Proposed Rates Will Not Be Disruptive to the Songwriters and Publishers is Incorrect**

22. In his written direct statement, RIAA expert Dr. David Teece states that "[r]educing the mechanical rate to 7.8% or less of the wholesale revenue will reduce overall disruption in the industry while returning some balance to the relative positions of the publishers and recording companies."<sup>15</sup> This statement displays a fundamental misunderstanding of the manner in which songwriter obligations are defined under contracts with publishers. In fact, replacing the current penny rate with a much lower rate based on percentage of wholesale revenue for physical goods would have a deeply disruptive effect on the both EMI MP and many of its songwriters.

---

<sup>15</sup> Written Testimony of Professor David J. Teece, RIAA Tr. Ex. 64, at 109.

23. EMI MP has approximately 700 active songwriters under contract. Based on a review of 561 of those contracts signed since 2000, 492 – or approximately 88% – define the songwriter’s obligation based on the penny rate. An example of such a contract is attached as Exhibit K to this statement. It is a May 1, 2007 contract between EMI MP affiliate EMI April Music Inc. (“EMI April”), and a group of songwriters. I approved and am familiar with the terms of this contract. Paragraph 4 of the contract defines the songwriters’ obligation to deliver a newly recorded album of music that entitles EMI April to collect mechanical royalties of not less than [REDACTED]. (¶ 4.01(d)). This penny rate is based on [REDACTED] [REDACTED] (¶ 4.03). In other words, the songwriters’ obligation is defined specifically by reference to the penny rate. If there is no penny rate (or a significantly reduced penny rate) the songwriter will not be able to meet this penny rate obligation, which constitutes a default under the contract that can result in termination and return of advances. (¶ 19.02).

24. Alternatively, the songwriter could get “trapped” in the contract as the songwriter could be deemed never to have fulfilled his or her obligations. The term of the contract often is based on “contract periods” that do not terminate until the songwriter provides notice of delivery of his or her next album that meets the penny rate requirements described above. (¶¶ 3.01-3.03). Thus, if the songwriter cannot meet these requirements, the contract can continue indefinitely.

25. If this Court were to adopt a percentage mechanical rate instead of a penny rate, EMI MP would need to renegotiate at least these 492 songwriter contracts in addition to any others in which the obligations described above are defined by reference to the penny rate. This would be enormously disruptive to both EMI MP and our songwriters. Maintaining a penny rate with a value at least comparable to the existing penny rate is essential to avoiding this disruption.

### VIII. Late Payment by the Labels Continues to be a Problem

26. In my written direct statement, I provided an analysis of label payment shortfalls on DPDs sold through services such as iTunes based on sales data from *Billboard* and Soundscan. This analysis showed that, as of the second quarter of calendar year 2006, EMI MP expected to be paid ██████████ in royalties on the DPDs but had received only ██████████, a shortfall of approximately ██████████, or 60%.<sup>16</sup> During my oral testimony, I indicated that by dunning the record labels, EMI MP had reduced this shortfall to about 40%. 1/29/08 Tr. at 495:20-496:12. Exhibit L updates the analysis provided in my written direct statement and shows that while EMI MP has made progress in reducing the DPD payment shortfall, a substantial shortfall remains. For the period from inception (January 1, 2001) through the third quarter of calendar year 2007, EMI MP expected to receive ██████████ in royalties on sales of DPDs on which there is a shortfall, but received only ██████████, a shortfall of ██████████.

27. In addition, I have been informed by our Copyright Department that based on Soundscan sales data as of September 30, 2007, we estimate that out of approximately ██████████ ██████████ in mechanical royalties due to be paid to EMI MP and our songwriters on physical product, we had not received approximately ██████████, or about ██████████. While some of this shortfall is due to writers and co-writers not reaching agreement on percentage splits, a significant portion of this amount is the result of labels either not securing the proper licensing agreements or taking excessive reserves returns (*i.e.*, reserves in excess of Soundscan figures for actual sales to consumers, which generally are not reduced materially by product being returned

---

<sup>16</sup> Statement of Roger Faxon, CO Tr. Ex. 3, at ¶ 77; CO Tr. Ex. 3-226.

to the labels), that typically are not liquidated until one year or more after the recording is released.

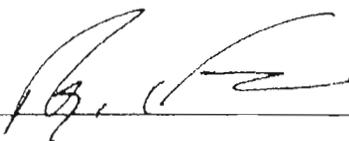
28. As I explained in my written direct statement, the labels' failure to make timely payments undermines the purposes of Section 115 by devaluing the mechanical royalty and reducing the songwriter's ability and incentive to create music.<sup>17</sup> In order to address these shortfall issues, EMI MP supports the Copyright Owners' proposals on late payment and pass-through fees.

---

<sup>17</sup> Statement of Roger Faxon, CO Tr. Ex. 3, at ¶ 78.

I declare under penalty of perjury that the foregoing is correct to the best of my understanding.

Dated: May 12, 2008

A handwritten signature in black ink, appearing to read 'R. Faxon', is written over a horizontal line.

Roger Faxon  
Chairman and Chief Executive Officer  
EMI Music Publishing



USD  
L082  
USA MP

H:\WWW\_FIN\Rep\0708\Feb08\Checkreports\Fesubs\L082\_10\_YR\_HIST.xlsA

**M2P**

2030100	Mechanical Inc-External
2030500	Mechanical Inc-Intra Publishing
2030600	Mechanical Inc-Music Outside Sector
2040000	TOTAL MECHANICAL INCOME

**REDACTED**

	FY 2004/05	FY 2003/04	FY 2002/03	FY 2001/02	FY 2000/01	FY 1999/00	FY 1998/99
	112,095	130,755	129,558	139,177	143,657	132,881	112,357
	57,528	54,679	47,326	39,385	36,505	39,584	37,959
	0	0	0	0	0	0	0
	169,623	185,434	176,884	178,562	180,162	172,465	150,316

LC(000's)

**EXHIBIT B**

EMI MUSIC PUBLISHING USA  
 CRB - FAXON REBUTTAL STATEMENTS  
 RINGTONE AND DPD INCOME HISTORY (BY YEAR PROCESSED)

3/7/2008

<u>Gross Income (USD)</u>	2003	2004	2005	2006	2007	Total
DPD	\$40,599	\$853,223	\$1,879,515			
Ringtone	\$0	\$5,112,792	\$6,342,973			
Mastertones	\$0	\$0	\$2,575,619			
<u>TOTAL RINGTONES</u>	<u>\$0</u>	<u>\$5,112,792</u>	<u>\$8,918,592</u>			
<u>TOTAL DIGITAL</u>	<u>\$40,599</u>	<u>\$5,966,014</u>	<u>\$10,798,107</u>			

REDACTED

<u>% Of Total</u>	2003	2004	2005	2006	2007	Total
DPD	100.0%	14.3%	17.4%			
Ringtone	0.0%	85.7%	58.7%			
Mastertones	0.0%	0.0%	23.9%			
<u>TOTAL RINGTONES</u>	<u>0.0%</u>	<u>85.7%</u>	<u>82.6%</u>			
<u>TOTAL DIGITAL</u>	<u>100.0%</u>	<u>100.0%</u>	<u>100.0%</u>			

**EXHIBIT C**

---

As of March 30, 2007

EMI Music Publishing ("EMI" or "you")  
1290 Avenue of the Americas  
New York, NY 10104

Reference is made to that certain New Digital Media Agreement, made as of November 1, 2004 by and between you and SONY BMG MUSIC ENTERTAINMENT ("SONY BMG") (together with all schedules, side letters, modifications and amendments thereto, the "NDMA"). Reference is also made to all of the agreements entered into between SONY BMG and various services ("Services"), which constitute agreements with Services in a manner consistent with paragraph 2.5.2.1 of the NDMA ("Video Services Agreements"). The following, when signed by you and SONY BMG shall modify the NDMA. All of the terms defined in the NDMA will have the same meanings herein, unless otherwise expressly provided herein.

1. Notwithstanding the provisions of paragraph 1.5 of the NDMA, the Parties agree that the "Digital Video Product Term" shall be extended up to and including June 30, 2008, whether such Digital Video Products were first released before or after April 1, 2005.
2. Notwithstanding the provisions of paragraph 1.7 of the NDMA, the Parties agree that the "Dual Disc Product Term" shall be extended up to and including June 30, 2008. Notwithstanding the foregoing, the Parties further agree that SONY BMG shall have not less than thirty-six (36) months from the initial release of any individual title of a Dual Disc Product embodying a Relevant Sony BMG Master released prior to June 30, 2008 to continue to manufacture and distribute such Dual Disc Product title. No rights are granted herein to SONY BMG to manufacture or distribute any new Dual Disc Product title after June 30, 2008, which title had not been released prior to June 30, 2008.
3. The following sentence shall be added to the end of paragraph 1.9 of the NDMA: "In the event EMI merges with, acquires or is acquired by another major music publisher, and the value of such other party is more than \$US 250 million dollars, the definition of "EMI Composition" shall not include those compositions contained in such major publisher's music publishing catalog(s)."
4. Notwithstanding the provisions of paragraph 1.13 of the NDMA, the Parties agree that the "Locked Content Term" shall be extended up to and including June 30, 2008, provided, however, that with respect to Locked Content Products sold on or before June 30, 2008, the consumer shall be permitted to unlock any encrypted content following the expiration of the Locked Content Term, as modified herein.

5. Notwithstanding the provisions of paragraph 1.17 of the NDMA, the Parties agree that the "Multi-Session Audio Product Term" shall be extended up to and including June 30, 2008. Notwithstanding the foregoing, the Parties further agree that SONY BMG shall have not less than twelve (12) months from the initial United States release of any individual title of a Multi-Session Audio Product embodying a Relevant Sony BMG Master released prior to June 30, 2008 to continue to manufacture and distribute such Multi-Session Audio Product title. No rights are granted herein to SONY BMG to manufacture or distribute any new Multi-Session Audio Product title after June 30, 2008, which title had not been released prior to June 30, 2008.

6. Notwithstanding the provisions of paragraph 1.14 and 1.15 of the NDMA, the Parties agree that "Master Ringtones" and "Master Ringbacks" shall include Master Ringtones and Master Ringbacks delivered via the Internet to Voice-Over-Internet-Protocol (VOIP) devices.

7. Notwithstanding the provisions of paragraph 1.31 of the NDMA, the Parties agree that the "Telecommunication Personalization Products Term" shall be extended up to and including June 30, 2008. Notwithstanding the foregoing, the Parties further agree that a consumer who has purchased, prior to June 30, 2008, a Ringback Tone embodying a relevant Sony BMG Master, shall have no less than twelve (12) months from the date of purchase to continue to use that Ringback Tone.

8. SONY BMG agrees to make EMI a

**REDACTED**

9. Notwithstanding the provisions of paragraph 2.5.3 of the NDMA and its subparagraphs, in the event the Parties have not mutually agreed upon Digital Video Product rate(s) as of July 1, 2007, the Parties agree to proceed directly to arbitration in accordance with the procedures set forth in subparagraph 2.5.3.4 of the NDMA (i.e., there will be no mediation procedure) which arbitration shall commence no later than September 1, 2007 and which shall end no later than April 30, 2008.

10. Notwithstanding the provisions of paragraph 2.4.3 of the NDMA and its subparagraphs, the Parties agree that the mechanical rate for Telecommunications

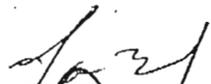
Personalization Products ("TPPs") shall be

**REDACTED**

11. Except with respect to the modifications set forth above, the NDMA is not otherwise modified.

ACCEPTED AND AGREED:

SONY BMG MUSIC ENTERTAINMENT

By:   
\_\_\_\_\_  
(An Authorized Signatory)

EMI MUSIC PUBLISHING

By:   
\_\_\_\_\_  
(An Authorized Signatory)



# FULLY-EXECUTED

June 27, 2007

EMI Music Publishing  
1290 Avenue of the Americas  
New York, New York 10104

Universal Music Group  
2220 Colorado Avenue  
Santa Monica, California 90404

Reference is made to that certain New Digital Media Agreement made as of April 1, 2005 by and between UMG Recordings, Inc. and EMI Music Publishing (together with all schedules, side letters, modifications and amendments thereto, the "NDMA"). Reference is also made to all of the agreements entered into between Universal Music Group and various services ("Services"), which constitute agreements with Services in a manner consistent with paragraph 2.5.2.1 of the NDMA ("Video Services Agreements"). The following, when signed by EMI and UMG Recordings, Inc. (collectively, the "Parties") shall modify the NDMA. All of the terms defined in the NDMA will have the same meanings herein, unless otherwise expressly provided herein.

1. Notwithstanding the provisions of paragraph 1.7 of the NDMA, the Parties agree that the "Digital Video Product Term" shall be extended up to and including December 31, 2008.
2. Notwithstanding the provisions of paragraph 1.13 of the NDMA, the Parties agree that the "Dual Disc Product Term" shall be extended up to and including December 31, 2008. Notwithstanding the foregoing, the Parties further agree that Universal Music Group shall have (i) not less than thirty-six (36) months from the initial release of any individual title of a Dual Disc Product embodying a Relevant Universal Music Group Master released prior to December 31, 2008 to continue to manufacture and distribute such Dual Disc Product title; and (ii) a perpetual right to distribute (but not manufacture) such Dual Disc Product title thereafter. No rights are granted herein to Universal Music Group to manufacture or distribute any new Dual Disc Product title after December 31, 2008, which title had not been released prior to December 31, 2008.
3. The following sentence shall be added to the end of paragraph 1.15 of the NDMA: "In the event EMI merges with or is acquired by another major music publisher, and the value of such other party is more than \$US 250 million dollars, the definition of "EMI Composition" shall not include those compositions contained in such major publisher's music publishing catalog(s)."
4. Notwithstanding the provisions of paragraph 1.20 of the NDMA, the Parties agree that the "Locked Content Term" shall be extended up to and including December 31, 2008, provided, however, that (a) with respect to Locked Content Products sold on or before December 31, 2008 or as provided below in this paragraph, the consumer shall be permitted to Unlock any encrypted content following the expiration of the Locked Content Term as modified herein, (b) Universal Music Group and/or those acting under its authority may, after December 31, 2008, fulfill any orders placed for Locked Content Products during the foregoing period, and (c) Universal Music Group and/or those acting under its authority may, after December 31, 2008, sell off any physical Locked Content Products manufactured during the foregoing period.
5. Notwithstanding the provisions of paragraph 1.26 of the NDMA, the Parties agree that the "Multi-Session Audio Product Term" shall be extended up to and including December 31, 2008, and, subject to paragraph 7 of the NDMA, shall continue in perpetuity with respect to

manufacture and distribution of any Multi-Session Audio Product title first released during the foregoing period. No rights are granted herein to Universal Music Group to manufacture or distribute any new Multi-Session Audio Product title after December 31, 2008, which title had not been released prior to December 31, 2008.

6. Notwithstanding the provisions of paragraph 1.42 of the NDMA, the Parties agree that the "Telecommunication Personalization Products Term" shall be extended up to and including December 31, 2008. Notwithstanding the foregoing, the Parties further agree that a consumer who has purchased, prior to December 31, 2008, a Master Ringback Tone embodying a Relevant Universal Music Group Master, shall have no less than twelve (12) months from the date of purchase to continue to use that Master Ringback Tone.

7. Notwithstanding the provisions of paragraph 2.5.3 of the NDMA and its subparagraphs, in the event the Parties have not mutually agreed upon Digital Video Product rate(s) as of October 1, 2007, the Parties agree to proceed directly to arbitration (i.e., there will be no mediation procedure). The arbitration process may be commenced by either Party, by sending written notice to the other Party on any date after October 1, 2007, which notice shall state that the arbitration process shall commence (the "Arbitration Process Commencement Notice"). The arbitration process set forth in subparagraph 2.5.3.4 of the NDMA (or any other mutually agreed upon arbitration process) shall then commence within fifteen (15) days following receipt of the Arbitration Process Commencement Notice. In no event shall the arbitration process described in subparagraph 2.5.3.4 (as modified herein) extend beyond a period of nine (9) months from the date the Arbitration Process Commencement Notice is first received by a party, unless the parties agree otherwise in writing.

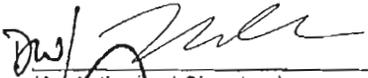
8. The Parties agree that the royalty rate for reproduction and distribution of Telecommunication Personalization Products ("TPPs") shall be

**REDACTED**

9. Except with respect to the modifications set forth above, the NDMA is not otherwise modified.

ACCEPTED AND AGREED:

UMG RECORDINGS, INC. (o/b/o itself and UNIVERSAL  
MUSIC GROUP (as defined in the NDMA)

By:   
(An Authorized Signatory)

EMI MUSIC PUBLISHING

By:   
(An Authorized Signatory)



Term Sheet for Video

EMI Music Publishing ("EMI") and Warner Music Inc. (WMG") agree promptly to conclude a definitive New Digital Media Agreement ("NDMA") based on the existing interim agreement between them dated September 12, 2005, with the following additional or modified terms:

1. Digital Video Products. The royalty rate payable to EMI under the NDMA for Digital Video Products embodying substantially only Promotional Videos and other Audiovisual Recordings (i.e., not Promotional Videos and/or Audiovisual Records used in or as part of user-generated videos) shall, with respect to synchronization, reproduction and distributions by a Service, be

**REDACTED**

For the avoidance of doubt, a Promotional Video uploaded to a Service by a user and any other Digital Video Product uploaded to a Service by a user substantially all of which consists of Promotional Videos or other Audiovisual Recordings, in their entirety or in part, is licensable under this paragraph, not paragraph 2.

**REDACTED**

2. User Generated Videos ("UGVs"). Warner Music Group may exploit (excluding via any mobile or wireless (WAP) network) Relevant UGVs (solely during the Term of the NDMA and in the Territory of the NDMA), and the rate for Relevant UGVs (including any applicable per-download/per-stream rate) for the Term and Territory of the NDMA shall be negotiated by the parties in good faith until September 17, 2007. In the event the parties fail to reach an agreement on a rate by September 17, 2007, such rate shall be determined in accordance with paragraph 7. Until the parties determine a rate pursuant to the arbitration procedures as stated above, Warner Music Group will collect all monies for Relevant UGV exploitations, and, after a rate is determined, will promptly account to and pay EMI for all Relevant UGV exploitations identified as such and claimed for payment by WMG. Notwithstanding anything to the contrary contained herein, but subject to the remainder of this paragraph, EMI retains the sole and exclusive right to license (or refrain from licensing) any use of EMI Compositions in connection with Relevant WMG Masters embodied in User Generated Videos (such UGVs embodying Relevant WMG Masters referred to herein as "Relevant UGVs") by a service ("Service"). EMI agrees to issue to any secure, fiscally capable Service that has been or will be licensed by Warner Music Group with respect to Relevant UGVs a license, during the Term and in the Territory, to synchronize,

reproduce and distribute, on or through such Service, Relevant EMI Compositions embodied in such Relevant UGVs, subject to payment of the royalty rate (to be determined in accordance with the process described in Paragraph 7) or such lower rate as EMI and the Service may agree, provided, however, that EMI may, in its sole discretion, refuse to license, or have WMG act as its agent in licensing, any infringing service (i.e., a service that has exploited EMI Compositions without permission from EMI in a way that EMI reasonably views as material). In all cases, such licenses may be made available to Services either directly by EMI, or through Warner Music Group, acting as EMI's agent, upon advance written approval from EMI. Notwithstanding the foregoing, any license issued through Warner Music Group (acting as EMI's agent) to a Service shall not be "retroactive" (i.e., shall not license or waive any rights with respect to infringements or other uses of Relevant EMI Compositions occurring before the term of such license), and EMI shall not be precluded from seeking any advance (including any advance recoupable from determined royalties, provided to the extent that Warner Music Group is performing administration services with respect to UGVs (e.g., matching Master Recordings embodied in UGVs with the Compositions embodied therein), EMI shall advise Warner Music Group of same), settlement sum, or any other amount or other compensation or interest from such Service, except a royalty rate in excess of the rate determined in accordance with the process described in Paragraph 7. Solely with respect to YouTube, (a) EMI represents and warrants that it has entered into an agreement with YouTube with respect to the exploitation of EMI Compositions embodied in Relevant UGVs; (b) EMI represents and warrants that by virtue of such agreement, EMI has authorized YouTube to pay to Warner Music Group the entirety of the royalties payable for the use of both Relevant WMG Masters and Relevant EMI Compositions in Relevant UGVs; (c) EMI and WMG shall negotiate a royalty rate in good faith in accordance with the procedure set forth above in this Paragraph 2, and, in the event the parties fail to agree within a mutually agreed amount of time, the parties will submit such determination to arbitration in accordance with the procedure set forth in Paragraph 7; (d) WMG will perform "matching" with respect to Relevant UGVs identified as such and claimed for payment (that is, determine which EMI Compositions are embodied in those Relevant UGVs), and calculate EMI's pro rata share of the applicable royalty; and (e) once the publisher's share of the total royalties payable by a Service for the use of both Relevant WMG Masters and musical compositions in Relevant UGVs has been determined by mutual agreement or arbitration, WMG shall account and pay to EMI

In the case of any Service with which EMI has a direct agreement concerning UGVs, the provisions of Paragraph 18 of the NDMA shall not apply to any consideration solely applicable to UGVs that is paid or payable pursuant to any agreement between Warner Music Group and a Service whereby Warner Music Group licenses the Service with respect to UGVs as EMI's agent under this paragraph 2. For the avoidance of doubt, Paragraph 18 of the NDMA shall apply to any consideration paid or payable to Warner Music Group pursuant to such agreement applicable to other New Digital Media Products pursuant to the NDMA. Regardless of which licensing methodology is employed, the rights granted to such Service to reproduce and distribute EMI Compositions in Relevant UGVs shall be granted solely on a "quitclaim basis" (i.e., EMI grants only those rights that EMI has the right to grant in the EMI Compositions, and no other rights), shall extend only to EMI Compositions (as defined in the NDMA), and EMI shall, in all events, have a right to demand a "take down" with respect to any videos in the following circumstances: (a) posting of the videos constitutes a violation of such Service's terms of use or the agreement between EMI or Warner Music Group and the Service, (b) legal risk to EMI, as determined in EMI's reasonable discretion, (c) where a video is disparaging to a writer or artist, or (d) an actual writer, or writer management or agent complaint. EMI shall not pursue, or cause or encourage any

REDACTED

writer, co-publisher or other third party to pursue, any action for copyright infringement against Warner Music Group, a Service licensed pursuant to this paragraph 2, or a user of such a Service for reproduction or distribution of a Relevant UGV through such a Service during the term of such license, except where (a) EMI has requested a "take down" (and in such a case only against the Service and only if the Service does not, promptly after being requested to do so, use commercially reasonable filtering technology promptly to curtail distribution of the Relevant UGV), and/or (b) Warner Music Group has asserted or is pursuing an action or claim for copyright infringement against such Service or such user. In addition, EMI reserves the right, in individual cases, to take legal action against particular individual users who are engaging in behavior that EMI believes, in its reasonable discretion, to be particularly egregious violations of EMI's rights or the rights of EMI writers.

3. Reserved Services. Notwithstanding anything to the contrary contained herein, absent EMI's advance written approval, the following Services may not be licensed by Warner Music Group as EMI's agent with respect to UGVs:

**REDACTED**

4. TPPs.

5. Term. The NDMA shall be extended through the end of the month one year from the date of signing of this term sheet.

6. Each party (the "Grantor") grants the other (the "Grantee") a royalty-free, limited license under the Grantor's rights with respect to Relevant WMG Masters (in the case of Warner Music Group) or Relevant EMI Compositions (in the case of EMI) during the term of the NDMA and in the Territory to authorize third party web site monitoring services ("Monitoring Services") to create "fingerprints" of Relevant WMG Masters ("Fingerprints"), solely for the non-commercial purpose of reporting to the Grantee data regarding sites that are using the Grantee's intellectual property without authorization (or sites that are permitting their users to use the Grantee's intellectual property without authorization). Fingerprints may only be used for this specific purpose, and, once the term of any agreement between the Grantee and a Monitoring Service ends, the Monitoring Service must either (a) return all copies of Fingerprints to the Grantee; or (b) destroy all copies of Fingerprints, and provide sufficient proof to the Grantee that such copies were destroyed.

7. Arbitration. The parties agree that the following issues will be decided by the arbitration procedures set out in the NDMA or such other arbitration procedures as the parties may determine (unless one or more of such issues are resolved by negotiation within the relevant time periods set forth above):

- **Minimum Rates for Digital Video Products:** (a) Whether minimums are appropriate for one or more types of Digital Video Products; and (b) if minimums are appropriate for one or more types of Digital Video Products, the minimum rates for each such Digital Video Product.
- **User-Generated Video Rates:** The rates for Relevant UGVs (including any applicable per-download/per-stream rate) for the Term and Territory.

- **Advances:** (a) Whether, in addition to the royalties payable hereunder, at the end of the term of an agreement between Warner Music Group and a Service, as such term may be extended from time to time upon mutual agreement by Warner Music Group and the Service, Warner Music Group should, in certain circumstances, pay EMI

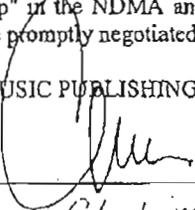
REDACTED

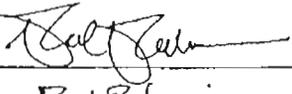
8. Performance. For clarity, all rights granted herein shall be exclusive of performance.

9. Miscellaneous. Steve Englund and Frank Scibilia will address the "fairly non-substantive clean-up" in the NDMA and the parties will enter into definitive long-form agreements which shall be promptly negotiated in good faith by the parties.

EMI MUSIC PUBLISHING

WARNER MUSIC INC.

By: 

By: 

Name: Clark Miller

Name: Paul Robinson

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: 8/22/07

Date: 8/29/07



EMI Entertainment World Inc.  
1290 Avenue of the Americas  
New York, New York 10104

January 31, 2007

MusicNet, Inc.  
845 Third Avenue, 11<sup>th</sup> Floor  
New York, New York 10022

Attn: Cindy Charles, Esq.

Re: License to Reproduce and Distribute EMI Compositions as Conditional Downloads and/or On-Demand Streams via Approved Services

Dear Cindy:

We are pleased to submit this short form agreement which sets forth the basic terms of the agreement between EMI Entertainment World Inc. ("EMI") and MusicNet, Inc. ("MusicNet") granting to MusicNet the limited right and non-exclusive license to reproduce and distribute, through Approved Services, Conditional Downloads and/or On-Demand Streams of Master Recordings embodying EMI Compositions (as such terms are defined below). Notwithstanding that the parties intend to negotiate a more definitive long-form agreement subsequent to the execution of this short form agreement (the "**Long Form Agreement**"), this short form agreement (the "**Agreement**") shall govern and be legally binding on both parties unless and until such Long Form Agreement is executed. Accordingly, we hereby agree as follows:

1. Definitions.

(a) An "**Approved Service**" shall mean any online service licensed by MusicNet in accordance with and subject to the terms hereof that is owned and operated by a third-party (an "**Approved Service Provider**") and (a) that reproduces and/or distributes to Subscribers, in exchange for a monthly or other periodic monetary payment or fee or is offered on an advertiser-supported basis, Conditional Downloads and/or On-Demand Streams, in accordance with the terms and conditions of this Agreement, and (b) has been approved in advance and in writing by EMI, or is on a list of Approved Services that have been "pre-approved" by EMI, such approval, in either case, not to be unreasonably withheld.

(b) A "**Composition**" shall mean a copyrighted, non-dramatic musical composition. For the avoidance of doubt, Compositions shall not include sound recordings of musical compositions.

(c) A "**Conditional Download**" shall mean a time- and use-limited Digital File that (a) is distributed via an Approved Service to a Subscriber's computer hard drive, (b) may be transferred by the Subscriber from the computer hard drive to which it was initially distributed to up to a limited number of DRM-enabled consumer electronics devices owned by such

Subscriber, and (c) in all events, shall become unplayable on the computer hard drive to which it was initially distributed and all other consumer electronics devices to which it was subsequently transferred thirty days (30) from the earlier of (i) the lapse, expiration or termination of the Subscriber's subscription, or (ii) the conclusion of the Term.

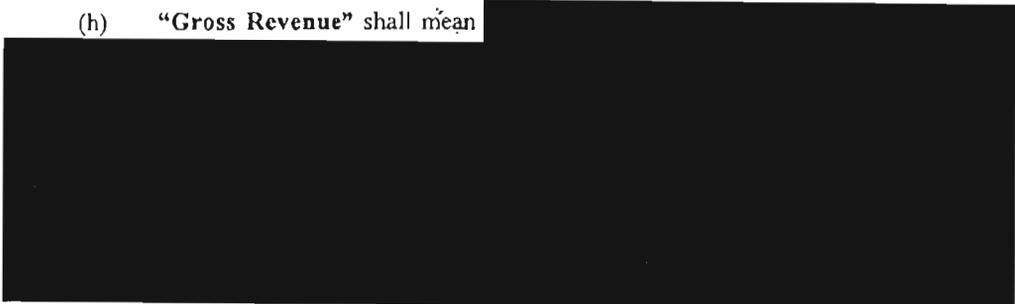
(d) A "**Digital File**" shall mean any single DRM-protected digital copy of a Master Recording, including, without limitation, a Licensed File.

(e) "**DRM**" shall mean industry-standard digital rights management technology that imposes effective, secured controls over the use of a Composition and any Master Recordings embodying such Composition, and that is designed to prevent the creation of a permanent, playable digital audio file.

(f) "**Effective Date**" shall mean January 1, 2007.

(g) An "**EMI Composition**" shall mean a Composition in which the rights which are the subject of this Agreement, and which are to be the subject of the Long Form Agreement, are owned or controlled by, or licensed to, EMI, in whole or in part, in the Territory, and which are available, to the extent of EMI's ownership or control thereof, and to the extent of its rights, for the purposes described herein, subject to any restrictions or limitations thereon imposed pursuant to songwriter agreements or otherwise. With respect to any such Composition which may be owned or controlled by EMI only in part, the term "EMI Composition" shall only refer to that portion of the musical composition controlled by EMI. MusicNet acknowledges that EMI may, in the normal course of business, and otherwise, lose rights with respect to Compositions, in which event such Compositions may cease to be EMI Compositions hereunder, and EMI shall have no liability to MusicNet or any other party with respect to the unavailability of such Compositions. Notwithstanding the foregoing, the rights granted to MusicNet herein shall, to the extent possible under relevant law and contract, extend for the entire Term, and EMI's successor's rights shall be subject to such license, to the full extent allowable under applicable law.

(h) "**Gross Revenue**" shall mean



(i) A "**Licensed File**" shall mean a Digital File embodying a Relevant Master Recording.

(j) A "**Master Recording**" shall mean an authorized audio-only master sound recording that has previously been distributed by a record label or other distributor.

(k) An **"On-Demand Stream"** shall mean an encrypted digital transmission of a Digital File of a Master Recording from a server owned or operated by MusicNet or an Approved Service Provider that allows a Subscriber to receive and listen to the particular Master Recording upon request at a time chosen by the Subscriber using streaming technology (including, without limitation, via Real Networks' RealAudio or Microsoft's Windows Media Audio formats), through the Subscriber's computer or consumer electronics device, which transmission is (a) configured by the provider of the Service such that the transmission will not result in a substantially complete reproduction of such Master Recording other than a copy used solely for caching or buffering and (b) either contemporaneous or substantially contemporaneous with the play of the Master Recording embodied therein.

(l) A **"Relevant Master Recording"** shall mean a Master Recording that embodies one or more EMI Compositions.

(m) A **"Subscriber"** shall mean any registered paying user of the Approved Service (or a user of an Approved Service that is solely advertiser-supported) and any "Trial Basis User" (as defined below) who resides in the Territory, has completed a click-through agreement and has opened a "User Account" (as defined below), for as long as such user is in "Good Standing", i.e., has complied with the terms of the click-through agreement and, if relevant, has timely paid its fees with respect to its User Account.

(n) A **"Trial Basis User"** shall mean a prospective Subscriber who has accessed the Approved Service for a "Free Trial", as defined paragraph 6(b) below.

(o) A **"User Account"** means the interface through which a Subscriber accesses the Approved Service using a unique user name and password.

2. **Grant of Rights.** Subject to the terms and conditions of this Agreement, EMI hereby grants to MusicNet the nonexclusive, non-transferable, limited right and license, solely during the Term and solely within the Territory, and solely in accordance with the terms and conditions set forth in this Agreement:

(a) to reproduce EMI Compositions solely for the purpose of accomplishing the distribution of Licensed Files in the manner described in paragraph 2(b) or 2(c) below;

(b) to distribute Licensed Files as Conditional Downloads;

(c) to distribute Licensed Files as On-Demand Streams;

(d) to reproduce and distribute excerpts of up to thirty (30) seconds in length of any Licensed File solely to promote or encourage Subscribers to purchase such Licensed File as a permanent download, Conditional Download and/or an On-Demand Stream (each a "Promo Sample"); and

(e) to sublicense the rights described in paragraph 2(a) – (d) above to Approved Service Providers.

3. **Term.** The term (the "Term") is two (2) years, commencing on the Effective Date.

4. **Territory.** The territory (the "Territory") is the United States of America.

5. **Licensing Methodology.** The rights granted hereunder shall apply solely to EMI Compositions. For the avoidance of doubt, no Composition that falls under any of the categories of restrictions annexed hereto as Schedule A (the "Restricted Compositions List") shall be exploited hereunder by MusicNet and/or any Approved Service Provider. EMI may also, at any time, send MusicNet written notice that one or more Compositions are no longer "EMI Compositions" and/or are otherwise restricted from being exploited hereunder (a "Take Down Notification"), and MusicNet and all Approved Service Providers shall promptly following receipt of such Take Down Notification cease further exploitation of such Composition(s). EMI shall exercise its rights hereunder to issue a Take Down Notification on a non-discriminatory manner relative to other licensees of EMI engaged in the same on-line distribution activity that is the subject of the particular Take Down Notification, in good faith, and not to frustrate the purposes of this Agreement.

6. **Guaranteed Advance.** MusicNet shall pay to EMI [REDACTED] (the "Guaranteed Advance"), payable as follows:

- (a) [REDACTED] on or before February 1, 2007;
- (b) [REDACTED] on or before August 1, 2007;
- (c) [REDACTED] on or before February 1, 2008; and
- (d) [REDACTED] on or before August 1, 2008.

The Guaranteed Advance shall be recoupable by MusicNet solely from the Royalties described in paragraph 7 below. The Guaranteed Advance shall be non-refundable, and EMI shall have no obligation to return any part of the Guaranteed Advance, even in the event that royalties payable to EMI for the uses hereunder do not equal or exceed the amount of the Guaranteed Advance during the Term. For the avoidance of doubt, the grant of rights as described in paragraph 2 above is conditioned upon the payment by MusicNet of the Guaranteed Advance in accordance with the schedule set forth in this paragraph, and MusicNet's failure to make any payment in accordance with such schedule (subject to the opportunity to cure within ten (10) days of delivery of written notice of such failure) shall result in the termination of all such rights.

7. **Royalties.**

(a) With respect to Conditional Downloads, during each calendar quarter beginning on the Effective Date, and for every calendar quarter during the Term thereafter (each, a "Quarterly Accounting Period"), MusicNet shall pay to EMI [REDACTED]



(b) With respect to On-Demand Streams, and subject to paragraph 8 below, MusicNet shall pay EMI



(c) Notwithstanding anything in this paragraph 7 to the contrary, EMI agrees to



(d) It is of the essence of this Agreement that all royalties payable to EMI hereunder be paid to EMI, and in a timely manner.

(e) MusicNet acknowledges and agrees that it shall not enter into any agreement or arrangement with any third party (including, without limitation, any Approved Service Provider, or any advertiser), or enter any agreement or arrangement with or make any sale or offer to any Subscriber(s), the effect or intent of which is to minimize or reduce the amounts that would otherwise constitute Gross Revenue or any other amount paid or payable to EMI hereunder, in return for increasing other amounts that might be paid or payable to MusicNet and/or an Approved Service Provider, or other such consideration, or in exchange for any other financial or promotional benefit to MusicNet and/or an Approved Service Provider. MusicNet further acknowledges and agrees that it shall use commercially reasonable efforts to secure, in all of its agreements in the future with Approved Service Providers, that such Approved Service Providers shall similarly acknowledge and agree that they shall not enter into any agreement or arrangement with MusicNet or any third party (including, without limitation, any advertiser), or enter any agreement or arrangement with or make any sale or offer to any Subscriber(s), the effect or intent of which is to minimize or reduce the amounts that would otherwise constitute Gross Revenue or any other amount paid or payable to EMI hereunder, in return for increasing other amounts that might be paid or payable to such Approved Service Provider and/or to MusicNet, or other such consideration, or in exchange for any other financial or promotional benefit to such Approved Service Provider and/or MusicNet.

(f) Notwithstanding any other provision of this Agreement, it is understood and agreed that certain royalties may have been paid or will be paid to EMI on behalf of MusicNet by Warner Music Group and/or the RIAA.



[REDACTED]

(g) [REDACTED]

8. "Determined Royalties".

(a) Additional Advance/Refund of Excess Royalties. [REDACTED]

[Redacted]

(b) Royalty Shortfall/Additional Payment to EMI.

[Redacted]

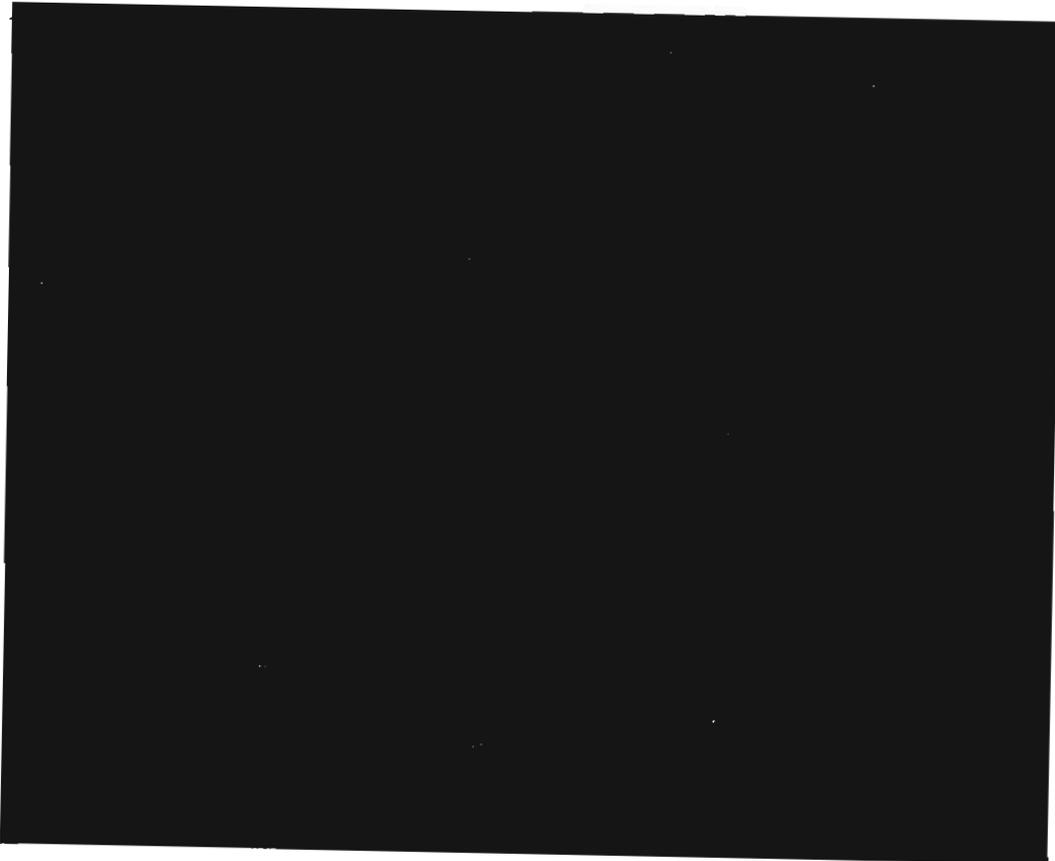
(c)

[Redacted]

9.

[Redacted]

[Redacted]



10. Accounting/Audit.

(a) Within forty-five (45) days after the end of each applicable Quarterly Accounting Period, MusicNet shall pay to EMI all royalties applicable for that period, and shall account to EMI in a manner such that EMI may pay its writers, including by providing electronic statements (“**Statements**”) indicating (i) Gross Revenue for the relevant Quarterly Accounting Period, and all financial and other relevant data supporting the calculation of Gross Revenue; and (ii) an itemization of the particular Relevant Master Recordings distributed to Subscribers via each Approved Service as Conditional Downloads and On-Demand Streams, and the number of each Relevant Master Recording distributed to Subscribers via each Approved Service as a Conditional Download and as an On-Demand Stream.

(b) In order to enable EMI to be satisfied that it is being accounted to on an accurate and timely basis (including by verifying that the calculation of Gross Revenue is correct), EMI and/or EMI’s designated representative shall also have the right to audit and examine the books, records and computer servers of MusicNet with respect to all exploitations covered by this Agreement and the calculation of Gross Revenue. EMI may conduct no more than one audit in any given calendar year. MusicNet shall cooperate with EMI and/or EMI’s designated representative to assist EMI and/or such representative in conducting such audit and in understanding all such material. To the extent any material contains information subject to a

confidentiality agreement between MusicNet and a third-party, MusicNet shall provide such material solely to an independent accountant or auditor retained by EMI (the identity of which EMI shall notify MusicNet, in writing, prior to an audit) (collectively, "**Confidential Third Party Information**"). EMI acknowledges the confidential nature of the terms and conditions contained in such Confidential Information and agrees that neither it, nor its accountant or auditor, shall disclose Confidential Information to any other person, or use any Confidential Information for any purpose other than as contemplated hereby, without the prior written consent of MusicNet.

11. Limitations on Grant of Rights.

(a) The rights granted hereunder are limited solely to EMI Compositions as embodied in and solely in conjunction with Master Recordings. This agreement grants no right to synchronize or make any other audio-visual use of any EMI Composition, to use any EMI Composition in a video game, or to exploit any EMI Composition as a ringtone, ringback tone, or other telecommunication personalization product.

(b) This Agreement does not authorize or permit any use of any EMI Composition not expressly set forth herein, and no implied licenses are granted herein. EMI reserves all rights not specifically granted hereunder.

(c) This Agreement does not include the right to alter the fundamental character of the music of any EMI Composition in any way, to excerpt or use only a portion of any EMI Composition (except in the manner expressly permitted in paragraph 2(d) above), or to create any derivative work based in whole or in part on an EMI Composition.

(d) This Agreement grants no right of public performance.

(e) This Agreement grants no right to make any permanent digital phonorecord delivery.

(f) Neither MusicNet nor any Approved Service shall cause any particular advertisement, sponsorship or other commercial message ("**Advertisement**"): (i) to appear in response to, or otherwise to be associated with, a user's selection of, search for, playback of or access to any particular EMI Composition (including any Relevant Master Recording or other recording embodying any EMI Composition), except to the extent such Advertisement directly and solely promotes the sale of a particular Relevant Master Recording, Conditional Download or On-Demand Stream being played or accessed by such user at the time the Advertisement appears; (ii) to appear in response to, or otherwise to be associated with, a user's selection of or search for any particular writer, artist or publisher; (iii) to suggest or imply in any way that EMI or any EMI Composition, Relevant Master Recording, Conditional Download, On-Demand Stream, Licensed File, writer, or artist is associated with or endorsing such Advertisement or any other Advertisement, product or service; or (iv) to suggest or imply that the Advertisement is part of or integrated into any EMI Composition, Relevant Master Recording, Conditional Download, On-Demand Stream, or Licensed File (the foregoing, collectively, "**Prohibited Endorsements**"). For clarity, MusicNet and Approved Services may present advertisements during the Subscriber's selection, search or playback of any Licensed File, provided no such

advertisements are selected or played based upon the particular writer, artist, or Licensed File selected.

(g) The limitations on the grant of rights contained in this paragraph shall also be contained in any Long Form Agreement.

12. **General.**

(a) This Agreement is executed voluntarily and without any duress or undue influence on the part of or behalf of the parties hereto. The parties further acknowledge that:

- (i) they have read this Agreement;
- (ii) this Agreement has been negotiated independently from any other agreement between the parties;
- (iii) they have been represented in the preparation, negotiation, and execution of this Agreement by legal counsel of their own choice or that they have voluntarily declined such counsel;
- (iv) they understand the terms and consequence of this Agreement; and
- (v) they are fully aware of the legal and binding effect of this Agreement.

(b) Counsel for EMI will prepare a more definitive Long Form Agreement and any other necessary ancillary agreement(s) which shall collectively contain the basic terms set forth herein, along with any other necessary provisions customary in similar transactions, and which shall be reviewed by both parties and their counsel. The parties agree to negotiate in good faith and to use their respective best efforts to conclude and sign the Long Form Agreement as soon as possible, but, unless and until such Long Form Agreement is executed, this Agreement (i) shall govern and be legally binding on both parties, (ii) represents the entire understanding of the parties with respect to the subject matter hereof, (iii) supersedes all prior and contemporaneous agreements and understandings of the parties (whether written or oral) with respect to the subject matter hereof, and (iv) may not be altered or amended except in a written instrument executed by both parties.

(c) The terms and conditions of this Agreement are highly confidential and may not be disclosed to any third party without the written consent of the non-disclosing party unless required to do so by legal process. Notwithstanding the foregoing, either party may disclose to any third party the summary of terms attached hereto as Schedule B (the "Summary of Terms"). The parties acknowledge and agree that the Summary of Terms is for illustrative purposes only and that, in the event of a conflict between any of the terms or conditions of this Agreement and the Term Sheet, this Agreement shall control.

(d) This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York, and without reference to the conflict of laws principles of any jurisdiction. The parties agree that any and all claims arising under or with respect to this Agreement or relating thereto shall be heard and determined by the state and federal courts

located in the County and State of New York, and the parties irrevocably agree to submit themselves to the exclusive and personal jurisdiction of those courts and irrevocably waive any and all rights any such party may now or hereafter have to object to such jurisdiction.

(e) Each of EMI and MusicNet represents and warrants for itself that it is authorized to execute this Agreement, and to do so through the individual signing on its behalf.

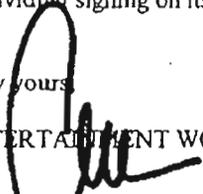
Very truly yours

EMI ENTERTAINMENT WORLD INC.

By:

Name:

Title:

  
Clark Hiller  
CC Worldwide

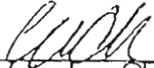
The foregoing is agreed to and accepted.

MUSICNET INC.

By:

Name:

Title:

  
Cindy Charles  
SVP+ General Counsel

Schedule A

Restricted Compositions List

Schedule B

Summary of Terms of Agreement between  
EMI Entertainment World Inc. and MusicNet, Inc.

**Licensor:** EMI Entertainment World Inc. ("EMI").

**Licensee:** MusicNet, Inc. ("MusicNet").

**Grant of Rights:** The non-exclusive right to reproduce and distribute certain musical compositions owned and/or controlled by EMI and embodied in audio-only sound recordings as conditional downloads and on-demand streams, and the right to sublicense such rights to service providers approved in advance and in writing by EMI ("Approved Service Providers").

**Term:** Two (2) years.

**Territory:** United States of America.

**Royalty Rate:** Conditional Downloads: MusicNet will pay to EMI [REDACTED]

On-Demand Streams: [REDACTED]

**Accounting/Audit:** MusicNet shall account to EMI on a quarterly basis. EMI has right to audit and examine books, records and computer servers of MusicNet with respect to exploitations covered by the Agreement and the calculation of Gross Revenue.

**Limitations on Grant of Rights:** Rights granted limited solely to exploitation of EMI Compositions embodied in and solely in conjunction with audio-only master sound recordings as Conditional Downloads and On-Demand Streams. No right of public performance. No right to make permanent digital phonorecord deliveries.

**Governing Law/Forum:** New York.

**Terms of Agreement Control:** The parties acknowledge and agree that this Summary of Terms is for illustrative purposes only and that, in the event of a conflict between any of the terms or conditions of this Agreement and the Term Sheet, this Agreement shall control.

**EXHIBIT E**

Intentionally Left Blank



## AGREEMENT

This Agreement ("**Agreement**") is made as of the 1st day of July, 2007 (the "**Effective Date**"), by and between imeem, Inc., a Delaware corporation with an office at 139 Townsend Street, 4<sup>th</sup> Floor, San Francisco, CA ("**Imeem**"), and EMI Entertainment World Inc., a Delaware corporation with an office at 75 Ninth Avenue, New York, New York 10011 ("**EMI**").

WHEREAS, Imeem desires to exploit, solely via the Service, On-Demand Video Streams of Label Videos (including EMI-Authorized Label Videos and Independent Label Videos), User-Generated Master Videos and User-Generated Cover Videos (as defined herein and, collectively, "**Videos**"), including Videos embodying EMI Compositions ("**Relevant Videos**") and On-Demand Audio Streams (as defined herein), including On-Demand Audio Streams embodying EMI Compositions ("**Relevant Audio Streams**"); and

WHEREAS, EMI wishes to grant to Imeem solely during the Term and within the Territory, solely via the Service (as defined herein), and solely in accordance with the terms and conditions set forth in this Agreement, the nonexclusive, non-transferable, royalty-bearing limited right and license to reproduce and distribute On-Demand Video Streams of Independent Record Label Videos, User-Generated Master Videos and User-Generated Cover Videos embodying EMI Compositions, and Relevant Audio Streams; and

WHEREAS, the parties wish to clarify in this Agreement the licensing and payment methodologies with respect to Imeem's exploitation of EMI-Authorized Label Videos (as defined herein);

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the sufficiency of which are hereby acknowledged, the parties agree as follows:

### 1. Definitions.

(a) "**Approved Functionality**" shall mean the relevant features, functions and descriptions of the Service, specifically and solely as set forth in the attached Schedule A. Any changes to the Approved Functionality that would, in EMI's sole discretion, affect EMI's rights or remedies hereunder, shall be subject to (i) EMI's advance written approval; and (ii) any additional fees, payments or royalties as mutually agreed upon by the parties.

(b) A "**Composition**" shall mean a single, copyrighted, non-dramatic musical composition. For the avoidance of doubt, Compositions shall not include so-called "mash-ups" (i.e., unlicensed mixes or combinations of two or more separate musical compositions) or sound recordings of musical compositions.

(c) "**DRM**" shall mean industry-standard digital rights management technology, including secure flash technology, that imposes effective, secure and robust controls over the use of a Composition and any Master Recordings embodying such Composition, and that is designed to prevent the creation of a permanent, playable digital video and/or audio file.

(d) An "EMI-Authorized Record Label" shall mean, throughout the Term, a Major Record Label authorized by EMI pursuant to a New Digital Media Agreement or similar agreement with EMI or an extension thereto (an "NDMA"), to act as EMI's agent in licensing to Imeem the nonexclusive, non-transferable, royalty-bearing limited right and license to reproduce, host on servers, and distribute as On-Demand Streams via the Service, EMI Compositions as embodied in Relevant EMI-Authorized Label Videos.

(e) An "EMI-Authorized Label Video" shall mean a Label Video produced and owned by an EMI-Authorized Record Label and that embodies a single, complete, Relevant Master Recording. For the avoidance of doubt, any video that has been modified in any way by a User shall not be considered an "EMI-Authorized Label Video."

(f) An "EMI Composition" shall mean any United States or United Kingdom Composition (that is, a Composition written by a writer that is a member of a United States or United Kingdom performing rights society) in which the rights which are the subject of this Agreement are owned or controlled by EMI, in whole or in part, solely to the extent of EMI's ownership or control thereof, and subject to any restrictions or limitations thereon imposed pursuant to songwriter agreements or other applicable license, administration or similar agreements with rightsholders, rights societies or any similar collective, agency, affiliation, organization or group that administers rights in Compositions. The definition of "EMI Composition" shall specifically exclude any Composition that is owned or controlled by EMI and that is (i) embodied in any third-party footage (e.g., footage owned by a media company) where EMI has already granted a license to such third-party for the use of such Composition as embodied in such footage; or (ii) embodied in any footage, recording or other material not owned or controlled by EMI that infringes the intellectual property rights (including without limitation copyright), or any other rights, of any third-party. With respect to any such Composition in which the rights that are the subject of this Agreement are owned or controlled by EMI only in part, the term "EMI Composition" shall only refer to that portion of the Composition in which such rights are owned or controlled by EMI. Imeem acknowledges that any Composition listed on the "Restricted Compositions List" annexed hereto as Schedule B, as such Schedule may be updated by EMI throughout the Term (each, a "Restricted Composition"), shall not be considered an "EMI Composition" and is not licensed for exploitation via the Service. In the event EMI merges with, is acquired by, or acquires another major music publisher, or acquires any music publishing catalog for an excess of ten million U.S. dollars (\$10,000,000), the definition of EMI Composition shall not include any composition that is contained in such major music publisher's music publishing catalog, or such acquired music publishing catalog, except to the extent that EMI owned or controlled a portion of such composition prior to said merger or acquisition. Imeem further acknowledges that EMI may, in the normal course of business, or otherwise, lose rights with respect to Compositions, in which event such Compositions may cease to be EMI Compositions hereunder, or incur additional restrictions on Compositions, in which event such Compositions may cease to be EMI Compositions hereunder to the extent of the restriction, and EMI shall have no liability to Imeem or any other party due to the fact that any particular musical composition(s) are no longer licensed under this Agreement because they are no longer owned by EMI, controlled by EMI, or permitted to be exploited in the manner set forth herein.

(g) "Gross Revenue" shall mean

REDACTED

REDACTED

(h) An "Independent Record Label" shall mean any record label other than a Major Record Label.

(i) A "Label Video" shall mean an "MTV-style" promotional music video produced and owned by a record label that embodies solely a single, complete Master Recording, and that is used by such label primarily to promote such Master Recording. For clarity, a Label Video may have additional content that is not synchronized with the Master Recording (e.g. intro footage or outro footage) or less than a complete Master Recording, provided, however, that such Label Video is produced by a record label.

(j) A "Label Video Overall Content Revenue Pool" shall, with respect to each record label, mean

REDACTED

(k) "Label Video Gross Revenue" shall, unless specified otherwise herein, with respect to each record label,

REDACTED

(l) A "Major Record Label" shall mean any record label owned or co-owned by SonyBMG Music Entertainment, UMG Recordings, Inc., Warner Music Group, Inc. or EMI Music North America.

(m) A **"Master Recording"** shall mean an authorized audio-only master sound recording, which has previously been distributed by a record label or other authorized distributor of a record label, and which has been licensed by Imeem from such record label and/or authorized distributor.

(n) **"On-Demand Audio Stream"** or **"On-Demand Audio Streaming"** shall mean a digital transmission of a single Master Recording from a secure server that allows a User to receive and listen to the particular Master Recording upon request at a time chosen by the User using streaming technology (including, without limitation, via flash format), through the User's Personal Computer, which transmission is configured by Imeem in a manner that will not result in a reproduction of such Master Recording other than a copy used solely for caching or buffering. For clarity, the play of a Master Recording transmitted via On-Demand Audio Streaming requires an active connection to the Internet simultaneously with the play of such Master Recording.

(o) An **"On-Demand Video Stream"** or **"On-Demand Video Streaming"** shall mean a digital transmission of a single Video from a secure server that allows a User to receive and view the particular Video upon request at a time chosen by the User using streaming technology (including, without limitation, via flash format), through the User's Personal Computer, which transmission is (a) configured by Imeem in a manner that will not result in a reproduction of such Video other than a copy used solely for caching or buffering and (b) either contemporaneous or substantially contemporaneous with the play of the Master Recording embodied therein. For clarity, the play of a Video transmitted via On-Demand Video Streaming requires an active connection to the Internet simultaneously with the play of such Video.

(p) The **"Publisher's Share"** shall mean

REDACTED

(q) A **"Relevant Master Recording"** shall mean a Master Recording that embodies a single, complete EMI Composition.

(r) A **"Relevant Independent Label Video"** shall mean a Label Video that reproduces, "synchronizes," embodies, or otherwise exploits a single, complete EMI Composition.

(s) A **"Relevant Label Agreement"** shall, with respect to each record label, mean the applicable agreement or agreements between Imeem and such record label by which such record label has licensed to Imeem the rights to exploit such label's Master Recordings in Label Videos and User-Generated Master Videos via the Service.

(t) A **"Relevant User-Generated Cover Video"** shall mean a User-Generated Cover Video that reproduces, "synchronizes," embodies, or otherwise exploits a single, complete EMI Composition.

(u) A **"Relevant User-Generated Master Video"** shall mean a User-Generated Master Video that reproduces, "synchronizes," embodies, or otherwise exploits a Relevant Master Recording.

(v) **"Relevant User-Generated Videos"** shall mean, collectively, Relevant User-Generated Master Videos and Relevant User-Generated Cover Videos.

(w) The **"Service"** shall mean the online, On-Demand Video Streaming and On-Demand Audio Streaming service located at [www.imeem.com](http://www.imeem.com), or viewable from or via Imeem's flash widget player (which may be used as set forth in the attached Schedule A) (the **"Widget"**) embedded on third party Web sites, and that is owned, controlled and operated by Imeem in accordance with and subject to the terms herein. The Service shall not, during the Term, be changed or altered in a manner that affects EMI's rights hereunder, including EMI's rights to be paid the royalties described herein. For the avoidance of doubt, the Service shall not be permitted to be accessed through any mobile or wireless carrier network, or optimized to be accessed via any mobile or wireless device. The Service shall, at all times during the Term, be solely "advertiser-supported" (i.e., Imeem may not charge Users any amount (whether a subscription fee, a per-play fee, or any other fee) in connection with the Service). For clarity, Imeem may charge Users fees in connection with the purchase of goods/services that are not part of the Service (e.g., wallpaper for User profile pages).

(x) A **"User"** shall mean any individual who resides within the Territory and who is authorized by Imeem to access On-Demand Video Streams and On-Demand Audio Streams via the Service solely for personal, non-commercial use. For clarity, all Users must be bound by Imeem's terms of service and/or terms of use, which terms are displayed on the Imeem site.

(y) A **"User Account"** means the interface through which a User accesses the Service using a unique user name and password.

(z) A **"User-Generated Cover Video"** shall mean any audiovisual work posted by a User on the Service that reproduces, "synchronizes," embodies, or otherwise exploits the performance of a single Composition that is not embodied in a Master Recording (i.e., a "cover version" of a Composition).

(aa) **"User-Generated Cover Video Overall Content Revenue Pool"** shall mean

**REDACTED**

(bb) A **"User-Generated Master Video"** shall mean any audiovisual work posted by a User on the Service that reproduces, "synchronizes," embodies, or otherwise exploits a single Master Recording embodying a single Composition, or more than one Master Recording (each embodying a single Composition) in succession. For the avoidance of doubt, User-Generated Master Videos shall not include so-called "mash-ups" (i.e., unlicensed mixes or combinations of two or more separate musical compositions).

(cc) **"User-Generated Master Video Gross Revenue"** shall, unless specified otherwise herein, with respect to each record label,

**REDACTED**

REDACTED

(dd) "User-Generated Master Video Overall Content Revenue Pool" shall mean,

REDACTED

(ee) "User-Generated Videos" shall mean, collectively, User-Generated Master Videos and User-Generated Cover Videos.

2. **Grant of Rights.** Subject to the terms and conditions of this Agreement, including, without limitation, Imeem's timely payment of all advances and royalties set forth herein, EMI hereby grants to Imeem, solely during the Term and within the Territory, solely via the Service, and solely in accordance with the terms and conditions set forth in this Agreement, the nonexclusive, non-transferable, royalty-bearing limited right and license to:

(a) reproduce EMI Compositions solely as embodied in Relevant Independent Label Videos and Relevant User-Generated Videos for the purpose of accomplishing the distribution of On-Demand Video Streams to Users in the manner set forth in section 2(c) below;

(b) reproduce EMI Compositions solely as embodied in Relevant Master Recordings for the purpose of accomplishing the distribution of On-Demand Audio Streams to Users in the manner set forth in section 2(d) below;

(c) distribute to Users On-Demand Video Streams of Relevant Independent Label Videos and Relevant User-Generated Videos; and

(d) distribute to Users On-Demand Audio Streams of Relevant Master Recordings.

For clarity, the grant of rights set forth herein shall not include any grant with respect to Relevant EMI-Authorized Label Videos, such rights to which shall be licensed directly from EMI-Authorized Record Labels.

3. **Term.** The term of this Agreement shall be two (2) years, commencing on July 1, 2007 (the "Term").

4. **Territory.** With respect to the rights granted herein, the territory is North America (the "Territory").

5. **Scope of License/Additional Imeem Covenants.**

(a) The rights granted hereunder shall apply only to EMI Compositions (as defined in section 1(f) above).

(b) EMI may, at any time, send Imeem written notice that one or more Compositions are no longer "EMI Compositions," are "Restricted Compositions," and/or are otherwise restricted from being exploited via the Service (each, a "**Restricted Composition**"), and are not licensed hereunder, and Imeem shall (i) add such Restricted Composition(s) to the Restricted Compositions List (annexed hereto as Schedule B); (ii) use the filtering solution described in section 6 herein to filter, remove, or block access to all videos and/or master recordings that are identified as embodying such Restricted Composition(s) and (iii) ensure that, on a going forward and continued basis during the Term, all videos uploaded to the site that are identified as embodying any such Restricted Composition(s) are removed, filtered, or blocked and that all master recordings that embody such Restricted Composition(s) are removed, filtered or blocked.

(c) EMI shall also have an Immediate right to issue a Take Down Notification (the "**Take Down Right**") with respect to any Relevant Videos and any Relevant Master Recordings in the following circumstances: (a) violation of Imeem's terms of use, end-user license agreement and/or this Agreement (including, for avoidance of doubt, violations on the use restrictions set forth in Section 5(d), below), (b) legal risk to EMI, as determined in EMI's sole discretion, (c) a complaint from a writer, a writer's management, a writer's agent and/or any other party that has relevant contractual or legal rights with respect to the Relevant Video, Relevant Master Recording or a Composition embodied therein or (d) where a Video is disparaging to a writer or artist. Imeem shall use the filtering solution described in section 6 herein to filter, remove, or block access to all videos and/or master recordings that are identified as embodying such Composition(s) that are the subject of the Take Down Notification, to the extent necessary to cure, remove, or satisfy the violation, legal risk, or complaint, as the case may be.

(d) EMI shall also have a right to prohibit the Widget from being placed on any particular third party service/Web site ("**Third Party Site**"). In the event Imeem receives notice from EMI that EMI wishes the Widget functionality to be disabled in connection with one or more Third Party Site(s), Imeem shall promptly disable such functionality with respect to such Third Party Site(s).

(e) Imeem warrants and represents that its terms of use and end user license agreements prohibit users from using EMI Compositions and Relevant Master Recordings in User-Generated Videos in any manner primarily intended as advertising for any good or service or any political campaign, or in connection with any material that is pornographic, obscene, or constitutes hate speech. Imeem shall maintain robust flagging and removal tools, including but not limited to the content identification and filtering solution described in section 6 below, to enforce such policies.

6. **Filtering Solution.**

(a) **Overview.** Imeem represents, warrants and agrees that it shall implement a so-called "content identification and filtering solution" designed to identify Videos and Master Recordings (including Relevant Videos and Relevant Master Recordings and/or EMI Compositions) on the Service such that (a) royalties can be accurately paid in accordance with section 8 herein, (b) accurate Statements can be provided in accordance with section 9 herein, and (c) videos and/or master recordings embodying Restricted Compositions and Compositions subject to a Take Down Notification can be filtered, blocked or removed from the Service.

(b) **Fingerprinting.** As part of the filtering solution, Imeem shall engage an acoustic fingerprinting vendor (the "**Fingerprint Vendor**") who shall (a) match sound recordings embodied in videos and master recordings uploaded to the Service to digital "fingerprints" of sound recordings identified by either a relevant owner or administrator of a copyright in such sound recording (e.g., a record label) or a relevant owner or administrator of a copyright in a Composition embodied in such sound recording (e.g., a music publisher) as a sound recording that is to be removed, filtered or blocked from being distributed via the Service ("**Blocked Content**"), and (b) promptly filter, remove, or block access to all videos that are matched with the audio fingerprints embodying such Blocked Content and ensure that, on a going forward and continued basis during the Term, all videos uploaded to the Service identified as embodying any such Blocked Content are removed, filtered, or blocked. All Compositions that are covered by the Restricted Compositions List shall be considered "Blocked Content" hereunder, and all Compositions that are the subject of the Take Down Notification shall be considered "Blocked Content" (to the extent necessary to cure, remove, or satisfy the violation, legal risk, or complaint that is the reason for the Take Down Notification, as the case may be).

(c) **Text-based Filtering.** In addition, as part of the filtering solution, Imeem shall, as frequently as EMI wishes but no more than once a day, run text-based searches of the User-Inputted metadata for videos uploaded to the Service to locate matches for titles of EMI Compositions, Master Recordings, Videos, songwriter or artists names, or whatever key words EMI designates which are designed to identify Relevant User-Generated Videos and/or Relevant Master Recordings ("**EMI Keywords**"). Imeem shall provide EMI with a list of Videos that contain EMI Keywords and, if EMI determines that such videos embody EMI Compositions, EMI may determine and indicate (via an electronic "tool" to be provided to EMI by Imeem) whether it wishes to license such videos under this Agreement or whether to designate such content as Blocked Content, in which case Imeem shall, promptly after notification by EMI (via the "tool"), filter, remove, or block access to such video and ensure that, on a going forward and continued basis, all uploaded videos with a hash that matches such video are treated in the same manner designated by EMI (e.g., are either licensed, or removed, filtered, or blocked).

(d) **Other Videos Identified By EMI.** In the event that EMI determines by any other means that a video embodies an EMI Composition, EMI may determine and indicate (via an electronic "tool" to be provided to EMI by Imeem) whether it wishes to license such video under this Agreement or whether to designate such content as Blocked Content, in which case Imeem shall, promptly after notification by EMI (via the "tool"), filter, remove, or block access to such video and ensure that, on a going forward and continued basis, all uploaded videos with a hash that matches such video are treated in the same manner designated by EMI (e.g., are either licensed, or removed, filtered, or blocked).

(e) **Video Hashing.** In addition, as part of the filtering solution, Imeem shall compare all videos uploaded to the Service against a library of "hashes" of video files that have previously been removed, filtered or blocked in accordance with section 5 and/or this section 6, and shall ensure that no video matching such any "hash" in such library is posted, reproduced, or distributed via the Service, and is and continues to be removed, filtered, or blocked.

(f) **Prompt Removal/Filtering/Blocking.** Master Recordings embodying Compositions that are added to the Restricted Compositions List after the Effective Date, Master Recordings embodying Compositions that are the subject of a Take Down Notification, and videos identified by EMI in accordance with sections 6(c) or 6(d) above, shall be removed, filtered, or blocked promptly, but in no event more than two (2) business days after receipt by Imeem of notice of the addition of such Composition(s) to the Restricted Compositions List, or the Take Down Notification, or the notice provided in section 6(c) or 6(d) as the case may be.

7. **Guaranteed Advances.** Imeem shall pay to EMI the following advances or guarantees as follows (collectively, the "Guaranteed Advances"):

(a) \_\_\_\_\_ for exploitations, during the first year of the Term of this Agreement, of Independent Label Videos, User-Generated Master Videos, User-Generated Cover Videos and On-Demand Audio Streams embodying EMI Compositions, which shall be payable upon execution of this Agreement; and

(b) \_\_\_\_\_ for exploitations, during the second year of the Term of this Agreement, of Independent Label Videos, User-Generated Master Videos, User-Generated Cover Videos and On-Demand Audio Streams embodying EMI Compositions, which shall be payable on or before July 1, 2008.

REDACTED

REDACTED

Guaranteed Advances be paid to EMI, and in a timely manner, in accordance with the schedule set forth in this section, and this Agreement shall not take effect until the Guaranteed Advance set forth in Section 7(a) has been paid to EMI

8. **Royalties.** During each calendar quarter beginning on the Effective Date, and for every calendar quarter during the Term thereafter (each, a "Quarterly Accounting Period"), Imeem shall pay to EMI the following royalties:

(a) **Label Videos Licensed by Independent Record Labels.** With respect to Label Videos licensed by Independent Record Labels to Imeem, Imeem shall pay EMI a royalty equal to

**REDACTED**

(b) **User-Generated Master Videos Licensed by Major Record Labels.**

**REDACTED**

REDACTED

REDACTED

REDACTED

(c) *User-Generated Master Videos Licensed by Independent Record Labels.*

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

(d) *User-Generated Cover Videos.*

(i) With respect to the reproduction and distribution on and/or via the Service, during the Term and in the Territory, of User-Generated Cover Videos embodying EMI Compositions, Imeem shall pay to EMI a royalty equal to:

REDACTED

REDACTED

(e) **On-Demand Audio Streams.** With respect to On-Demand Audio Streams, Imeem shall pay EMI

REDACTED

(f) Imeem acknowledges and agrees that it shall not enter into any agreement or arrangement with any third party (including, without limitation, any advertiser), or enter any agreement or arrangement with or make any sale or offer to any User(s), the intent of which is to artificially or fraudulently minimize or reduce the amounts that would otherwise constitute Gross Revenue, any applicable Content Revenue Pool, or any other amount paid or payable to EMI hereunder, in return for increasing other amounts that might be paid or payable to Imeem or, or other such consideration, or in exchange for any other financial or promotional benefit to Imeem.

(g) For purposes of this Section 8, plays of Videos and On-Demand Audio Streams shall not include any plays that are the lesser of: (i) thirty (30) seconds; or (ii) an amount of time that is less than thirty (30) seconds as agreed upon by Imeem and a record label pursuant to the terms of a relevant agreement between Imeem and such record label. A play of a Video that is between ten (10) seconds and twenty-nine (29) seconds in duration shall be counted as a play only if it is played for more than one-half (1/2) of the duration of such Video.

9. Accounting/Audit/Payment.

(a) For each applicable Quarterly Accounting Period, Imeem shall, within thirty (30) days after the end of the relevant Quarterly Accounting Period, pay to EMI all royalties applicable for that period in respect of the exploitation by Imeem of all Videos, and shall account to EMI in a manner such that EMI may pay its writers, including by providing electronic statements ("Statements") indicating

**REDACTED**

and (iv) an itemization of the particular Label Videos, User-Generated Master Videos, User-Generated Cover Videos and On-Demand Audio Streams reproduced and distributed to Users via the Service, the Relevant Master Recording and/or EMI Composition embodied in each such Video and Audio Stream, and the number of each such Video and Audio Stream distributed. It is of the essence of this Agreement that all royalties payable to EMI hereunder be paid to EMI, and in a timely manner.

(b) In order to enable EMI to be satisfied that it is being accounted to on an accurate and timely basis

**REDACTED**

EMI may, once per year during regular business hours upon reasonable prior written notice, have a third-party representative designated by EMI audit and examine the books, records and computer servers of Imeem and make copies and extracts of such books and records, with respect to all exploitations covered by this Agreement and the calculations of :

Imeem shall cooperate with EMI's designated representative and assist such representative in conducting such audits and in understanding and making copies of all such material. To the extent any material subject to such audit and examination contains information subject to a confidentiality agreement between Imeem and a third-party, such information shall be deemed "Confidential Information" subject to Section 13 hereunder, and Imeem may require that such representative execute a confidentiality and non-disclosure agreement that conforms with the provisions of Section 13 hereunder prior to receiving such Confidential Information.

(c) All checks to EMI shall be in United States Dollars, shall be made payable to EMI Entertainment World Inc., and shall be sent to the address set forth in section 10 below. All accountings and payments must be received by EMI on the date such payment and statement are due, according to the terms of this Agreement, time being of the essence hereof. No payments shall be diminished or reduced in any manner for any reason, including without limitation, any withholdings, currency restrictions, exchanges or taxes, and, for clarity, no amount(s) shall be set-off against, or (except as otherwise agreed) recouped from, the payments due hereunder.

(d) EMI shall be paid the relevant royalties as provided for in section 8 herein, and in accordance with the payment provisions provided for in this section 10,

regardless of whether Imeem has identified and/or cleared all or some of the other rights embodied in the relevant Video, Master Recording(s) or Composition(s), other than the rights owned or controlled by EMI.

10. **Notices.** Any notices, consent, approval, demand, or other communication to be given to EMI or to Imeem shall be sent to EMI or Imeem, as the case may be, at the address mentioned in this section 10 below, or to such other address as the party may hereafter designate by notice in writing to the other party. All notices, consents, approvals, demands, other communications and payments hereunder shall be hand delivered or sent by certified mail, return receipt requested, as follows:

To EMI: EMI Entertainment World Inc.  
75 Ninth Avenue, 4<sup>th</sup> Floor  
New York, New York 10011  
Attention: General Counsel Worldwide

With a courtesy copy to: Pryor Cashman LLP  
410 Park Avenue  
New York, New York 10022  
Attention: Frank P. Scibilia

To Imeem: Imeem Inc.  
139 Townsend Street, 4<sup>th</sup> Floor  
San Francisco, CA  
Attention: General Counsel

With a courtesy copy to: Davis Shapiro Lewit & Hayes, LLP  
689 Fifth Avenue  
New York, New York 10022  
Attention: Elizabeth Moody, Esq.

Any notice shall be deemed complete when the same (containing whatever information may be required hereunder) is deposited in any mail box properly addressed and sent as aforesaid, except that (a) all materials personally delivered shall be deemed served when actually received by the party to whom addressed, (b) air express materials shall be deemed served on the day of delivery to the air express company, (c) notices of change of address shall be effective only from the date of receipt, and (d) royalty statements may be sent by regular mail and shall be deemed rendered when actually received by EMI.

11. **Limitations and Reservation of Rights.**

(a) This Agreement relates only to EMI Compositions and only to their use as embodied in Videos and On-Demand Audio Streams. Notwithstanding anything to the contrary expressly or impliedly contained herein, this Agreement grants Imeem no right to itself create any work or content of any kind (including, without limitation, any audiovisual or derivative work) embodying any Relevant Master Recording and/or EMI Composition in whole or in part, but only to reproduce and distribute the EMI Compositions embodied in On-Demand Audio Streams of Relevant Master Recordings and On-Demand Video Streams of User-Generated Master Videos and User-Generated Cover Videos created and posted by Users and Independent Label Videos licensed and

supplied by Independent Record Labels. For the avoidance of doubt, this Agreement does not grant Imeem any right to itself "synchronize" Relevant Master Recordings and/or EMI Compositions with any audiovisual material, or create any derivative work based in whole or in part on a Relevant Master Recording and/or EMI Composition.

(b) This Agreement does not authorize or permit any use of any EMI Composition not expressly set forth herein, and no implied licenses are granted herein. EMI reserves all rights not expressly granted to Imeem hereunder. All rights granted hereunder are granted on a non-exclusive basis.

(c) Except as may be specifically provided for herein, this Agreement does not in any way affect any musical composition other than an EMI Composition, and EMI does not by this Agreement license or agree to license any exploitation of any EMI Composition outside of the Term or Territory.

(d) No right of public performance is granted under this Agreement. For clarity, notwithstanding anything herein, where a performance license is required in order for Imeem to exploit any Video, Imeem shall obtain such license under a separate agreement.

(e) This Agreement grants no right to permit downloads of Videos or Relevant Master Recordings or EMI Compositions embodied therein on a permanent basis (including any right to make any permanent digital phonorecord delivery).

(f) Without limiting the force and effect of the foregoing, this Agreement does not include the rights to reproduce, distribute, synchronize, use or exploit an EMI Composition in any digital media format not specifically provided herein, in any broadcast or cablecast service, or in any on-line service (whether viewable in real time or downloadable), interactive program, platform, media or storage device other than the Service.

(g) No right whatsoever is being granted hereunder to use or authorize other persons to use the titles of EMI Compositions, or the names (including any professional names, previously, now or hereafter used), signatures, voices, likenesses, biographical materials and/or any other information concerning, or regarding any of the composers of an EMI Composition, for any purpose whatsoever.

(h) This agreement grants no right to use any EMI Composition in a video game, or to exploit any EMI Composition as a ringtone, ringback tone, or other so-called "telecommunication personalization product."

(i) This Agreement grants no rights or licenses in sound recordings, including any sound recordings embodied in any Video or Master Recording, and Imeem warrants and represents that it shall obtain any and all rights required from any owners of any Master Recordings.

(j) This Agreement grants no print, display or karaoke rights.

(k) This Agreement grants no right to alter the fundamental character of any EMI Composition.

(l) This Agreement grants no merchandising rights, or rights to use any EMI Composition for a marketing campaign, product tie-in, game or contest, or otherwise to advertise, promote or cross-promote any product or service, including the Service.

(m) No EMI Composition shall be exploited in, on or via the Service along with or in connection with any content the rights to which have not been cleared and/or that infringes upon the rights of EMI or any third-party and/or is libelous, derogatory, defamatory, scandalous and/or does not comply with Imeem' posted guidelines for Users.

(n) Imeem shall not cause nor allow any third party to cause any particular advertisement, sponsorship or other commercial message ("**Advertisement**"): (a) to suggest or imply in any way that EMI or any EMI writer or artist is associated with or endorsing such Advertisement or any other Advertisement, product or service; or (b) to suggest or imply that the Advertisement is part of or integrated into any EMI Composition, Relevant Master Recording or Video embodying any EMI Composition (the foregoing, collectively, "**Prohibited Endorsements**"). Any advertisement, sponsorship or commercial message that endorses or promotes one or more of the following shall also be considered a "Prohibited Endorsement": (i) tobacco; (ii) prescription drugs; (iii) feminine hygiene or incontinence products, toilet paper, or diapers; (iv) firearms; (v) political or religious endorsements; and (vi) pornography. In the event that EMI notifies Imeem that a particular Advertisement or category of Advertisement can never appear on the same page as a particular Relevant Label Video, Relevant User-Generated Video, Relevant Master Recording, or category of such Videos or Master Recordings (e.g., those embodying the EMI Compositions of a particular writer or artist), Imeem shall ensure that no such Advertisement or Advertisement falling within such category appears on the same page as such Video, Master Recording, or category of Videos or Master Recordings. Imeem may present advertisements during the User's selection, search or playback of any Video or Master Recording, provided no such advertisements are selected or played based upon the particular writer, artist, or Video or Master Recording selected.

(o) Nothing contained in this Agreement shall preclude or inhibit EMI's ability to take any action with respect to the infringement of its rights in any EMI Composition.

(p) For the avoidance of doubt, it is understood and agreed that no rights are granted herein to offer, sell, reproduce, display, transmit, distribute or otherwise exploit any EMI Compositions via the Service in any manner, or embodied in any content, product, or audiovisual work (including in any permanent download, or any physical copy), other than to exploit Videos as On-Demand Video Streams and Master Recordings as On-Demand Audio Streams via the Service (all solely as defined herein), in accordance with the terms herein. All rights not granted to Imeem hereunder are expressly reserved to EMI.

REDACTED

REDACTED

REDACTED

13. **Confidentiality.**

(a) For the purposes of this Agreement, "**Confidential Information**" shall mean the terms of this Agreement and any non-public information, data, usage reports, revenue reports, or other materials provided by one party to the other under or in connection with this Agreement (other than EMI Compositions, metadata, and other information intended for storage and display to Users under this Agreement) and any other information the receiving party ("**Recipient**") should reasonably have understood under the circumstances should be treated as confidential, whether or not the specific designation "confidential" or any similar designation is used, such as usage data, royalty reports, and similar information.

(b) Except with the prior written consent of the disclosing party, neither party shall use or disclose any Confidential Information other than (i) to such party's attorneys, accountants and financial representatives under a duty of confidentiality as may be reasonably necessary in order to receive their professional

advice, (ii) to such party's employees and contractors who have a need to know and any disclosure to contractors may only be to contractors who have signed a non-disclosure agreement to protect the confidential information of third parties, (iii) in connection with any legal, governmental or administrative proceeding, provided that prior written notice of such disclosure is furnished to the non-disclosing party in order to afford such non-disclosing party a reasonable opportunity to seek a protective order (it being agreed that if the non-disclosing party is unable to obtain or does not seek a protective order, disclosure of such information in such proceeding may be made without liability), (iv) in the ordinary course of such party's fulfillment of its obligations hereunder solely as necessary to fulfill its written and/or legal obligations to songwriters and record labels, (v) as required by law or the rules of any securities exchange on which such party's securities are listed ("**Exchange Disclosure**") and (vi) solely in the event of a disclosure outside of the ordinary course of business, and with notice to the other party, to the record labels. In addition, nothing in this Agreement shall prohibit or limit either party's use or disclosure of information (a) previously known to it by lawful means without obligation of confidence, (b) independently developed by or for it without use of or access to the other party's Confidential Information, (c) acquired by it from a third party which, to the reasonable knowledge of the receiving party, is not under an obligation of confidence with respect to such information, (d) which is or becomes publicly available through no breach of this Agreement or (e) that is required to be disclosed by operation of law, court order or other governmental demand (subject to the notice requirement in subsection (iii) above). Notwithstanding the foregoing, neither party shall be in breach of this Agreement for disclosing to any Rights Society that EMI has licensed to Imeem the rights granted in Section 2. In the event of a required Exchange Disclosure, the party making the Exchange Disclosure shall seek confidential treatment of the material terms of this Agreement and any Confidential Information and ensure that the other party shall (x) be provided sufficient prior notice and (y) have the right to require, in its discretion, the party making the Exchange Disclosure to seek confidential treatment for additional terms of the Agreement or any Confidential Information. This Section 13 shall survive in perpetuity after the conclusion of the Term of this Agreement or the early termination of this Agreement for any reason whatsoever.

14. **Security/Copyright Notice.** Imeem represents, warrants and agrees that all Videos and Master Recordings shall be distributed with DRM. Imeem further represents, warrants and agrees that it shall use commercially reasonable efforts to prevent the creation or exploitation of any unauthorized copies of any Videos, Master Recordings and/or EMI Compositions in any facilities in their control in any form (including but not limited to, copies created by employees or contractors outside the immediate scope of their employment) ("**Illicit Copies**"). Imeem shall use reasonable business efforts to accord appropriate copyright credit to EMI and/or its writers in a manner that is industry-standard for the relevant type of Video or On-Demand Audio Stream.

15. **Ownership.** Imeem shall not at any time, directly or indirectly, license, transfer, assign, sell or otherwise dispose of, pledge, mortgage or in any way encumber any EMI Composition or any interest of any kind therein, and/or any right or license granted hereunder, other than as provided herein, and any such purported license, transfer, assignment, sale, disposal, pledge, mortgage or encumbrance shall be void and of no effect.

16. **No Partnership.** Nothing herein contained shall create any association, partnership, joint venture or relationship of principal and agent between the parties

hereto, except as specifically provided for herein; it being understood that the parties hereto are, with respect to each other, independent contractors, and neither party shall have any authority to bind the other or the other's representatives in any way and shall not hold itself out to any person or entity as having authority.

17. **Integration.** The parties hereto agree that: (i) all understandings and agreements heretofore made between them with respect to the subject matter hereof are merged in this agreement, which fully and completely expresses their agreement with respect to the subject matter hereof and (ii) except as specifically set forth herein, all prior agreements among the parties with respect to such subject matter are superseded by this agreement which integrates all promises, agreements, conditions and understandings among the parties with respect to such subject matter. In addition, each party acknowledges that neither party nor any person acting on behalf of a party (including its agents, its representatives or its attorneys) has made any promise, representation or warranty whatsoever, express or implied, oral or written, not contained herein, and further acknowledges that they have not executed, and have not been induced to execute, this agreement in reliance upon any promise, representation or warranty. No change, modification, waiver or termination of this agreement shall be binding upon either party unless it is made by an instrument signed by an authorized officer of the party against whom enforcement is sought. A waiver by either party of any provision of this agreement in any instance shall not be deemed a waiver of such provision, or any other provision hereof, as to any future instance or occurrence. All remedies, rights, undertakings, and obligations contained in this agreement shall be cumulative and none of them shall be in limitation of any other remedy, right, undertaking, or obligation of either party. The captions of the Articles in this agreement are included for convenience only and shall not affect the interpretation of any provision.

18. **Governing Law.** THIS AGREEMENT HAS BEEN ENTERED INTO IN THE STATE OF NEW YORK, AND THE VALIDITY, INTERPRETATION AND LEGAL EFFECT OF THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS ENTERED INTO AND PERFORMED ENTIRELY WITHIN THE STATE OF NEW YORK (WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAW PRINCIPLES UNDER NEW YORK LAW). THE NEW YORK COURTS (STATE AND FEDERAL) SHALL HAVE SOLE JURISDICTION OF ANY CONTROVERSIES REGARDING THIS AGREEMENT; ANY ACTION OR OTHER PROCEEDING WHICH INVOLVES SUCH A CONTROVERSY SHALL BE BROUGHT IN THOSE COURTS IN NEW YORK COUNTY AND NOT ELSEWHERE. THE PARTIES WAIVE ANY AND ALL OBJECTIONS TO VENUE IN THOSE COURTS AND HEREBY SUBMIT TO THE JURISDICTION OF THOSE COURTS.

19. **Sophisticated Parties; Independent Counsel.** The parties hereto are sophisticated and have had the opportunity to be represented by independent counsel throughout the negotiation and execution of this Agreement. As a consequence, no presumption of any law or rule relating to the interpretation of contracts against the drafter of any particular provision should be applied in this case, and the parties hereby waive their effects.

20. **Mutual Press Release.** No party hereto shall, without the prior written consent of the other parties, issue any press release or make any other public announcement or statement relating to any terms and conditions of this Agreement or to the negotiation thereof to which such party was privy or of which it was otherwise made aware (e.g., by

being copied on correspondence or by being advised by another party to the negotiation). The parties shall mutually approve and issue a joint press release announcing the execution of this agreement, and shall mutually agree on a general description or characterization of the agreement, with which any public statements shall conform and follow in all material respects.

21. **Assignment; Change of Control.** This Agreement, and the rights, opportunities and obligations created pursuant to this Agreement, are not assignable, delegable, transferable, or sublicensable in any manner, in whole or in part, by Imeem, without the prior written consent of EMI. In the event EMI consents to such assignment, Imeem shall not be released from their obligations hereunder unless the assignee agrees in writing to be bound by all of the provisions hereof. EMI may assign or encumber its rights or obligations under this Agreement in whole or in part provided any assignee shall be bound by EMI's obligation hereunder.

22. **Warranties & Representations.**

(a) Imeem warrants, represents and covenants that: (i) it has the full right and power to enter into and fully perform this Agreement in accordance with its terms; (ii) its execution, delivery and performance of this Agreement will not violate rights granted by such party to any third party or violate the provisions of any agreement to which it is a party or violate any applicable law or regulation, including those related to personal data protection; (iii) the Service shall comply with any and all applicable federal, state and local laws, rules and regulations and (iv) except for the license described in section 2 herein, Imeem has or will obtain all necessary licenses and consents and pay all associated fees, royalties and other amounts due any third parties (e.g., record labels, unions) in connection with Imeem's activities under this Agreement, including, without limitation, any licenses and fees in respect of the public performance of any Compositions that are embodied in any Videos and/or Master Recordings.

(b) EMI warrants, represents and covenants that it has the full right and power to enter into and fully perform this Agreement in accordance with its terms and to grant the rights granted herein.

23. **Indemnity.**

(a) Imeem agrees to defend, indemnify and hold EMI, its officers, directors and employees, in addition to EMI's parent companies, subsidiaries, associated or affiliated companies, successors and/or assigns (the "EMI Indemnitees"), harmless from and against any and all damages, costs, charges, and disbursements, recoveries, judgments, penalties, expenses or losses of whatsoever kind or nature (whether or not finally adjudicated, and including any settlement thereof), including reasonable attorneys' fees and costs, that may be obtained against, imposed upon or suffered by the EMI Indemnitees by reason of, arising out of, or in connection with a third party claim relating to (i) any breach of Imeem's warranties, representations, covenants or obligations set forth herein; (ii) the failure of, or Imeem's failure to use, the Content Identification and Filtering Solution described in section 6 herein and/or Imeem's failure to filter, remove, or block access to Videos embodying Restricted Compositions and/or Compositions subject to Take Down Notifications; and (iii) the Service and/or the operation of Imeem's business.

(b) In the event EMI seeks indemnification pursuant to this Section 23 from or against the assertion of a third party claim will give prompt notice to Imeem; provided that failure to give prompt notice will not relieve the Imeem of any liability hereunder (except to the extent Imeem has suffered actual material prejudice by such failure). Imeem will have the right to control the defense of the relevant claim; and EMI will cooperate, at Imeem's expense, in such defense. Notwithstanding the previous sentence and without limiting any right of either party hereunder, Imeem will not settle any claim that imposes an obligation or liability on EMI (whether for payment of monies or otherwise) without EMI's consent (which will not be unreasonably withheld or delayed).

24. Termination.

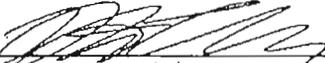
(a) Imeem understands and agrees that in the case of infringement, irreparable harm may be presumed, and EMI shall be entitled to seek appropriate injunctive relief, in addition to any other remedy that may be available at law or in equity, whether hereunder or otherwise.

(b) To the extent permitted by applicable law, and without limitation, the occurrence of any of the following events shall be considered a material breach of and default under this Agreement: (i) failure to timely pay any amount or other consideration described in section 7 or 8 herein; (ii) the material breach of any representation or warranty described in section 21 hereof following written notice and a thirty (30) day opportunity to cure (provided that such breach representation or warranty is capable of being cured); (iii) the exploitation of any musical composition owned or controlled by, or licensed to, EMI in a manner not permitted hereunder; (iv) dissolution of and/or the liquidation of all of the assets of Imeem or the business unit(s) of Imeem responsible for the Service; (v) the filing of a petition in bankruptcy or insolvency or for an arrangement or reorganization by, for or against Imeem, which is not dismissed within 90 days; (vi) the appointment of a receiver or trustee for all or a portion of the assets of Imeem or the business unit(s) of Imeem responsible for the Service, which are not dismissed or removed within 90 days; (vii) Imeem's assignment of assets for the benefit of creditors, which are not returned or reversed within 90 days; or (viii) in the event the Service fails to comply with any applicable federal, state or local laws, rules and/or regulations. Upon the occurrence of any of the events described in this section, without limiting any other remedy that may be available at law or in equity, whether hereunder or otherwise, this Agreement and all license authority pursuant to any licenses issued hereunder shall automatically and immediately terminate without the requirement of any further action by EMI.

25. **Authority to Bind.** Each party for itself represents and warrants that it is authorized to execute this Agreement, and to do so through the individual signing on its behalf.

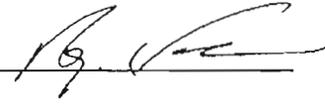
26. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

IMEEM INC.

By:   
Name: Dalton Cuidwen  
Date: November 7, 2007

OK LEGAL  


EMI ENTERTAINMENT WORLD INC.

By:   
Name:  
Date:

## SCHEDULE A

### APPROVED FUNCTIONALITY

The Approved Functionality set forth below is subject to the terms, conditions, restrictions and limitations of the agreement:

- A User of the Service can either (i) upload his/her Master Recording and/or Video file onto the Service (i.e., to be hosted solely on the Service webserver) and which may be streamed on his/her profile page or (ii) can add an existing Master Recording or Video already uploaded by another User to his/her profile page; provided, however, that only registered Users will be able to stream full audio tracks on the Service. Subject to all terms, conditions, restrictions and limitations of the Agreement, and any and all other pertinent terms, conditions, restrictions and limitations, all registered Users may stream such files using a protected streaming flash format, however, Users shall not be permitted to download Videos, Master Recordings or EMI Compositions embodied therein on a permanent basis (including any right to make any permanent digital phonorecord delivery). Imeem has established affiliated store relationships with iTunes to offer paid music downloads to users via the iTunes Internet site, and with Amazon.com to offer CDs and DVDs via the Amazon.com Internet site. Imeem warrants and represents that the Service shall include a "buy" link to either iTunes, Amazon, Imeem's own store and/or any other mutually agreed upon third party store to enable Users to purchase music and/or video.
- **Widget:** A User may embed the Widget in his/her blog or profile pages on other services/Web sites. Visitors to those pages may click on and access the content included in such Widget, however, Imeem warrants and represents that all content accessed through the Widget (regardless of what services/Web sites such Widget is present on) shall always be served by Imeem.

**SCHEDULE B**

**RESTRICTED COMPOSITIONS LIST**

(This Schedule may be amended by EMI from time-to-time during the Term)

*[TO BE ATTACHED IN EXCEL FORMAT]*

RESTRICTED WRITERS (2)

REDACTED

SCHEDULE C

DEFINITIONS OF CONTENT POOL(S) FROM RELEVANT LABEL AGREEMENTS:

1. License Agreement by and between imeem, SONY BMG MUSIC ENTERTAINMENT and SONY BMG MUSIC ENTERTAINMENT (CANADA) INC., dated as of September 21, 2007:

REDACTED

REDACTED

REDACTED

2. License Agreement by and between imeem and EMI Music Marketing, dated as of October 15, 2007:

REDACTED

**REDACTED**

3. **Online Streaming Agreement by and between imeem and Iris Distribution dated as of June 19, 2007:**

**REDACTED**

REDACTED

4. Online Streaming Agreement by and between imeem and INGROOVES dated as of July 19, 2007:

REDACTED

5. Online Streaming Agreement by and between imeem and Red Eye Distribution dated as of August 13, 2007:

REDACTED

**REDACTED**

6. **Online Streaming Agreement by and between imeem and Dualtone Records dated as of September 10, 2007:**

**REDACTED**

REDACTED



As of November 7, 2007

EMI Entertainment World Inc.  
75 Ninth Avenue  
New York, NY 10011

Imeem, Inc.  
139 Townsend Street, 4<sup>th</sup> Floor  
San Francisco, CA

This confidential agreement is made as of November 7, 2007 (the "**Effective Date**") by and among EMI Entertainment World Inc. ("**EMI**") and imeem, Inc. ("**Imeem**"). The definitions of all other capitalized terms not defined in the body of this agreement are set forth in the schedule attached to this agreement.

Imeem acknowledges and agrees that, pursuant to each NDMA between EMI and each Major Record Label, EMI has retained the sole and exclusive right to license (or refrain from licensing) any use of a Relevant EMI Composition in connection with Digital Video Products by either such Major Record Label or by a third-party service. Digital Video Products as defined in each NDMA would include On-Demand Video Streams of EMI-Authorized Label Videos. Services as defined in each NDMA would include the Service.

Notwithstanding the foregoing, each NDMA further provides that the Major Record Label that is party to the NDMA shall have the right to act as EMI's agent for the sole purpose of licensing to a service the right to exploit Relevant EMI Compositions embodied in Digital Video Products with and subject to EMI's advance approval, and subject to the royalty rates and payment provisions contained in the NDMA, and that EMI has pre-approved such Major Record Label to act as EMI's agent in licensing to the services listed on an annexed, confidential schedule (the "**NDMA Digital Video Product Pre-Approved Service Schedule**"), the right to exploit Relevant EMI Compositions embodied in Digital Video Products. The Service does not appear on any of the NDMA Digital Video Product Pre-Approved Service Schedules.

Given that Imeem has already entered into agreements with certain Major Record Labels in which such Major Record Labels purport to provide (or be able to provide) an all-inclusive license with respect to Relevant Master Recordings embodied in EMI-Authorized Label Videos (that is, a license to exploit the Master Recording, and a "pass through" license to exploit the Relevant EMI Composition embodied therein) (the "**Imeem Major Label Agreements**"), and given that Imeem wishes to obtain directly from all Major Record Labels all rights necessary to exploit EMI-Authorized Label Videos as On-Demand Video Streams via the Service (other than any necessary performance rights), Imeem has requested that EMI pre-approve the Major Record Labels to act as EMI's agent in licensing to Imeem the right to exploit EMI Compositions embodied in EMI-Authorized Label Videos as On-Demand Video Streams via the Service, by adding Imeem to each an every NDMA Digital Video Product Pre-Approved Service Schedule, and EMI hereby agrees to add Imeem to each an every NDMA Digital Video Product Pre-Approved Service Schedule, and to waive any claim that EMI may have had against Imeem for Imeem having entered into the Imeem Major Label Agreements, in consideration for the Fee (described below). Notwithstanding the foregoing, and for the

avoidance of doubt, EMI does not herein or hereby release or waive any claim to royalties and other sums that EMI is entitled to receive from the Major Record Labels, under the NDMA's, with respect to the Imeem Major Label Agreements and/or the exploitation by Imeem of EMI-Authorized Label Videos as On-Demand Video Streams via the Covered Service. Moreover, and for the avoidance about, EMI does not herein or hereby release any claim whatsoever that it may have against any Major Record Label, and no Major Record Label shall be considered a third-party beneficiary to this agreement or any provision contained herein.

In consideration of the foregoing, on or before November 7, 2007, Imeem shall pay to EMI

(the "Fee").

It is of the essence of this Agreement that the Fee be paid to EMI, and in a timely manner.

REDACTED

The parties intend that the terms and conditions of this agreement shall be considered experimental in nature, and non-prejudicial to the positions that either party may take in subsequent discussions and non-precedential with regard to any future agreements, tribunals, copyright proceedings or otherwise.

The parties hereto agree to hold the contents of this letter in confidence and to not communicate, transmit, publish, disseminate or otherwise disclose any of its terms or conditions or the negotiation thereof (collectively, "Confidential Information"); provided, however, that nothing in this paragraph shall prohibit disclosure of such Confidential Information: (i) to such party's attorneys, and accountants under a duty of confidentiality as may be reasonably necessary in order to receive their professional advice, (ii) to such party's employees and contractors who have a need to know and any disclosure to contractors may only be to contractors who have signed a non-disclosure agreement to protect the confidential information of third parties, (iii) to comply with a legal duty of disclosure in connection with any legal or governmental proceeding, provided that prior written notice of such disclosure is furnished to the non-disclosing party in order to afford such non-disclosing party a reasonable opportunity to seek a protective order (it being agreed that if the non-disclosing party is unable to obtain or does not seek a protective order, legally required disclosure of such information in such proceeding may be made without liability), (iv) in the ordinary course of such party's fulfillment of its obligations hereunder solely as necessary to fulfill its written and/or legal obligations to songwriters and record labels, and (v) solely in the event of a disclosure outside of the ordinary course of business, and with notice to the other party, to the record labels. In addition, nothing in this agreement shall prohibit or limit either party's use or disclosure of information (a) previously known to it by lawful means without obligation of confidence, (b) independently developed by or for it without use of or access to the other party's Confidential Information, (c) acquired by it from a third party which is not under an obligation of confidence with respect to such information, (d) which is or becomes publicly available through no breach of this agreement or (e) that is required to be disclosed by operation of law, court order or other governmental demand (subject to the notice requirement in subsection (iii) above).

Notwithstanding anything herein, neither party shall disclose Confidential Information to a rights society without the other party's prior written consent.

This agreement may be executed in one or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

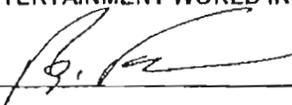
ACKNOWLEDGED AND AGREED:

IMEEM INC.

By:   
Name: Dulron Caldwell  
Date: November 7, 2007

OK LEGAL  
W.S. EG

EMI ENTERTAINMENT WORLD INC.

By:   
Name:  
Date:

## SCHEDULE A

### Defined Terms

Solely for the purposes of this agreement, the following defined terms shall have the following meanings:

1. The "**Service**" shall mean the online, On-Demand Video Streaming and On-Demand Audio Streaming service located at [www.imeem.com](http://www.imeem.com), or viewable from or via Imeem's flash widget player (the "Widget") embedded on any third party Web site, and that is owned, controlled and operated by Imeem in accordance with and subject to the terms herein. The Service shall not, during the Term, be changed or altered in a manner that affects EMI's rights hereunder, including EMI's rights to be paid the royalties described herein. For the avoidance of doubt, the Service shall not be permitted to be accessed through any mobile or wireless carrier network, or optimized to be accessed via any mobile or wireless device. The Service shall, at all times during the Term, be solely "advertiser-supported" (i.e., Imeem may not charge Users any amount (whether a subscription fee, a per play fee, or any other fee in connection with the Service), however, Imeem may link to third party music retail sites (e.g., iTunes) where Users may be charged fees for the purchase of Master Recordings).
2. "**Digital Video Products**" shall, with respect to each Major Record Label, have the same definition as in the applicable NDMA.
3. An "**EMI-Authorized Record Label**" shall mean a Major Record Label that is authorized by EMI, pursuant to and during the term of a New Digital Media Agreement or similar agreement with EMI (a "**NDMA**") or an extension thereto at least with respect to Imeem, to act as EMI's agent in licensing to Imeem rights to exploit EMI Compositions in EMI-Authorized Label Videos on or via the Service.
4. An "**EMI-Authorized Label Video**" shall mean an "MTV-style" promotional music video produced and owned by an EMI-Authorized Record Label that embodies solely a single, complete Relevant Master Recording, and that is used by such label primarily to promote such Relevant Master Recording. For clarity, an EMI-Authorized Label Video may have additional content that is not synchronized with the Master Recording (e.g. intro footage or outro footage) or less than a complete Master Recording, provided, however, that such Label Video is solely produced by a record label. For the avoidance of doubt, any video that has been modified in any way by a User shall not be considered an "EMI-Authorized Label Video."
5. An "**EMI Composition**" shall, with respect to each Major Record Label, have the same definition as in the applicable NDMA.
6. A "**Major Record Label**" shall mean any record label owned or co-owned by SonyBMG Music Entertainment, UMG Recordings, Inc., Warner Music Group, Inc., or EMI Music North America.
7. A "**Master Recording**" shall mean an audio-only master sound recording that has previously been distributed by a Major Record Label and which has been authorized by such label for distribution on or via the Service.

8. An **"On-Demand Video Stream"** shall mean a digital transmission of a single EMI-Authorized Label Video from a secure server that allows a User to receive and view the particular Video upon request at a time chosen by the User using streaming technology (including, without limitation, via flash format), through the user's Personal Computer, which transmission is (a) configured by Imeem in a manner that will not result in a reproduction of such Video other than a copy used solely for caching or buffering, and (b) either contemporaneous or substantially contemporaneous with the play of the Master Recording embodied therein. For clarity, the play of an EMI-Authorized Label Video transmitted via an On-Demand Video Stream requires an active connection to the Internet simultaneously with the play of such video.

9. A **"Relevant EMI-Authorized Label Video"** shall mean an EMI-Authorized Label Video that embodies a single, complete Relevant Master Recording.

10. A **"Relevant Master Recording"** shall mean a Master Recording that embodies a single, complete EMI Composition.

11. A **"User"** shall mean any individual who resides within the territory of the relevant NDMA who is authorized by Imeem to access On-Demand Video Streams via the Service solely for personal, non-commercial use.

**EXHIBIT G**

## AD-SUPPORTED DIGITAL MUSIC AUDITION DOWNLOAD SERVICE AGREEMENT

This Ad-Supported Digital Music Audition Download Service Agreement ("Agreement") is entered into as of August 4, 2006 (the "Effective Date") by and between LTDnetwork, Inc., a Delaware corporation located at 211 Madison Avenue, Suite 29B, New York, NY 10016, and each and every Affiliate (defined below) (individually and collectively, "Licensee"), and EMI Entertainment World Inc., a Delaware corporation with an office at 1290 Avenue of the Americas, New York, New York 10104 ("EMI").

WHEREAS, Licensee desires to offer to Users (as defined below), solely via the Service (defined and described more fully below), Audition Downloads (defined below), including those embodying EMI Compositions; and

WHEREAS, Licensee seeks licenses to reproduce and distribute the EMI Compositions as embodied in Audition Downloads solely via the Service and solely in accordance with the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the promises contained in this Agreement and for other good and valuable consideration, the adequacy and sufficiency of which each party hereby acknowledges, the parties agree as follows:

1. **Definitions.** For purposes of this Agreement, the following terms shall have the following meanings:

1.1 An "**Affiliate**" shall mean any corporation or other entity which directly or indirectly controls, or is controlled by, or is under common control with, LTDnetwork, Inc. For purposes of this definition, "control" or "controlled" means ownership, directly or through one or more Affiliates, of fifty percent (50%) or more of the shares of stock entitled to vote for the election of directors, in the case of a corporation, or fifty percent (50%) or more of the equity interest in the case of any other type of legal entity, status as a general partner in any partnership, or any other arrangement whereby any entity controls or has the right to control the Board of Directors or equivalent governing body of a corporation or other entity, or the ability to cause the direction of the management or policies of a corporation or other entity. The parties to this Agreement acknowledge that in the case of certain entities organized under the laws of certain countries, the maximum percentage ownership permitted by law for an investor is less than fifty percent (50%), and that in such case such lower percentage shall be substituted in the preceding sentence, PROVIDED THAT such investor otherwise has the power, directly or indirectly, to direct the management and policies of such entity.

1.2 An "**Audition Download**" shall mean a digital copy of an Authorized Recording that is downloaded by a User using the Qtrax Client and, upon being so downloaded, (i) is transcoded into the Approved Format, (ii) is deposited on the storage medium of the Terminal Device on which that Qtrax Client is installed, and (iii) is thereafter capable of being accessed and/or played solely via the Service and as contemplated by this Agreement, including the Usage Rules (as defined in Section 4).

1.3 The "**Approved Format**" shall mean Licensee's (i) digital file encoding format known as "MPQ" and (ii) related file encryption and digital rights management ("**DRM**") technologies (as more fully described in Exhibit A, the "Approved DRM").

1.4 An "**Authorized Recording**" shall mean a Recording that has previously been distributed, for promotional or commercial purposes, by a record label or other distributor and that has been licensed by such record label or distributor to Licensee for exploitation via the Service.

1.5 An "**Authorized Stream**" shall mean a User-initiated on-demand Stream of a Covered Download of up to thirty (30) seconds in duration solely for the purpose of allowing such User to preview such Covered Download.

1.6 A "**Covered Download**" shall mean an Audition Download for which the Authorized Recording embodies a musical composition that in whole or part is an EMI Composition.

1.7 An "**EMI Composition**" shall mean a musical composition in which the rights which are the subject of this Agreement are owned or controlled by, or licensed to, EMI, in whole or in part, in the Territory, and which are available, to the extent of EMI's ownership or control thereof, and to the extent of its rights, for the purposes described herein, subject to any restrictions or limitations thereon imposed pursuant to songwriter agreements or otherwise. With respect to any such musical composition which may be owned or controlled by EMI only in part, the term "EMI Composition" shall only refer to that portion of the musical composition controlled by EMI. Licensee acknowledges that EMI may, in the normal course of business, and otherwise, lose rights with respect to musical compositions, in which event such compositions may cease to be EMI Compositions hereunder, and EMI shall have no liability to Licensee with respect to the unavailability of such musical compositions.

1.8 The "**Gnutella Networks**" shall mean the Gnutella 1 and Gnutella 2 file transfer networks and protocols.

1.9 "**Gross Revenues**" shall mean

**REDACTED**

1.10 An "**Illegal Service**" shall mean any business or service that enables or facilitates the trading of any kind of content in any manner that is not authorized by the owner of such content

1.11 "**Internet**" shall mean the wide area of cooperative network of university, corporate, government and private computer networks communicating predominately through Transmission Control Protocol/Internet Protocol which network is commonly referred to as "the

Internet" (but which specifically excludes wireless transmissions other than IEEE 802.11x transmissions, i.e., so-called "Wi-Fi" transmissions).

1.12 The "**Launch Date**" shall mean the first date when Licensee makes the Service generally available to prospective end users located in the Territory, except the Launch Date shall in no event be later than January 31, 2007.

1.13 The "**Major Labels**" shall mean EMI Music, SONY BMG Music Entertainment, Universal Music Group and Warner Music Inc.

1.14 A "**Musical Ringer**" shall mean a so-called ringtone, master ringtone, ringback tone, music video ringtone, or other similar product (i) copied, derived from and/or embodying a musical composition or Recording and (ii) used for the personalization of wired or wireless voice and/or data communications products or services (e.g., landline telephones, wireless telephones and mobile email devices).

1.15 A "**Permanent Download**" shall mean a digital copy of a Recording which copy is protected with industry-standard DRM technology designed to prevent that copy's further viral distribution (e.g., via a peer-to-peer network).

1.16 A "**Portable Medium**" shall mean any portable, recordable digital storage medium (including, e.g., all formats of recordable CDs, DVDs, minidisks and digital memory sticks and cards) that could be used to render Audition Downloads playable in conjunction with a compatible media player.

1.17 The "**Qtrax Client**" shall mean Licensee's proprietary computer software application, by whatever names it may be known during the Term, which enables an end user thereof, after installing such application on a Terminal Device and registering it with Licensee, to access and use the Service. The Qtrax Client will be inclusive of all enhancements, patches, bug fixes, improvements, upgrades, modifications and other revisions to such application which Licensee during the Term may, in its discretion, apply thereto; provided that none of the same shall cause there to be any violation of this Agreement or any material diminution of the effectiveness of the Approved DRM.

1.18 A "**Recording**" shall mean an audio-only recording of sound, by any method now or hereafter known (regardless of any substance, material, form or format used), which (i) embodies the performance of a single musical composition and/or the spoken voice of one or more individuals and (ii) is used or useful in the recording, production and/or manufacture of records.

1.19 A "**Related Music Product**" shall mean (i) a tangible copy and/or Permanent Download of the Authorized Recording corresponding to an Audition Download, (ii) a subscription to a non-portable or portable music listening service (e.g., as offered by Napster or Rhapsody) or (c) a Musical Ringer corresponding to an Audition Download.

1.20 The "**Service**" shall mean Licensee's "Qtrax" advertiser-supported, peer-to-peer digital music auditioning service, as currently configured and marketed (i) via which Users may listen to Audition Downloads; (ii) in connection with which Licensee shall collect revenues from third-parties for advertising, promotions, sponsorships and the like in accordance with and subject to the terms and conditions of Section 7 herein and which revenues shall be shared with record labels and music publishers (including with EMI in accordance with Section 9 hereunder); and

(iii) that does not impose any Service Fee on Users. The Service will not be co-branded with any third party. In no event shall the Service allow any user to make any permanent copy of any sound recording embodying an EMI Composition, or to transfer copies of sound recordings embodying EMI Compositions to portable music playing devices.

1.21 A "**Service Fee**" shall mean a fee or charge of any kind (however characterized, e.g., as an access charge or subscription fee), whether imposed one time (e.g., upon registration of a User's Qtrax Client), on a periodic or recurring basis (e.g. monthly) or on a usage-based basis, which is charged to Users for or on account of the right to subscribe to, access or use the Service generally.

1.22 "**Stream**" shall mean the digital transmission of an Authorized Recording to the Terminal Device of a User in such a manner that (i) the audio is rendered simultaneously with its transmission and (ii) such transmission does not result in the creation of a residual or fixed copy of the audio so transmitted.

1.23 A "**Terminal Device**" shall mean an Internet-enabled desktop or laptop computer in the Territory that is capable of recognizing the Approved Format and all other applicable requirements of this Agreement (including the Usage Rules). The term "Terminal Device" excludes all mobile wireless handsets and like devices utilizing wireless communications networks.

1.24 The "**Territory**" shall mean the United States and Canada and their respective territories and possessions.

1.25 A "**User**" shall mean an individual person who (i) is an end user of a Terminal Device in the Territory, (ii) has downloaded and installed the Qtrax Client on that Terminal Device and (iii) has been authorized by Licensee to use the Service through the registration with Licensee of such installed Qtrax Client.

2. **Term.** This Agreement will take effect on the Effective Date and, unless terminated earlier as permitted herein, will expire on the earlier of (i) the one (1) year anniversary of the Launch Date and (ii) eighteen (18) months after the Effective Date (the "Term"). EMI will have no obligation to extend or renew this Agreement on any terms.

3. **Grant of Rights.** Subject to the terms and conditions of this Agreement, EMI hereby grants to Licensee the nonexclusive, non-transferable, non-sub licensable license, solely during the Term and solely within the Territory, and solely via the Service and in accordance with the terms and conditions set forth in this Agreement to:

(a) reproduce and distribute EMI Compositions embodied in Authorized Recordings as Audition Downloads (subject without limitation to the Usage Rules described in Section 4 below); and

(b) reproduce and distribute EMI Compositions embodied in Authorized Recordings as Authorized Streams.

EMI acknowledges and agrees that Licensee may license a third-party digital service provider to provide the Authorized Streams permitted hereunder, subject to EMI's advance, written approval. The rights of any successor or assign of EMI shall be subject to this Agreement to the maximum extent allowable under applicable law.

4. **Usage Rules.** The license granted in Section 3 is subject to the following rules for Users' usage of EMI Compositions as Audition Downloads (the "Usage Rules"):

(a) **Content Integrity.** An Audition Download acquired (via download or otherwise) by a particular User's Qtrax Client will be playable (i) only when that User's Terminal Device is connected to the Internet and (ii) only from the same Terminal Device on which that User's Qtrax Client was installed when such Audition Download was downloaded (it being agreed that the foregoing will be ensured also in the case of an Audition Download that a User copies to a Portable Medium). An Audition Download residing on one User's Terminal Device will be capable of being searched for and downloaded by another User of another Qtrax Client; but upon such downloading it will in turn be encrypted such that it will be playable only as contemplated in the immediately preceding sentence and in the remainder of this Section 4.

(b) **Playback Limits.** An Audition Download will be playable by a particular User's Qtrax Client, regardless of the storage media from which that Qtrax Client accesses such Audition Download, and regardless of the number of Terminal Devices on which such Audition Download is stored by a User in renderable form, no more than the then-applicable Permitted Playback Number. The "**Permitted Playback Number**" means, in respect of a particular Audition Download at any time, the maximum number of times that Licensee is then permitted, under its grant of rights from the owner of the corresponding Authorized Recording, to allow the Qtrax Client to playback such Audition Download. EMI understands and agrees that (i) as of the Launch Date, the Permitted Playback Number will be five (5), and (ii) Licensee after the Launch Date will be entitled, pursuant to its agreements with owners of Authorized Recordings, to conduct tests that will increase or decrease the Permitted Playback Number; provided that EMI's prior Approval (as defined in Section 15.3) will be required for any test that would increase that number above ten (10). Licensee will make the results of all such tests promptly available to EMI. Licensee represents and warrants that such tests will be designed primarily to stimulate the acquisition of new Users and the purchase by Users of Related Music Products.

(c) **Portable Devices.** An Audition Download will not be playable on any handheld music player, wireless communication or other portable devices.

(d) **Authorized Terminal Devices.** A User will not be permitted at the same time to (i) store Audition Downloads in a renderable form on more than three (3) Terminal Devices or (ii) log on to the same user account from two different Terminal Devices.

(e) **Additional Label-Imposed Rules.** An Audition Download will be incapable of being stored, copied, played, distributed, transferred or otherwise used in any manner that is not in accordance with such additional usage rules, restrictions, limitations and conditions as, at the time of a User's initial downloading of such Audition Download, were applied thereto pursuant to Licensee's grant of rights from the owner of the corresponding Authorized Recording.

5. **Reservation of Rights; Restrictions; Conditions; Other Obligations of Licensee.**

5.1 **Reservation of Rights.** The Licenses issued hereunder are strictly limited to the use of EMI Compositions in the manner expressly set forth in the Agreement. Any and all other rights held by EMI that are not specifically covered hereunder are reserved by EMI (and all other rights held by third parties are expressly excluded from the Licenses), including, without limitation:

- (a) any right of public performance;

- (b) any copyrights or other rights in sound recordings, including any sound recordings embodied in any Authorized Recording;
- (c) any right to use the lyrics of any EMI Composition;
- (d) any print, display or karaoke rights;
- (e) any right to synchronize any EMI Composition with any audio-visual or other material;
- (f) any right to use, exploit, or permit the use or exploitation of any EMI Composition in a video game;
- (g) any right to use, exploit, or permit the use or exploitation of any EMI Composition as a ringtone, ringback tone, or other Musical Ringer or so-called "telecommunication personalization product";
- (h) any adaptation (derivative work) rights or right to alter the fundamental character of an EMI Composition, to excerpt or use only a portion of any EMI Composition (other than the exploitation of an EMI Composition via an Authorized Stream), to combine content from multiple EMI Compositions, to combine content from an EMI Composition with any other content (e.g., audio, video, graphics, etc.) from any other source, or to create any derivative work based in whole or in part on an EMI Composition;
- (i) any merchandising rights;
- (j) any use of an EMI Composition for a marketing campaign, product tie-in, game or contest, or otherwise to advertise, endorse, promote or cross-promote any product or service;
- (k) any right to permit downloads of Authorized Recordings on a permanent basis (including any right to make any Permanent Download or any permanent digital phonorecord delivery);
- (l) any use of the title of an EMI Composition, or the name or likeness of any writer or publisher of an EMI Composition, except solely as necessary to identify the EMI Composition to Users as part of (and not to promote) the Service or as otherwise required hereunder.

**5.2 Licensee Responsible for Additional Licenses and Royalties.**

Notwithstanding anything in this Agreement to the contrary, any and all uses of Compositions by Licensee or any User, apart from use of EMI Compositions as part of authorized Audition Downloads created hereunder in accordance with the license authority and other terms and conditions hereof, shall require separate licenses from the relevant owners of any applicable copyrights or other rights, and Licensee agrees to obtain, at its own expense, appropriate licenses in advance for any other such uses. For the avoidance of doubt, Licensee shall be solely responsible for paying any share of royalties due to the relevant owners of any applicable copyrights or other rights with respect to any musical compositions to the extent not represented by EMI under this Agreement. Without limiting the foregoing, no musical composition owned or controlled by, or licensed to, EMI, in whole or in part (whether embodied in Audition Downloads or otherwise) shall be exploited in, on or via the Service along with or in connection with any content the rights to which have not been cleared and/or that infringes upon the rights of EMI or any third-party and/or is libelous, defamatory and/or scandalous.

5.3 **Limitation on Sublicenses.** The license authority contemplated by this Agreement and issued pursuant to any License issued hereunder is limited to Licensee and may not be sublicensed, assigned or otherwise transferred by Licensee other than as provided in Section 3 above with respect to Authorized Streams.

5.4 **Filtering of Unlicensed Content.** Licensee throughout the Term will utilize robust, state of the art (i.e., the best available) so-called "fingerprinting" and related "file filtering" technologies (collectively, the "**Filtering Technology**") for the purpose of ensuring that the Qtrax Client(s) will not be able to download to any Terminal Device(s) any copies of Recordings that the Filtering Technology cannot clearly identify as being Authorized Recordings (such copies, "**Unlicensed Copies**"). Licensee will not utilize any Filtering Technology that has not been approved by whichever of the Major Labels have, at the time in question, licensed Authorized Recordings to Licensee. Licensee will ensure that each time a User directs his Qtrax Client to download an Unlicensed Copy, the Qtrax Client will present the User with a message to the effect that such Unlicensed Copy is unavailable for downloading. That message will not ascribe the unavailability to any particular content owner(s).

5.5 **Operation of Service on Gnutella Networks; No Effect on Third-Party Infringement Actions.** EMI acknowledges that the Service operates via the Gnutella Networks (and Licensee represents that the Service shall operate solely via the Gnutella Networks). Nevertheless, EMI reserves all rights, with respect to infringement and otherwise, in respect of the Gnutella Networks and all protocols thereof, and any other so-called "peer-to-peer" or file transfer network or protocol. This Agreement does not affect any of EMI's rights to commence any action against any Users, or an entity other than Licensee or an affiliate thereof, for claims of infringement, or contributory, vicarious or induced infringement, or otherwise.

5.6 **No Promotion of Unauthorized Reproduction or Distribution.** Notwithstanding anything to the contrary in this Agreement, Licensee will not in any way promote the unauthorized reproduction or distribution of proprietary content, whether by "file sharing" or otherwise.

5.7 **Promotion of Related Music Products.** The Qtrax Client's playback of each Audition Download will seek to encourage, by means of a "buy now" (or comparable) button or link that will be conspicuously embedded in the Qtrax Client, the User's purchase of Related Music Products from one or more third-party providers licensed or otherwise authorized by EMI. In furtherance of the foregoing, Licensee may affiliate with wireless carriers and other third parties licensed or otherwise authorized by EMI who provide a third-party-branded or third-party/Licensee co-branded online storefront for the sale of Related Music Products.

5.8 **Licensee Websites.** Subject to obtaining EMI's prior Approval as to the form and substance of the particular reference in question, Licensee will have the right to refer generally, on websites controlled by Licensee ("**Licensee Websites**"), to the fact that EMI and/or its constituent publishing companies have made musical compositions available to registered end users of the Service.

5.9 **Territorial Restrictions.** Licensee shall take all commercially reasonable steps to verify that Users are located in the Territory (including by employing so-called "reverse IP lookup"). It is acknowledged that it may not be technically feasible for Licensee entirely to prevent the Service's distribution of Audition Downloads to Users who are outside the Territory at the time their Qtrax Clients acquire the same ("**Ex Territory Users**"). It shall not be considered a breach hereof (although Licensee's indemnity obligations under this Section and

Section 13 will apply) where such an unavoidable distribution outside the Territory occurs; provided that Licensee shall (i) not advertise or promote outside the Territory the availability of Audition Downloads, (ii) not advertise or promote inside or outside the Territory that the Service might make Audition Downloads available to Ex Territory Users, and (iii) indemnify and hold EMI and its officers, directors, employees and representatives harmless from and against any and all liabilities, damages, awards, settlements, losses, claims and expenses (including reasonable attorneys fees and costs of investigation) due to any claim by a third party relating to or arising out of the fact that such a distribution has occurred outside of the Territory. It is acknowledged that web-based advertisements of the Service might be viewable by persons outside the Territory. Such advertisements will not violate the foregoing provisions of this Section 5.9 so long as they include information to the effect that the Service is for use only by persons located in the Territory.

5.10 **Viruses, Spyware, etc.** Licensee shall ensure that the Qtrax Client does not contain any viruses, Trojan horses, trap doors, back doors, Easter eggs, time bombs, worms, cancelbots, lock-ups, spyware or other code or devices or computer programming routines that are intended to damage or detrimentally interfere with, surreptitiously intercept or expropriate any Terminal Device or computer system.

5.11 **Security.** Subject to the Usage Rules and Section 5.4, Licensee will ensure that the private key encryption technologies used to secure Audition Downloads will at all times implement best practices for those types of technologies (which will be, at a minimum, substantially equal in quality to the most recent release of the Microsoft Windows Media "Janus" DRM solution). Upon becoming aware of any security breach that could result in unauthorized access to, or unauthorized modification or other use of, any Audition Downloads (including use in violation of any of the Usage Rules), Licensee will immediately notify EMI and, at Licensee's expense, take all actions that are necessary and commercially reasonable to remedy such breach.

## 6. Licensing Methodology.

6.1 **Approved Compositions List.** The rights granted hereunder shall apply solely to EMI Compositions included on the Approved Compositions List (defined below), and only for so long as a particular EMI Composition is included on the Approved Compositions List. The "Approved Compositions List" shall mean the list of the EMI Compositions that EMI has cleared for exploitation in accordance with this Agreement by Licensee. The most current version of the Approved Compositions List as of the Effective Date is annexed hereto as Schedule A. Licensee shall, from time to time, provide EMI with written notice of additional EMI Compositions it desires to add to the Approved Compositions List, and the same shall be so added if, in EMI's sole but reasonable discretion, all relevant approvals have been obtained. For the avoidance of doubt, neither Licensee nor anyone acting on Licensee's behalf shall exploit any EMI Composition that is not on the Approved Compositions List.

6.2 **Removal of Compositions.** EMI reserves to itself the right at any time and for any reason (including, e.g., due to its loss of music publishing rights or the imposition of restrictions pursuant to songwriter agreements) to amend the Approved Compositions List, including by adding and/or removing EMI Compositions by means of a specific notice or by furnishing Licensee with an updated Approved Compositions List. In the event EMI in any manner removes an EMI Composition from the Approved Compositions List (a "Removed Composition"), Licensee shall, as promptly as practicable, but in no event later than seventy-two (72) hours after receiving from EMI an updated Approved Compositions List or a specific

notice that a particular composition(s) is to be a Removed Composition (in either case, a "**Take Down Notification**"), take such steps as are necessary to ensure that the Qtrax Client will thereafter be incapable of downloading any recording embodying such Removed Composition; it being agreed that any previously downloaded Covered Download embodying such Removed Track will remain playable by a Qtrax Client until they shall "time out" in accordance with the Usage Rules that were applied to such Covered Download at the time of its downloading by such Qtrax Client. EMI will have no liability to Licensee in respect of the unavailability of Removed Compositions. From and after Licensee's receipt of a Take Down Notification, any indemnity afforded to Licensee in Section 13 will not apply to Licensee's exploitation of such Removed Composition.

7. **Advertising on the Service.**

7.1 **General.** Licensee shall integrate third-party advertising, promotions and sponsorships in the Qtrax Client using general search and paid search-style advertising (which may include keyword-based advertising).

7.2 **Permitted Triggering of Contextual Ads.** The Qtrax Client, when taking the actions of searching for, displaying the metadata of or playing an Audition Download, may not be programmed to trigger or cause the concurrent display or playback of any advertisements or promotions that are not for legally-sold products or services that are reasonably related to such Audition Download (e.g., offers, or hyperlinks to offers, for legally-sold tangible recordings containing the corresponding Authorized Recording, Permanent Downloads of that Authorized Recording or music videos, Musical Ringers or other products derived from that Authorized Recording).

7.3 **Other Conditions.** All of Licensee's rights herein to integrate third-party advertising, promotions and sponsorships in the Service are subject to the following further conditions: (i) in the case of search and keyword-based advertising Licensee will integrate only with a paid/sponsored/algorithmic search provider (the "**Search Provider**") whose advertising sales base is sufficient to result in search results for any particular Audition Download that include multiple paid and sponsored returns, along with the normal algorithmic returns that are driven by relevance; (ii) Licensee will use reasonable efforts to ensure that the Search Provider associates search responses from at least three (3) unique paid search advertisers with any one Audition Download (by way of example only, Licensee will use reasonable efforts to ensure that the Search Provider does not allow a single advertiser to purchase all of the paid search responses relating to any particular Audition Download or Authorized Stream); (iii) Licensee will not directly associate a particular Audition Download, or any EMI Composition, writer, or artist with a specific advertiser or sponsor; and (iv) Licensee will not position any paid advertising, search, promotion or sponsorship so as to imply an "endorsement" (x) by the advertiser or sponsor of EMI or any EMI Composition or any songwriter thereof or (y) by EMI or any of its songwriters of a particular advertiser or sponsor or any product or service thereof. For the avoidance of doubt, Licensee shall neither cause nor allow any third party to cause any particular advertisement, sponsorship or other commercial message to appear in response to, or otherwise to be associated with, a user's selection of, search for, playback of or access to any particular EMI Composition (including any Audition Download or Authorized Stream embodying any EMI Composition), except to the extent such advertisement directly and solely promotes the sale of a legally-sold products or services that are reasonably related to such Audition Download (e.g., offers, or hyperlinks to offers, for legally-sold tangible recordings containing the corresponding Authorized Recording, Permanent Downloads of that Authorized Recording or music videos, Musical Ringers or other products derived from that Authorized

Recording), and Licensee shall not cause any advertisement to appear in response to, or otherwise to be associated with, a user's selection of or search for any particular Audition Download, Authorized Stream, writer, artist or publisher.

7.4 **Prohibited Ads.** Licensee will use commercially reasonable efforts to ensure that the Search Provider filters out all EMI-Prohibited Categories of search results and websites (paid or non-paid) such that those results and websites do not appear on the Qtrax Client. The "EMI-Prohibited Categories" means: (i) the business of copying, distributing or facilitating, or of knowingly enabling the copying or distribution of, copyrighted material without authorization (including any unlawful or unauthorized peer-to-peer sites, programs or services); (ii) products or services for alcohol, tobacco, gambling, pornography, firearms and any other product, service or website that is objectionable in the reasonable judgment of EMI, as communicated to Licensee by notice pursuant to this Agreement; and (iii) advertisers or websites (A) whose principal business is to offer or promote used Recordings in any formats (including, e.g., CDs, vinyl and cassette tapes) or (B) that offer or promote the unauthorized use of lyrics, album cover art or recording artist or songwriter images or likenesses.

## 8. Intellectual Property.

8.1 **Use of EMI Marks; Mislabeling and Other Errors.** If so requested by EMI and where feasible, Licensee shall display the EMI name, logo or such other EMI trademark (e.g., marks of EMI's affiliates) reasonably designated by EMI (the "EMI Marks") in a readable size and in close proximity to the associated Covered Download during the playback thereof by the Qtrax Client. Moreover, Licensee shall ensure that the provider of the Filtering Technology use its best efforts to correct any errors in the labeling of Authorized Downloads, including any mislabeled Authorized Downloads (e.g., an Authorized Download labeled with the wrong song title), and any errors relating to the EMI Marks. Except as specifically authorized pursuant to this Section 8.1, Licensee shall not use any of the EMI Marks without EMI's prior written consent. Any goodwill generated through the use of the EMI marks as permitted hereunder shall inure to EMI's sole benefit.

8.2 **Rights of EMI.** As between EMI and Licensee, EMI forever shall exclusively own all worldwide copyright rights and other intellectual property rights now or hereafter recognized in and to the EMI Compositions and EMI Marks (the "EMI Intellectual Property"). Nothing in this Agreement shall be construed to convey, and neither Licensee nor any User by virtue of the limited rights granted hereunder shall acquire, any ownership interest in any EMI Intellectual Property. Without limitation, ownership and control of any EMI Composition embodied in any Audition Download shall remain with EMI, and neither Licensee nor any User or other third party shall obtain any ownership rights in any work derived from or that makes use of the EMI Composition, including, without limitation, Audition Downloads or other digital files. Licensee shall not contest, or assist others in contesting, the validity, enforceability, ownership or title of any EMI Intellectual Property. Licensee's compliance with any statute, regulation, order, subpoena or document discovery request will not be deemed a violation of the preceding sentence, provided that Licensee uses commercially reasonable efforts to provide sufficient prior notice to EMI to allow EMI to oppose or defend such subpoena, order or request.

8.3 **Enforcement.** Licensee will (i) promptly notify EMI of any infringement or threatened infringement of any EMI Intellectual Property of which Licensee becomes aware and which arises in connection with the Service and (ii) provide reasonable assistance to EMI, at Licensee's expense, in connection therewith.

8.4 **Rights of Licensee.** As between Licensee and EMI, Licensee forever shall exclusively own all worldwide copyright rights and other intellectual property rights now or hereafter recognized (other than those expressly reserved for EMI hereunder) in and to the following: (i) the Service, the Approved Format and the Qtrax Client (including all modifications and derivative works); and (ii) the trademarks, trade names, service marks, logos and designs used by Licensee in connection with the Service, the Approved Format or the Qtrax Client. EMI shall not contest, or assist others in contesting, the validity, enforceability, ownership or title of any of those intellectual property rights. EMI's compliance with any statute, regulation, order, subpoena or document discovery request will not be deemed a violation of the preceding sentence, provided that EMI uses commercially reasonable efforts to provide sufficient prior notice to Licensee to allow Licensee to oppose or defend such subpoena, order or request.

9. **Accountings; Royalties.**

9.1 **Accountings and Royalty Payments -- Audition Downloads.** Within sixty (60) days after the end of each calendar quarter during the Term, Licensee will (i) deliver to EMI a reasonably detailed accounting (as further described in Section 9.7) of :

REDACTED

9.2 **Authorized Streams.**

REDACTED

9.3 **Timely Payment of the Essence.** EMI has the right to terminate this Agreement immediately in the event Licensee repeatedly (even if not consecutively) fails to deliver payments or accounting statements when due or omits required data from those statements.

9.4 **Late Payments.** All amounts owed hereunder not paid when due and payable will bear interest from the date such amounts are due and payable at the lesser of (a) prime or (b) the highest rate permitted by applicable law for transactions between sophisticated commercial entities.

9.5 **Taxes.** Licensee shall be solely responsible for paying to all relevant taxing authorities any applicable sales, use, goods and services or other taxes due by reason of Licensee's activities under this Agreement (other than income taxes, franchise taxes, gross receipts taxes or other similar taxes payable by EMI on monies earned by EMI hereunder).

9.6 **Method of Payment.** All payments shall be made in United States Dollars and shall be directed by wire transfer to:

Account Name: EMI Entertainment World, Inc.  
Account Number: 323-662560  
  
Bank: JP Morgan Chase Bank  
Address: 1 Chase Manhattan Plaza  
New York, NY 10081  
  
ABA #: 021000021  
SWIFT CODE: CHASUS33  
Reference: LTDnetwork, Inc. and period being remitted.

9.7 **Content of Accountings.** Licensee's accountings hereunder shall be (i) sufficient to allow EMI to verify the exploitation of all EMI Compositions, on a title-by-title basis, by all Qtrax Clients during the quarter in question and (ii) furnished to EMI no less frequently and in a manner no less beneficial than the manner in which Licensee furnishes comparable information to any other party licensing musical compositions to the Service. Each such accounting will include at least the following information for the applicable quarter: (a) an itemization (by Covered Download title, artist and ISRC) showing, for each Covered Download, the aggregate number of times during the quarter that it was (listed separately) downloaded and played by all Users; (b) an itemization (first by date, and then by Covered Download title, artist and ISRC) of the aggregate numbers of times during the month that each Covered Download was (listed separately) downloaded and played by all Users; (c) an itemization (by Audition Download title, artist and ISRC) showing, for each Audition Download, the aggregate number of times during the quarter that it was (listed separately) downloaded and played by all Users; (d) an itemization (first by date, and then by Audition Download title, artist and ISRC) of the aggregate numbers of times during the month that each Audition Download was (listed separately) downloaded and played by all Users; (e) Licensee's Gross Revenues, broken down by major sources (e.g., general advertising, search-style advertising, promotions and sponsorships, Referral Fees), and clients, and information sufficient to verify the accuracy of  
and (g) any other information  
reasonably requested by EMI for its own accounting and reporting purposes.

REDACTED

10. **Audits.**

10.1 **Books and Records.** During the Term and for two (2) years thereafter, Licensee shall keep such books and records as are necessary to verify the amounts owed to EMI under this Agreement. Once a year during the term of this Agreement and the first two (2) years thereafter, EMI, at its expense and upon ten (10) days' notice to Licensee, will have the right to examine Licensee's relevant books and records in order to verify the figures reported in any report or statement required hereunder and the amounts owed to EMI pursuant to this Agreement; provided that EMI may make such an examination (i) only once in respect of a particular report or statement, and (ii) only once during any period of twelve (12) consecutive months. Such books and records will be made available during Licensee's normal business hours at the place where these records are kept in the ordinary course of business. The books and records of Licensee and all results of any examination thereof by EMI shall constitute confidential information of Licensee. If, as a result of such examination, EMI determines that

Licensee misreported any figure or underpaid any amount, then EMI will promptly furnish to Licensee a copy of the results of its audit setting forth the discrepancy, and showing, in reasonable detail, the bases upon which the same was determined. Licensee will remit to EMI a sum equal to the amount of any underpayment within thirty (30) days after notification of the discrepancy. If such discrepancy is greater than five percent (5%) of the total amount reported by Licensee for the period audited, then Licensee will reimburse EMI for its reasonable out-of-pocket costs incurred to unaffiliated third parties as a result of the examination.

10.2 **Technical Audits.** On reasonable advance notice during the Term and for six (6) months thereafter, EMI at its expense will have the right to conduct, during the regular business hours of Licensee and/or (as applicable) an Approved Contractor (as defined in Section 15.2), on-site inspections of Licensee's and/or such Approved Contractor's relevant facilities and servers for the purpose of verifying Licensee's compliance with the terms of this Agreement and/or in order to verify the figures reported in any report or statement required hereunder and the amounts owed to EMI pursuant to this Agreement.

#### 11. Limitation of Liability.

11.1 **Force Majeure.** Neither party will be liable for any failure to perform any obligation hereunder, or from any delay in the performance thereof, due to causes beyond its control, including industrial disputes of whatever nature, acts of God, public enemy, acts of government, failure of telecommunications, fire or other casualty.

11.2 **Special Damages.** No party hereto will be liable to the other party for any indirect, incidental, special or consequential damages (including lost profits) with respect to the subject matter hereof, regardless of whether such damages could have been foreseen or prevented by either party, except with respect to: (a) Licensee's indemnification obligations pursuant to Section 13; or (b) any breach or violation by Licensee of Section 5.

#### 12. Representations; Warranties; Covenants.

12.1 **General.** Each party hereto represents, warrants and covenants that: (a) it has the full right and power to enter into and fully perform this Agreement in accordance with its terms; and (b) its execution, delivery and performance of this Agreement will not violate rights granted by such party to any third party, or violate the provisions of any material agreement to which it is a party, or violate any applicable law or regulation, including those related to personal data protection.

12.2 **Representations, Warranties and Covenants of EMI.** EMI represents and warrants that it has the full right, power and authority to enter into this Agreement and perform its obligations hereunder, and to grant to rights granted to Licensee hereunder.

12.3 **Additional Representations, Warranties and Covenants of Licensee.** In addition to the other representations, warranties and covenants of Licensee contained herein, Licensee further represents, warrants and covenants that (a) it shall take all steps necessary to implement and shall comply with its filtering and security obligations contained herein; (b) it has obtained or shall obtain from the relevant owners, at its own expense, any rights not granted hereunder that are necessary to convert EMI Compositions to Audition Downloads or to use or distribute Audition Downloads in accordance with this Agreement, including by acquiring any performance rights and any rights in sound recordings embodied in Audition Downloads; (c) it has obtained or shall obtain all necessary licenses and consents from, and will pay all

associated fees, royalties and other amounts due (if any) to any other third parties in connection with the Approved Format, the Qtrax Client and the Filtering Technology; and (d) Licensee's conversion of EMI Compositions into Audition Downloads, the reproduction and distribution thereof, and the Service and the operation thereof (including the display or other transmission of advertisements either alone or in connection with the exploitation of sound recordings, musical compositions and/or other content) (i) do not and shall not, to the best of Licensee's knowledge, infringe upon or violate the intellectual property rights, privacy or publicity rights, or other rights of any third party, (ii) comply with all applicable laws, rules and regulations, and (iii) shall not result in any liability whatsoever to EMI.

**12.4 EXCLUSION OF WARRANTIES.** EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, ALL "EMI INTELLECTUAL PROPERTY" IS MADE AVAILABLE TO PROVIDER HEREUNDER AS IS, AND EMI MAKES NO WARRANTIES, CONDITIONS, GUARANTEES OR REPRESENTATIONS (AS USED IN THIS SECTION, "WARRANTIES") WITH RESPECT TO THE SUBJECT MATTER HEREOF, INCLUDING AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, IN LAW OR IN FACT, ORAL OR IN WRITING. LICENSEE HEREBY ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY WARRANTY MADE BY EMI EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT.

**13. Indemnification.**

**13.1 General.** Each party (an "Indemnifying Party") will, both during and after the Term, indemnify and hold the other party and its officers, directors, employees and representatives (each, an "Indemnified Party") harmless from and against all liabilities, damages, awards, settlements, losses, claims and expenses (including reasonable attorneys fees and costs of investigation) due to any claim by a third party relating to or arising out of a breach by the Indemnifying Party of any of its representations, warranties, covenants and obligations hereunder. Approved Contractors will not be considered "third parties" for the purposes of EMI's indemnification obligations to Licensee.

**13.2 LICENSEE.** LICENSEE ADDITIONALLY WILL, BOTH DURING AND AFTER THE TERM, INDEMNIFY AND HOLD EMI AND ITS INDEMNIFIED PARTIES HARMLESS FROM AND AGAINST ALL LIABILITIES, DAMAGES (INCLUDING ANY PUNITIVE OR ENHANCED DAMAGES), AWARDS, SETTLEMENTS, LOSSES, CLAIMS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS FEES AND COSTS OF INVESTIGATION) DUE TO ANY CLAIM BY A THIRD PARTY RELATING TO OR ARISING OUT OF: (A) ANY CLAIM THAT THE SERVICE OR THE QTRAX CLIENT VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY (OTHER THAN FOR CLAIMS THAT THE EMI COMPOSITIONS VIOLATE THE INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY); (B) EMI'S PARTICIPATION IN THE SERVICE, INCLUDING ITS AUTHORIZATION OF THE USE OF THE FILTERING TECHNOLOGY (INCLUDING, WITHOUT LIMITATION, ANY CLAIM THAT EMI HAS CONTRIBUTED TO OR INDUCED, OR SHOULD BE HELD VICARIOUSLY OR SECONDARILY LIABLE FOR, ANY COPYRIGHT INFRINGEMENT OR OTHER VIOLATION OF OR BREACH BY ANY USER OF THE SERVICE OR OTHER THIRD-PARTY); AND/OR (C) ANY CLAIM THAT EMI IN ANY WAY FACILITATED ANY MISUSE OF ANY CONTENT IN CONNECTION WITH THIS AGREEMENT.

**13.3 Notice and Participation.** A party seeking indemnification pursuant to this Section 13 from or against the assertion of a third party claim will give prompt notice to

Indemnifying Party; provided that failure to give prompt notice will not relieve the Indemnifying Party of any liability hereunder (except to the extent the Indemnifying Party has suffered actual material prejudice by such failure). The Indemnifying Party will have the right to control the defense of the relevant claim; and the Indemnified Party will cooperate, at the Indemnifying Party's expense, in such defense. Notwithstanding the previous sentence and without limiting any right of either party hereunder, the Indemnifying Party will not settle any claim that imposes an obligation or liability on the Indemnified Party (whether for payment of monies or otherwise) without the Indemnified Party's consent (which will not be unreasonably withheld or delayed).

14. **Termination.**

14.1 ***Termination For Breach.*** In addition to any other remedy available at law or in equity or otherwise provided for herein, either party may terminate this Agreement immediately in the event of any material breach of this Agreement by the other party which is not remedied within thirty (30) days after notice of such breach (which cure period shall be five (5) days, however, for breaches of Section 3, 4, or 9.1).

14.2 ***Additional Termination Rights.*** In addition to any other remedy available at law or in equity or otherwise provided for herein, EMI may terminate this Agreement immediately in the event of: (a) any sale, lease or other transfer of all or substantially all of the assets of Licensee to any entity, other than pursuant to a reorganization of Licensee which does not involve any change in control of Licensee; (b) any change in control of Licensee (whether by merger, consolidation, stock transfer, voting power or otherwise); (c) Licensee's making an assignment for the benefit of its creditors, the filing of a voluntary or involuntary petition under any applicable bankruptcy or insolvency law, or the appointment of a trustee or receiver or any equivalent thereof for Licensee or its property; or (d) Licensee's becoming affiliated or associated in any way with an Illegal Service. For purposes of this Section 14.2, a "change in control of Licensee" means a merger, consolidation, stock transfer or other transaction in which securities possessing fifty percent (50%) or more of the combined voting power of the Licensee's then-outstanding securities having ordinary voting power with respect to the election of Licensee's Board of Directors shall be transferred to a person or persons different from the persons holding those securities immediately prior to such transaction.

14.3 ***Obligations Upon Termination.*** Promptly upon the expiration or termination of this Agreement for any reason, Licensee will: (a) immediately cease any further display of EMI Marks in any media; (b) render the Qtrax Client incapable of searching for, downloading or playing Covered Downloads (except that previously obtained Covered Downloads will remain playable until they shall "time out" in accordance with the Usage Rules that were applied to them when downloaded); and (c) delete or destroy all EMI Intellectual Property in its possession, custody or control and certify the same to EMI in writing.

15. **Miscellaneous.**

15.1 ***Similar Agreements.*** Nothing will be deemed to limit or restrict either party from entering into similar agreements with any other person or from offering services similar to the other party's.

15.2 ***Third Party Contractors.*** With EMI's prior Approval, to be given (or not given) at EMI's sole and absolute discretion, Licensee will be permitted to use the services of third party contractors to assist Licensee in providing services in respect of the Service (each, an "Approved Contractor"), in each instance solely for the benefit of Licensee and on Licensee's

behalf, on the conditions that: (a) Licensee shall be responsible for the performance of such party to the same extent as if such party's activities were performed directly by Licensee; (b) Licensee shall ensure that such party is in compliance with all of the applicable terms and conditions of this Agreement; and (c) any violation of such terms and conditions by such party shall be treated as a breach by Licensee. Upon EMI's request made from time to time, Licensee will provide EMI with a complete list of all party's who are then Approved Contractors.

15.3 **Confirmation of Approvals.** An EMI approval required under this Agreement shall not be deemed given unless it is in the form of a written approval delivered to Licensee by an EMI employee in the position of Vice President or above (an "Approval"). Licensee acknowledges that an Approval may be conditioned on Licensee's complying with any additional terms set forth in such Approval, and such terms shall form an integral part of this Agreement.

15.4 **Controlling Law.** This Agreement will be deemed to have been executed and delivered in New York, New York, and will be governed by and construed in accordance with the laws of New York. Each party consents to the exclusive jurisdiction of the state and federal courts located in New York County, New York, for the adjudication of any disputes arising out of this Agreement.

15.5 **Notices.** Except as otherwise provided herein, whenever any notice, request, consent, approval or other communication shall be given by one party hereto to the other, such communication shall be in writing and shall be delivered by personal delivery, express courier, confirmed facsimile, confirmed email or certified or registered mail, return receipt requested, addressed as follows:

<b>If to EMI:</b>	EMI Entertainment World, Inc. 1290 Avenue of the Americas New York, NY 10104 Attn: Senior Vice President, Legal and Business Affairs
<b>With a copy to:</b>	Pryor Cashman Sherman & Flynn LLP 410 Park Avenue New York NY 10022-4441 Attn: Frank Scibilia, Esq.
<b>If to Licensee:</b>	LTDnetwork, Inc. 211 Madison Avenue, Suite 28B New York, NY 10016 Attn: Allan Klepfisz, President
<b>With a copy to:</b>	Bomser & Studnicky LLP 853 Broadway, Suite 1001 New York, NY 10003-4719 Attn: Lawrence J. Studnicky III, Esq.

15.6 **Assignments.** This Agreement will be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns. EMI reserves the right to assign or transfer any of its rights and delegate any of its duties hereunder (in whole or in part) to any entity. The rights granted to Licensee hereunder are personal to Licensee, and Licensee may not assign or otherwise transfer any of its rights or delegate any of its duties under this

---

Agreement without EMI's prior Approval, including by operation of law and whether by merger, change of control, reorganization (in bankruptcy or otherwise), a stock sale of Licensee or otherwise.

15.7 **Relationship Between Parties.** There is no joint venture, partnership, agency or fiduciary relationship existing between the parties, and the parties do not intend to create any such relationship by this Agreement.

15.8 **Publicity.** Neither party will make any statement (whether oral or in writing) in any press release, external advertising, marketing or promotion materials regarding the other party or its goods or services unless: (a) it has received the express written consent of the other party, which will not be unreasonably withheld; or (b) it is required to do so by law.

15.9 **Amendments, Waivers.** This Agreement may not be amended, modified or superseded, unless expressly agreed to in writing by both parties. No provision of this Agreement may be waived except by an instrument in writing executed by the party against whom the waiver is to be effective. The failure of either party at any time or times to require full performance of any provision hereof will in no manner affect the right of such party at a later time to enforce the same.

15.10 **Severability.** If any provision or term of this Agreement, not being of a fundamental nature, is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remainder of this Agreement will not be affected.

15.11 **No Third Party Beneficiaries.** Except as may be expressly set forth herein, nothing in this Agreement shall be deemed or interpreted to create any third party beneficiaries or confer any rights on any third parties.

15.12 **Equitable Relief.** Licensee agrees that any unauthorized exploitation of EMI Intellectual Property constitutes copyright infringement and will result in injury to EMI for which there would be no adequate remedy at law. Accordingly, Licensee agrees that, in addition to any other available legal or equitable remedies, EMI shall be entitled to injunctive relief against such unauthorized exploitation.

15.13 **Survival.** Any provision of this Agreement which by its express terms is intended to apply or have effect after the expiration or earlier termination of this Agreement, shall survive such expiration or termination.

15.14 *Counterparts*. This Agreement may be executed in counterparts, each of which shall be deemed an original and both of which shall constitute one and the same document.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers thereunto duly authorized.

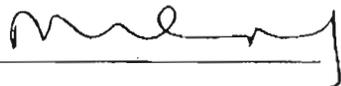
EMI Entertainment World Inc.

By: 

Name: \_\_\_\_\_

Title: \_\_\_\_\_

LTDnetwork, Inc.

By: 

Name: Allan Klepfisz

16. Title: President

---

EXHIBIT A

DESCRIPTION OF PROVIDER'S APPROVED DRM

REDACTED

REDACTED

REDACTED

**REDACTED**

**REDACTED**

**REDACTED**

REDACTED

REDACTED

REDACTED

SCHEDULE A

Initial Approved Compositions List

[TO COME]

LTDnetwork Inc.  
211 Madison Avenue, Suite 28B  
New York NY 10016

August 4, 2006

EMI Entertainment World, Inc.  
1290 Avenue of the Americas  
New York, New York 10104

Attn: Senior Vice President, Legal and Business Affairs

Gentlemen:

This confidential side letter agreement (the "**Letter Agreement**") is made pursuant to that certain Ad-Supported Digital Music Audition Download Service Agreement being entered into between the parties hereto as of the date hereof (the "**Download Agreement**"). All capitalized terms in this Letter Agreement shall have the meanings as defined in the Download Agreement.

**REDACTED**

1. Concurrently with the execution of this Letter Agreement, LTD shall pay EMI (the "**Fee**") in consideration of EMI's commitment, in response to LTD's inquiries made from time to time during the next year, to render general advice to LTD concerning LTD's efforts (i) to improve LTD's ad-supported P2P audition download service and (ii) to license, for use in that service, musical compositions from U.S. and other major and independent music publishers.

2. EMI will not be required to devote any particular amount of time to rendering the contemplated advice and is in no way representing that any advice it may provide will prove useful to LTD; nor is EMI making any other representations or warranties of any kind concerning any information it may provide to LTD hereunder. LTD will have no right (based on any legal, equitable or other theory of any kind) to assert claims of any kind against EMI based on its performance or non-performance under this Letter Agreement.

3. **REDACTED**

4. Notwithstanding anything to the contrary in the Download Agreement, including in paragraph 1.10 or 10 thereof,

**REDACTED**

and the definition of "Gross Revenues" contained in paragraph 1.10 of the Download Agreement is hereby modified to read as follows:

1.10 "Gross Revenues" shall mean

**REDACTED**

---

**REDACTED**

5. Notwithstanding anything to the contrary in the Download Agreement (including, without limitation, the definition of "Effective Date" in the preamble), it shall be a condition precedent of the Download Agreement that Licensee have entered into agreements with all of the Major Labels permitting Licensee to exploit Authorized Recordings via the Service as Audition Downloads (the "**Condition Precedent**"). For the avoidance of doubt, notwithstanding anything to the contrary in the Download Agreement, Licensee shall have no right to exploit any EMI Composition via the Service and/or as an Audition Download unless and until Licensee has demonstrated to EMI, to EMI's reasonable satisfaction, that Licensee has satisfied the Condition Precedent, and the Effective Date of the Download Agreement shall be the first date upon which Licensee has done so.

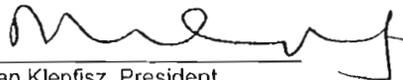
6. Each party hereto (i) will keep strictly confidential the existence and terms of this Letter Agreement and the substance hereof (collectively, the "**Confidential Information**"), and (ii) will not disclose any Confidential Information to any third party (other than such party's attorneys or accountants). Notwithstanding the foregoing, a party hereto (the "**Disclosing Party**") may disclose Confidential Information pursuant to any statute, regulation, order, subpoena or document discovery request, and/or in any legal or rate-setting proceeding, provided that prior written notice of such disclosure is furnished to the other party hereto as soon as practicable in order to afford such other party an opportunity to seek, at its own expense, a protective order (it being agreed that if such other party is unable to obtain or does not seek a protective order, and if the Disclosing Party is legally compelled to disclose such information, then disclosure thereof may be made without liability hereunder).

7. This Letter Agreement (i) shall be governed by and construed and enforced in accordance with the laws of the State of New York (without giving effect to any of such State's principles regarding conflict of laws), (ii) embodies the sole and entire agreement of the parties in respect of, and supersedes all prior oral or written understandings between them concerning, the subject matter hereof, (iii) shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, heirs, estates, administrators and executors, (iv) may be executed in counterparts, all of which together shall constitute one and the same instrument, and (v) may not be canceled, amended, discharged or waived in whole or part except by a written instrument signed by all parties hereto.

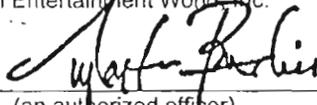
8. Nothing contained in this Letter Agreement modifies or supersedes any portion of the Download Agreement, other than as provided in paragraphs 4 and 5 herein.

ACCEPTED AND AGREED TO AS OF  
THE DATE FIRST WRITTEN ABOVE:

LTDnetwork Inc.

By   
Allan Klepfisz, President

EMI Entertainment World, Inc.

By   
(an authorized officer)

**AMENDMENT TO AD-SUPPORTED DIGITAL MUSIC AUDITION DOWNLOAD  
SERVICE AGREEMENT**

This Amendment (the "**Amendment**") is entered into as of this 27<sup>th</sup> day of February 2008 by and between EMI Entertainment World Inc. ("**EMI**" or "**Licensor**") and Qtrax, Inc. (formerly known as LTDnetwork, Inc.) ("**Qtrax**" or "**Licensee**") in order to amend certain of the provisions and terms of the original AD-SUPPORTED DIGITAL MUSIC AUDITION DOWNLOAD SERVICE AGREEMENT dated August 4, 2006 between said parties (herein the "**Original Agreement**"). Capitalized words used herein shall have the meanings ascribed to them pursuant to the Original Agreement.

For good and valuable consideration, the parties hereto hereby agree to and do hereby amend the Original Agreement with effect as of the date hereof as follows:

1. The title shall be changed to "**AD-SUPPORTED DIGITAL MUSIC CONDITIONAL DOWNLOAD SERVICE AGREEMENT.**"

2. Section 1.2 shall be modified by replacing the phrase "**Audition Download**" with the phrase "**Conditional Download**". In each other instance in which the phrase "Audition Download" (or "Audition Downloads" as the case may be) appears in the Original Agreement, such phrase shall be replaced with the phrase "Conditional Download" (or "Conditional Downloads" as the case may be).

3. Section 2 shall be modified to read:

2. **Term.** The term of this Agreement shall commence on January 25, 2008 and will expire on January 25, 2010.

4. Section 1.16 (the definition of "**Portable Medium**") shall be deleted in its entirety and replaced with the words "Intentionally Omitted".

5. Section 1.20 (the definition of "**Service**") shall be amended by inserting at the end of the third sentence (immediately following the word "devices") the phrase "other than as permitted hereunder with regard to Permitted Portable Devices."

6. A new Section 1.26 shall be added as follows:

1.26 A "**Permitted Portable Device**" means a portable device, such as, but not limited to, devices such as the Apple iPod and Microsoft Zune devices, capable of playing Conditional Downloads, provided that in all cases such devices must be capable of "counting" plays of individual Conditional Downloads and reporting such number of plays through the Qtrax client for purposes of accounting for plays and making payments to rightsholders hereunder.

7. Sub-Section 4(a) shall be amended to read as follows:

(a) **Content Integrity.** A Conditional Download acquired (via download or otherwise) by a particular User's Qtrax Client will be playable (i) only when that User's Terminal Device is connected to the Internet, and (ii) only from the same Terminal Device on which that User's Qtrax

Client was installed when such Conditional Download was downloaded. A Conditional Download residing on one User's Terminal Device will be capable of being searched for and downloaded by another User of another Qtrax Client; but upon such downloading it will in turn be encrypted such that it will be playable only as contemplated in the immediately preceding sentence and in the remainder of this Section 4. Qtrax shall employ DRM and/or other technological measures that prevent Users and other individuals from (a) making any permanent copies of any Conditional Download(s), including, without limitation, by making permanent copies on the hard-drive of his or her Terminal Device, by sending permanent copies to any "locker" or similar storage service or device, or by reproducing or "burning" Conditional Downloads on recordable media (including, without limitation, recordable CDs, DVDs, minidisks, and digital memory sticks and cards), other than on Permitted Portable Devices as permitted hereunder. A Conditional Download acquired (via download or otherwise) by a particular User's Qtrax Client will also be playable on any Permitted Portable Device as defined in Section 1.26 above (but on no other handheld music player, wireless communication or other portable device), solely subject to the limitations provided in Sub-Section 4(c) below.

8. Sub-Section 4(c) shall be deleted in its entirety and replaced with the following:

(c) **Playback and Other Limitations.** With respect to the playback of Conditional Downloads on Permitted Portable Devices, such Conditional Downloads shall be "time-limited" such that a User will be required to connect to the Internet and his or her Qtrax Client at least once every sixty (60) days in order to further enable the playback of such Conditional Downloads (and so that the number of plays of such Conditional Downloads may be determined for payment purposes, as required pursuant to the provisions hereof). In addition, in no event shall Licensee permit any Conditional Download to be exported to more than three (3) Permitted Portable Devices (and Licensee shall employ DRM and/or other technological measures that prevent Users and other individuals from exporting Conditional Downloads to more than three (3) Permitted Portable Devices). In addition, a User shall not be permitted to install multiple copies of the Qtrax Client on such User's Terminal Device. In addition, notwithstanding anything in this Agreement to the contrary, there shall be no limitations on the "bit rate" of any files.

9. The title of Section 9 shall be changed to "Accountings; Royalties; Advance".

10. A new paragraph 9.8 shall be added as follows:

9.8 **Advance.** Licensee shall pay Licensor a

**REDACTED**

(the "Advance") as an advance against monies otherwise payable to Licensor pursuant to this Agreement. Licensee shall pay the Advance promptly following the execution of this Amendment

11. A new paragraph 9.9 shall be added as follows:

9.9

**REDACTED**

12. A new Section 16 shall be added as follows:

"16.

16.1

**REDACTED**

16.2

**REDACTED**

16.3

**REDACTED**

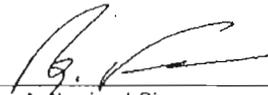
13. Reference is made to the confidential side letter agreement (herein the "Side Letter Agreement") dated August 4, 2006 between the parties concerning the subject matter of the Original Agreement. The provisions of the Side Letter Agreement shall be modified so as to remove the application of the Condition Precedent (as defined in paragraph 5 thereof); provided that EMI shall have the right upon notice in writing to Qtrax at any time from and after ninety (90) days from the date hereof, to terminate this Amendment; upon no less than ten (10) days notice, in the event that Qtrax shall not have theretofore advised EMI that Qtrax has obtained licensing agreements with each of the Major Labels (as such term is defined in the Side Letter Agreement) ("Amendment

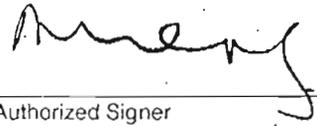
Termination"). Notwithstanding EMI's exercise of the Amendment Termination, (a) EMI shall be entitled to retain the entirety of the Advance; and (b) EMI shall be entitled to avail itself of all benefits set forth in Section 16.1, 16.2 and/or 16.3 of this Amendment.

As modified hereby, by their signatures hereinbelow, as of the date first written above, the parties hereto hereby confirm that the Original Agreement is hereby ratified and confirmed and acknowledged to be in full force and effect.

EMI Entertainment World Inc.

Qtrax, Inc.

By:  \_\_\_\_\_  
An Authorized Signer

By:  \_\_\_\_\_  
An Authorized Signer

Alan Klephist  
President & CEO



Royalty Rates In EMI Voluntary Digital Agreements

<u>LICENSEE</u>	[REDACTED]	[REDACTED]	[REDACTED]
MusicNet, Inc.	[REDACTED]	[REDACTED]	[REDACTED]
imeem, Inc.	[REDACTED]	[REDACTED]	[REDACTED]
LTDnetwork, Inc. (Qtrax)	[REDACTED]	[REDACTED]	[REDACTED]

REDACTED



EMI GRATIS LICENSES

<u>Artist</u>	<u>Song</u>	<u>Date</u>
Sean Paul	"Momma"	3/27/2008
Landon Pigg	"Falling In Love At A Coffee Shop"	3/27/2008
City and Colour	"Against the Grain"	3/20/2008
City and Colour	"Waiting"	3/20/2008
City and Colour	"What Makes A Man"	3/20/2008
City and Colour	"The Death of Me"	3/20/2008
City and Colour	"Body In A Box"	3/20/2008
Wyclef Jean	"President"	3/19/2008
Panic At The Disco	"Nine In the Afternoon"	3/19/2008
Panic At The Disco	"The Green Gentleman"	3/19/2008
Panic At The Disco	"Pas De Chavel"	3/19/2008
The Answer	Three songs (unknown)	3/19/2008
Duffy	"Mercy"	3/17/2008
Idina Menzel	"Brave"	3/11/2008
Peter Moren	"Social Competence"	3/10/2008
Trace Adkins	"You're Gonna Miss This"	3/10/2008
Counting Crows	"Washington Square"	3/7/2008
Lostprophets	"Rooftops"	3/6/2008
Peter Moren	"Social Competence"	3/4/2008
Bullet For My Valentine	"Scream Aim Fire"	2/29/2008
Cobra Starship	Unknown	2/28/2008
Black Tide	"Shockwave"	2/23/2008
Fall Out Boy	"I Write Sins Not Tragedies"	2/19/2008
I-Nine	"Seven Days Of Lonely"	2/13/2008
Jordin Sparks	"Tattoo"	2/13/2008
B-52's	"Hot Corner"	2/12/2008
The Pretenders	"I'll Stand By You"	2/6/2008
Say Anything	Unknown	2/6/2008
Sia	Unknown	2/4/2008
David Banner	"Ball With Me"	1/29/2008
Bullet For My Valentine	Unknown	1/18/2008
Tom Petty	"Free Fallin"	1/8/2008
Los Lonely Boys	"Heaven"	1/3/2008
The Fray	"How To Save A Life"	1/3/2008
Unknown	"I Believe"	1/3/2008
Foo Fighters	"Times Like These"	1/3/2008
Natasha Bedingfield	"Unwritten"	1/3/2008
Five For Fighting	"World"	1/3/2008



RR requests received 2006 vs. 2007

<u>Reduced Rates 2006-2007</u> (Requests received in 2006 & 2007)	RR Requests Received	Total # EMI Songs Requested	Total # EMI Songs APPROVED	% EMI Songs APPROVED
EMI-Capitol Special Markets (2007) EMI-Capitol Special Markets (2006)				
Rhino/WSM (2007) Rhino/WSM (2006)				
UMG (2007) UMG (2006)				
Razor & Tie (2007) Razor & Tie (2006)				
TUTM (2007) TUTM (2006)				
Lic. Concepts (2007) Lic. Concepts (2006)				
D. Prentice (2007) D. Prentice (2006)				
SANJEK (2007) SANJEK (2006)				
	Total RR Requests Received	Total # EMI Songs Requested	Total # EMI Songs APPROVED	% EMI Songs APPROVED
Totals (2007)		REDACTED		
Totals (2006)		REDACTED		



This Agreement ("Agreement"), effective as of May 1, 2007 (the "Effective Date"), is made between EMI APRIL MUSIC INC., a Connecticut corporation with its principal place of business at 1290 Avenue of the Americas, New York, New York 10104 ("Publisher") and MASON MUSSO, TRACE CYRUS, TIMOTHY BLAKE HEALY and ANTHONY IMPROGO, each individually and d/b/a METRO STATION MUSIC ("you" or "your"), whose address is c/o Michael McKoy, Esq., Serling, Rooks and Ferrara, 119 Fifth Avenue, 3rd floor, New York NY 10003.

FOR GOOD AND VALUABLE CONSIDERATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, PUBLISHER AND YOU HEREBY AGREE AS FOLLOWS:

**1. Certain Definitions.**

As used in this Agreement, the following terms shall have the meanings set forth below:

1.01 "Advances" shall mean (a) all payments made under paragraph 9.02 of this Agreement; (b) all other costs incurred or paid by Publisher, with your consent in its discretion, in connection with your creation of any Composition, or the creation of any demo authorized by you, including but not limited to travel expenses; (c) royalty prepayments; and (d) all other monies incurred or paid by Publisher that Publisher is not otherwise specifically obligated to incur under this Agreement, and which are accepted by you as Advances in writing. Notwithstanding the foregoing, Advances shall not include those amounts which Publisher is permitted hereunder to deduct from Gross Income for the purpose of calculating Net Income pursuant to paragraph 1.10 of this Agreement.

1.02 "Affiliate" shall mean any Person (a) which you own or in which you own an interest, in whole or in part; (b) which owns you or has an interest in you, in whole or in part; (c) which you employ or which employs you; (d) the operation of which is controlled directly or indirectly by you; (e) which directly or indirectly controls you; or (f) is under common control with you; in each case if such Person has any right or interest in any musical composition(s).

1.03 "Album" shall mean one or more Phonograph Records consisting of studio master recordings totaling at least thirty-five (35) minutes in playing time, sold in a single package.

1.04 "Contract Period" shall mean the Initial Contract Period (as provided in paragraph 3.02), and, in the event that an Option is exercised, the respective Option Period (as provided in paragraph 3.03) of the Term of this Agreement (as such periods may be suspended or extended as provided herein).

1.05 "Cover Recording" shall mean each recording of a Composition on Records other than a recording of that Composition that is recorded or produced by you.

1.06 "Delivery" or "Delivered" shall, when used with respect to a Composition, mean the actual receipt by Publisher at its principal place of business located at 1290 Avenue of the Americas, New York, New York 10104, of all of the following: (a) A recorded digital audio tape or compact disc ("CD") (or other medium acceptable to Publisher through which sound recordings embodying musical compositions are now or hereafter customarily commercially

exploited) of the Composition; (b) A lyric sheet of the Composition; (c) Executed assignments of copyright and authorizations in the form of the Exhibits annexed hereto; (d) All existing copyright registrations, if any; (e) Copies of your agreements, if applicable, with any third parties; (f) For any Compositions embodied on an Album (including a Qualifying Album), confirmation from the Record label concerned that the Album has been released, a final US mechanical royalty rate calculation relating to such Album which is prepared by the Record label, and written documentation reasonably satisfactory to Publisher that the Record label shall not withhold payment of mechanical royalties for any reason whatsoever, (g) Complete and accurate writer and publisher information, and (h) Any additional information or documents concerning the Composition requested by Publisher. Publisher may waive any or all formalities of your Delivery requirement with respect to any Composition or Compositions. Any such waiver shall be in writing duly executed by an authorized representative of Publisher, and shall be deemed to be a one-time waiver, and shall not affect your obligation to comply with all formalities of Delivery with respect to all other Compositions.

1.07 "Gross Income" shall mean [REDACTED]

1.08 "Licensee" shall mean any Person to whom Publisher grants a license with respect to any or all of the Compositions, any sublicensee of such Person, and any parent, subsidiary, division and/or affiliate of Publisher, who is acting within the scope of and subject to the terms of such license.

1.09 "Major Label" shall mean: Capitol, Virgin, RCA, Arista, J Records, Jive, Interscope/Geffen/A&M, Island Def Jam, MCA, Mercury, Universal, Columbia, Epic, Warner, Elektra, Atlantic, or any Record label that is owned and distributed by EMI, BMG, SONY, WEA or Universal if such label has released an album which has sold 500,000 units (as reported by SoundScan or a successor retail reporting system if SoundScan is discontinued) within 12 months prior to the date of Release of the Album concerned.

1.10 "Net Income" shall mean Gross Income, less only the following amounts which Publisher is hereby permitted to deduct from Gross Income: (a) [Intentionally Deleted], [REDACTED]



1.11 "Overpayment" shall mean (a) misapplied royalties (*i.e.*, royalties erroneously paid by Publisher to you which should have been paid by Publisher to another Person), or (b) any payment(s) made to you in excess of amounts due to you. An Overpayment may result from, among other things, miscalculations by Publisher or a lack of full or accurate disclosure to Publisher of facts relevant to the calculation of any amount due to you.

1.12 "Person" shall mean any individual, corporation, company, partnership, joint venture, association or other business entity or organized group of individuals of whatever nature, and any legal successors and representatives of the foregoing.

1.13 "Pipeline Monies" shall mean your share of monies collected by or credited to Publisher's music publishing company affiliates in Japan, the United Kingdom, Ireland, Italy, Spain, Scandinavia, Benelux, Canada, France, Australia/New Zealand, Hong Kong, Mexico, Austria, Switzerland and Germany that have not yet been paid to Publisher in the United States, as well as your share of monies that have been collected by, received by or credited to Publisher in the United States and that have not yet been accounted to you.

1.14. "Phonograph Records" shall mean sound-alone Records, including but not limited to vinyl records, tapes, tape cartridges, compact discs, mini-discs, digital music files, Digital Phonorecord Deliveries (as defined in the US Copyright Act) and audio DVDs. (The inclusion of incidental promotional video content in what otherwise constitutes an Album shall not be deemed to alter its "sound-alone" status for purposes of this definition.)

1.15 "Recording Agreement" shall mean an exclusive worldwide agreement between you and a Major Label for your collective recording services p/k/a METRO STATION and/or Records embodying your performances as the featured recording artist p/k/a METRO STATION. The current Recording Agreement between you and Columbia Records is sometimes hereinafter referred to as the "Current Recording Agreement."

1.16 "Records" shall mean any reproduction of a Composition in any form now known or later developed in which sounds (with or without visual images) are fixed by any method now

known or later developed and from which sounds (with or without visual images) can be perceived, reproduced or otherwise communicated either directly or with the aid of a machine or device and includes the material object in which sounds with or without visual images are fixed.

1.17 "Release" shall, when used with respect to a Record, mean the initial commercial release of such Record through normal retail channels in the United States by a Major Label, on such Major Label's top price line or, with respect to the First Qualifying Album only, on such Major Label's so-called "new artist" or "developing artist" price line provided that such Record is subsequently released on the Major Label's top price line.

1.18 "Retail Unit Sold" shall, with respect to an Album, mean one (1) copy of such Album sold by a Major Label through normal retail distribution channels in the United States.

1.19 "Societies" shall mean public performance rights licensing organizations, mechanical rights licensing organizations, and any other similar licensing organizations, societies or entities anywhere in the Territory which administer rights in and/or uses of the Compositions.

1.20 "Territory" shall mean the Universe.

2. Your Obligations.

2.01 During the Term, you will Deliver exclusively to Publisher "Your Interest" (as defined below) in all Compositions, and without limitation of your other obligations hereunder, you will satisfy the Minimum Delivery and Release Commitment set forth in paragraph 4.01.

2.02 Your performance of your obligations set forth in paragraph 2.01 will be deemed to have taken place in the State of New York, upon your Delivery, regardless of where you reside or where you created or acquired any or all such Compositions.

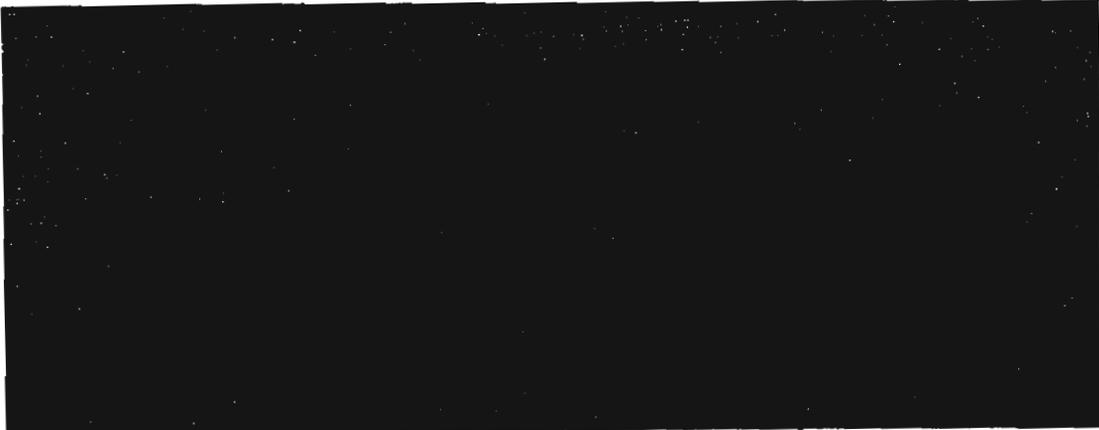
2.03 You warrant and represent that you are currently collectively professionally known as "METRO STATION."

3. Term.

3.01 The Contract Periods. The Term of this Agreement shall be defined as and shall consist of the Initial Contract Period, unless extended by Publisher's exercise of its exclusive Options to extend the Term for an additional Contract Period or additional Contract Periods as set forth herein.

3.02 [REDACTED]

3.03 Options and Option Periods. You hereby grant Publisher exclusively [REDACTED] separate and successive Options to extend the Term, each for [REDACTED]



3.04 Publisher's Failure to Exercise an Option. If you contend that Publisher has failed to properly exercise an Option, the Then Current Contract Period shall remain in effect until you have provided Publisher with Notice of such contention (with reasonable detail as to the basis of such contention). If seven (7) days following receipt of such Notice, Publisher has failed to furnish you Notice exercising said Option, the Term will terminate on the later of (a) seven (7) days following Publisher's receipt of such Notice, or (b) the termination of the Then Current Contract Period by its terms.

3.05 Termination of Term. (a) If the Term terminates in accordance with the provisions of this Agreement, Publisher shall retain no rights in (i) the musical compositions written or acquired by you after the end of the Term, or (ii) the musical compositions written by you and released on the Album that would otherwise constitute the Qualifying Album for the Contract Period for which Publisher does not exercise an Option, but Publisher shall retain, throughout the Retention Period (as described below), all other rights acquired from you hereunder during the Term. Notwithstanding the foregoing, if a musical composition is written by you during the Term and released on the Qualifying Album for which Publisher does not exercise its Option, then with respect to such composition, Publisher shall retain all of its rights under this Agreement solely with respect to any releases or exploitations of such Composition which occurred or are licensed by Publisher during the Term (e.g., without limitation, soundtrack albums, movie synchronizations), but excluding the Composition's exploitation on the Qualifying Album for which Publisher fails to exercise its option (or singles derived therefrom) or any other exploitations made after the Term.

(b) During the Retention Period and Collection Period, Publisher shall continue to have the royalty accounting and royalty payment obligations specified in this Agreement (provided that you shall advise Publisher of any address changes in accordance with paragraph 18.01 below). All of your representations, warranties and indemnity obligations shall remain in full force and effect after the end of the Term, and shall survive even after the Retention Period. In addition, any of Publisher's rights which under this Agreement specifically survive expiration of the Retention Period, such as the collection rights described in paragraph 7.02(c), shall likewise survive the Retention Period.

4. Minimum Delivery and Release Commitment.

4.01 Minimum Delivery and Release Commitment. During each Contract Period, you shall Deliver to Publisher one Qualifying Album (the "Minimum Delivery and Release Commitment" or "MDRC"). A Qualifying Album is an Album that, unless otherwise expressly agreed in writing by Publisher, fulfills all of the following requirements, each of which is a material requirement:

(a) Such Album must be newly recorded in a recording studio, and embody solely your collective performances as the featured recording artist, performing under the name METRO STATION;

(b) [REDACTED]

(c) [REDACTED]

(d) [REDACTED]

4.02 Albums Excluded from "Qualifying Albums. Unless Publisher otherwise consents, Qualifying Albums shall exclude [REDACTED]

4.03 Penny Rate. [REDACTED]

4.04 Qualifying Albums. (a) The Qualifying Albums are sometimes referred to, [REDACTED]

(b) [REDACTED]

[REDACTED]

(c) [REDACTED]

4.06 Current Recording Agreement. You represent and warrant that; (a) you are party to the Current Recording Agreement as defined above; (b) the term of the Current Recording Agreement is currently in effect; and (c) the mechanical royalty provisions of the Current Recording Agreement provide for the licensing to Columbia of Your Interest in Compositions, for use in full-priced Records recorded thereunder and sold through normal U.S. retail channels, at the rate of [REDACTED]. The mechanical royalty provisions of the Current Recording Agreement are collectively referred to in this Agreement as the "Controlled Composition Provision" and are attached as Exhibit D.

5. The Compositions.

5.01 New Compositions. All of the musical compositions written by you, alone or together with others, in whole or in part, during the Term (whether or not completed during the Term), are hereinafter called "New Compositions." You shall Deliver to Publisher "Your Interest" (as hereinafter defined) in each New Composition promptly after creation.

5.02 Old Compositions. All of the musical compositions, if any, written by you, alone or together with others, in whole or in part, prior to the commencement of the Term, are hereinafter called "Old Compositions." Simultaneously with the execution of this Agreement, you shall Deliver to Publisher Your Interest in each Old Composition. You warrant and represent that each Old Composition is listed on Schedule A annexed to this Agreement and that all of the information contained on Schedule A is complete and accurate. You represent, warrant

and agree that any musical composition which should have been listed by you on Schedule A but which is not listed thereon shall be deemed an Old Composition.

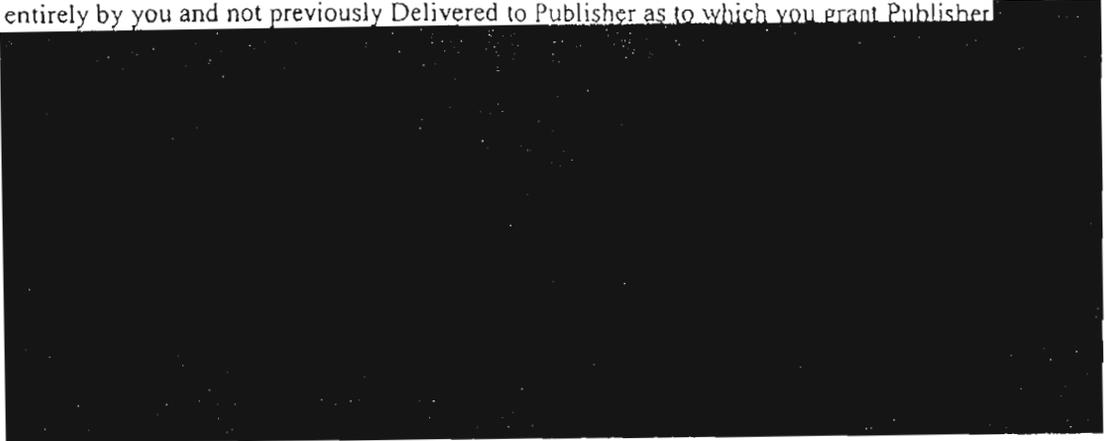
5.03 Acquired Compositions. All of the musical compositions (in addition to the New Compositions or the Old Compositions) in which you or any of your Affiliates acquire or have acquired any ownership, control or administration interest during or prior to the Term, are hereinafter called "Acquired Compositions." You shall convey to Publisher Your Interest in each Acquired Composition immediately following acquisition in each instance. All musical compositions in which you or any of your Affiliates have, prior to the commencement of the Term, acquired any ownership, control or administration interest shall be deemed to have been conveyed to Publisher on the Effective Date of this Agreement.

5.04 The Compositions. The New Compositions, the Old Compositions and the Acquired Compositions are hereinafter collectively called the "Compositions." Each Composition in existence at the time of the Effective Date of this Agreement shall be included on Schedule A. All New Compositions shall be deemed included on Schedule A at the time of their creation, delivery or conveyance, as the case may be, by you, and all subsequently Acquired Compositions shall be deemed included on Schedule A following Delivery or conveyance, as the case may be, by you to Publisher hereunder in each instance.

5.05 Definitions Relating to Compositions. For the purposes of this Agreement, the following terms shall have the following definitions:

(a) "Your Interest" in a Composition written by you, in whole or in part, shall mean the percentage interest in such Composition resulting from your authorship of that Composition; and "Your Interest" in an Acquired Composition shall mean the percentage interest in such Acquired Composition acquired by you. If a Composition is both an Acquired Composition and a New or Old Composition, then "Your Interest" shall mean the aggregate of the percentage interest resulting from your authorship and the percentage interest resulting from your acquisition of rights.

(b) A "Full New Composition" shall mean a New Composition written entirely by you and not previously Delivered to Publisher as to which you grant Publisher





**6. Samples and Delivery of Compositions.**

6.01 The term "Sample" shall mean the use, inclusion or interpolation (the "Interpolation") in a Composition of any musical composition or portion thereof which is not a Composition.

6.02 You shall, upon Delivery of Your Interest in a Composition hereunder, fully, and in writing, notify Publisher of all Samples Interpolated in that Composition including, without limitation (a) the size of such Sample (the "Size"), *i.e.* the portion of the Composition which is attributable to the Sample; (b) the source of such Sample; and (c) the owner(s) of the musical composition or portion thereof from which such Sample is derived (the "Sampled Party"). Publisher shall have the right to include all of such information in Schedule A annexed to this Agreement.

6.03 Regarding the Old Compositions and the Acquired Compositions which are acquired prior to the date hereof, you warrant and represent that Schedule A is a complete and accurate description of all Samples, the Size of such Samples, and all Sampled Parties with respect to such Compositions.

6.04 The Samples shall not apply toward your Minimum Delivery and Release Commitment for any Contract Period hereunder.

6.05 In the event of any claim by any third party (the "Sample Claim") against you and/or Publisher with respect to a Sample actually Interpolated in a Composition and for which Sample you failed to provide Publisher with accurate notice as required above, then:

(a) You shall not settle, defend or attempt to settle or defend the Sample Claim without Publisher's written consent, not to be unreasonably withheld;

(b) Any monies payable by Publisher (either on your or Publisher's behalf) with respect to the Sample Claim, either in settlement thereof, or otherwise, shall be paid solely out of monies (whether royalties or Advances) otherwise payable to you hereunder, and the payment of such monies by Publisher shall be deemed to fulfill any obligation that Publisher may have had to otherwise pay such amounts to you, provided in the event that Publisher pays any monies with respect to the Sample Claim which are not then otherwise payable to you, then such amounts shall be deemed to be Advances, fully recoupable from royalties hereunder;

(c) Any copyright or proprietary interest in a Composition which is assigned by Publisher to a third party with respect to the Sample Claim (the "Assigned Interest"), either in settlement thereof, or otherwise, shall be assigned solely from, and shall therefore reduce only

your retained interest in such Composition, and shall not reduce any interest in such Composition granted to Publisher hereunder;

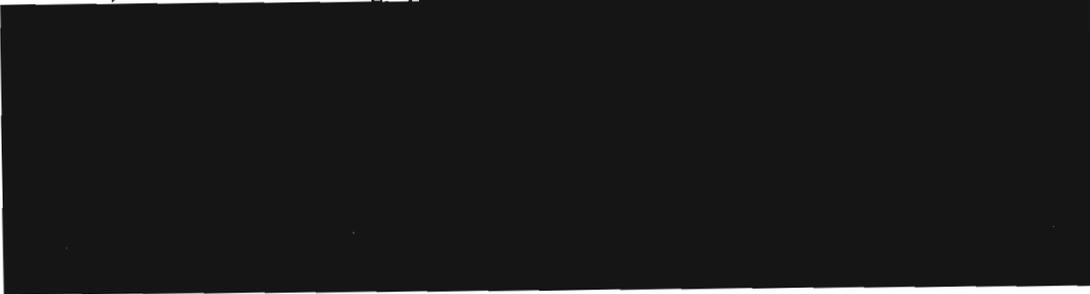
(d) The Assigned Interest shall not apply toward your Minimum Delivery and Release Commitment for the Contract Period in which the applicable Composition is Delivered;

(e) The provisions of this subparagraph 6.05 shall not in any way reduce or alter any of Publisher's other rights or remedies hereunder and shall be in addition thereto; and

(f) Nothing contained in this subparagraph 6.05 shall be interpreted or construed as Publisher's condonation or approval of the Interpolation of Samples in any Compositions.

**7. Grant of Rights.**

7.01 Assignment of Copyrights. You hereby irrevocably sell, transfer and assign to Publisher, its successors and assigns, 



7.02 Administration. It is the intent of the parties that Publisher and Licensees hereunder (and anyone acting under the authority of Publisher or a Licensee) shall have at all times during the Term and Retention Period, throughout the Territory, the broadest possible rights to administer and otherwise exploit the Compositions. Without limiting the foregoing, with respect to the Compositions, Publisher and its Licensees (and anyone acting under the authority of Publisher or a Licensee) shall have, and you hereby grant to Publisher, the sole and exclusive right and license during the Term and Retention Period, throughout the Territory, to:

(a) License, and cause others to license, the exploitation of the Compositions in all forms, media and configurations, including, without limitation, the right to license: (i) broadcast and other public performances, (ii) the manufacture, distribution and sale of Records and video devices, (iii) the synchronization of the Compositions in connection with motion pictures, television programs, videos and commercials, (iv) the use of the Compositions in connection with merchandising activities, and (v) the exploitation of the Compositions in any configurations and technologies now known or hereafter to become known in respect of which musical compositions may, now or in the future, be licensed (including, without limitation, Internet uses, e.g., "digital downloads" and "streams").

(b) Print, publish, rent and/or sell (and authorize others to print, publish, rent and/or sell) alone or together with other works, printed editions or other reproductions of the

Compositions, whether such reproduction is in the form of printed materials, or other technological means for reproducing printed words, text or music.

(c) Collect all monies derived from any source whatsoever during the Term and the Retention Period, with respect to the Compositions, in addition to all monies due prior to the date of this Agreement, but excluding any songwriter share of public performance income. Further, for a period of 18 months following the expiration of the Retention Period for monies earned in the U.S. and two years following the expiration of the Retention Period for monies earned outside the U.S. (individually and collectively, the "Collection Period"), Publisher shall have the sole and exclusive right to collect all monies earned by reason of uses of the Compositions made during the Term and/or the Retention Period.

(d) In addition to any rights granted to Societies regarding the Compositions, Publisher shall have the right to license public performance uses of the Compositions directly ("Direct Performance Licenses") and all income received by Publisher in connection with such license shall be deemed [REDACTED] and subject to accounting pursuant to this Agreement. With respect to income derived from Direct Performance Licenses, Publisher shall have the right to [REDACTED]

(e) Make arrangements of, or otherwise adapt or change, any one or more Compositions in any manner, provided that Publisher shall not make, or authorize the making of, material changes in the title, music or lyrics of the Compositions without your prior written consent (and use of a Composition as a "sample" shall not be deemed to be a material change). Your consent shall not be required, however, for any foreign language changes in the Compositions, gender changes, and other customary changes that are required for the uses contemplated (e.g., print uses and uses in Records). Publisher will not, without your prior written consent, pay any writer royalties to additional writers (if any) from your share of royalties except with respect to foreign language translations, and then only to the extent required by Society regulations or local laws. Subject to the requirements of local law and the practices of the applicable local societies, Publisher and you shall collectively own a 100% interest in all translations, parodies, adaptations and other arrangements of the Compositions [REDACTED] for the Term and Retention Period.

(f) Otherwise administer, grant any and all rights with respect to, and subject to paragraph 7.03, initiate and settle any and all claims concerning, the Compositions.

7.03 Power of Attorney. You hereby irrevocably authorize, empower, and appoint Publisher your true and lawful attorney, for the Term and Retention Period, to secure the copyright in the Compositions for the initial and any renewal and/or extension periods for Publisher's and your benefit, to initiate and compromise any claim or action against infringers of rights in the Compositions and to execute in your name any and all documents and/or instruments necessary or desirable to accomplish the foregoing and/or to evidence Publisher's ownership of the copyrights (including, without limitation, such registrations of Publisher's copyright and/or ownership interest as Publisher may deem advisable) during such periods

and/or to effectuate Publisher's rights hereunder (if you fail to execute any such document and/or instrument within 10 business days after such document or instrument has been submitted to you). The power granted herein is coupled with an interest and is irrevocable during the Term and Retention Period. Notwithstanding anything to the contrary set forth above, Publisher shall not compromise or settle any claim against an infringer of Publisher's and/or your rights in the Compositions without your prior consent, which shall not be unreasonably withheld or delayed.

7.04 Names and Likenesses. Publisher and Licensees each shall have the right, and may grant to others the right, to reproduce, print, publish, or disseminate, in any medium now known or hereafter to be known, your names, and approved portraits, approved pictures and approved likeness (including, without limitation, the name METRO STATION and all other professional, group, and other assumed or fictitious names used by you), and approved biographical material concerning you: (i) in connection with uses of the Compositions (including, but not limited to, print uses of the Compositions); and (ii) for the purpose of indicating your association with Publisher. Accordingly, you agree, at Publisher's request, to furnish Publisher with such biographies and likenesses of you as may be available to you and/or any company who is a party to a Recording Agreement with you during the Term and Retention Period. All photographs, biographies and likenesses submitted by you shall be deemed approved by you for the uses for which such materials were submitted. If Publisher desires to use any likeness not supplied by you or biographical material substantially different from that supplied by you, you shall have the right to approve same. Such approval shall be deemed to have been given within 10 business days following your receipt of such material unless you notify Publisher to the contrary within that 10-business day period. Notwithstanding the foregoing, any inadvertent and non-repetitive use of your name or likeness shall not be deemed a breach of this Agreement, provided that Publisher shall use reasonable efforts to prospectively cure such failure. During the Term, you shall not authorize any Person other than Publisher to use your name or likeness (or any professional, group, or other assumed or fictitious name used by you) in connection with music activities relating to the Compositions.

7.05 Society Regulations. You acknowledge that certain Societies in the Territory may impose regulations (the "Regulations") applicable to the licensing of musical compositions in the country or countries concerned, including, without limitation, with respect to blanket licensing of musical compositions. Notwithstanding anything herein (including without limitation, any requirement that Publisher obtain your approval with respect to any such use of any Composition), any exploitation hereunder of the Compositions in a manner consistent with the Regulations shall be deemed to be in full compliance with all of the terms of this Agreement.

7.06 Waiver of Rights. Except where specifically reserved to you hereunder, you hereby waive any and all rights and interests of any kind that you may have or may later acquire in and with respect to the Compositions, or any Composition, including without limitation, so-called "moral rights."

7.07 Restrictions. (a) Notwithstanding anything to the contrary contained in this Agreement, Publisher shall not, without your prior written consent, license the use of the Compositions in connection with:

(i) commercials, advertisements and endorsements;  
(ii) theatrical motion pictures;  
(iii) merchandising uses;  
(iv) video games;  
(v) television uses;  
(vi) the use of the title of any Composition (without the music and/or lyrics of that Composition) as the title of any play, motion picture, television series or individual television program; or

(vii) the use of a Composition as a "sample" in a third-party musical composition or master recording, provided, that Publisher will not be required to obtain your consent for such use if the Composition was actually "sampled" prior to Publisher's receipt of a request to license such Composition for "sample" use.

Your consent for any of the above uses will not be unreasonably withheld and will be deemed granted unless Publisher has received your rejection of such use within seven (7) business days following Publisher's request for consent, which, for purposes hereof, may be faxed or e-mailed to you c/o your representative Mike McKoy, or a successor representative of whom you give Publisher Notice.

(b) Publisher shall not, without your prior written consent, issue any license granting "grand rights" in connection with the Compositions.

(c) Publisher agrees to issue mechanical licenses for the use of Compositions in Phonograph Records Released by Columbia in accordance with the controlled composition provision of the Current Recording Agreement (the "Controlled Composition Clause") or a successor controlled composition provision which complies with the requirements of paragraph 16.04(b) below. You represent and warrant that a complete and accurate copy of the Controlled Composition Clause is attached hereto as Exhibit D. The foregoing shall not be deemed to limit Publisher's rights in the event Publisher collects less than the Penny Rate for a Qualifying Album.

(d) Publisher will not, without your prior written consent (which may be withheld in your sole discretion) and, if applicable, the consent of your Record company, commercially exploit any demo recordings or outtakes made by you.

(e) Film Music. If, during the Term, you desire to write new music (Your Interest in which is referred to as "Film Music") for a film, television program or other audiovisual work ("A/V Project"), then Publisher will, upon your request, permit the assignment to the film company concerned of up to [REDACTED] of the copyright in and/or [REDACTED] provided, that:

(i) All agreements with the film company are negotiated by Publisher and you, and you shall not agree to any material terms relating to Film Music without Publisher's consent;

(ii) The remaining [REDACTED] of the copyright in such Film Music must be subject to this Agreement in all respects, and Publisher must be entitled to administer same hereunder, [REDACTED]

[REDACTED]

(iii) Publisher shall have the absolute right to negotiate a synchronization fee for the use of such Film Music in an A/V Project. If no separate synchronization fee is allocated by the film company, then a portion of the so-called "creative fee" or "all in fee" shall be paid to Publisher as a synchronization fee, the amount of which portion shall be mutually agreed by Publisher and you. Any additional income derived from Film Music shall be collected by Publisher and subject to accounting in accordance with this Agreement; and

(iv) The Film Music must have been written specifically for the A/V Project and actually embodied in the A/V Project.

(f) First Use Mechanical Licenses. If you write a New Composition specifically to be recorded by a particular recording artist, then if you give Notice thereof to Publisher simultaneously with your Delivery of such New Composition (a "Hold"), Publisher agrees that it shall not issue a "first-use" mechanical license for a recording of such Composition performed by a Person other than the artist designated by you unless you otherwise consent prior to issuance of such license or unless required by applicable law or Society regulation; provided, that no Hold will continue for more than eight months. Your consent to the issuance of a mechanical license of the type described in the preceding sentence is also hereby deemed granted for any such recording the artist, producer or executive producer of which is you or for which you were otherwise directly or indirectly responsible (as determined by Publisher in good faith).

## 8. Retention Period.

8.01 Notwithstanding the termination or expiration of the Term, Publisher shall retain all rights acquired by it under this Agreement in each country of the Territory for a period (the "Retention Period") ending on the later of (a) the date [REDACTED] following the expiration of the Term (the [REDACTED] Date") or (b) the end of the semi-annual accounting period during which Publisher has fully recouped, from royalties credited to your Royalty Account, all Advances paid and payable under this Agreement. Upon the expiration of the Retention Period, all rights granted by you to Publisher hereunder with respect to Your Interest in the Compositions, including the copyright interest assigned to Publisher under paragraph 7.01, shall automatically revert to you, subject to Publisher's collection rights as described in paragraph 7.02(c). Following the Retention Period and upon your request, Publisher will promptly execute and deliver any documents reasonably satisfactory to Publisher which are required or reasonably desirable to effectuate such reversion to you of the rights granted to Publisher with respect to Your Interest in the Compositions, including the copyright assigned to Publisher hereunder. None of the foregoing shall be deemed to limit Publisher's collection rights as described in paragraph 7.02(c). In addition, you shall have the right exercisable only upon written Notice given to Publisher after the [REDACTED] Date, to terminate the Retention Period provided that such written notice is accompanied by a payment to Publisher in an amount equal to [REDACTED] of the unrecouped balance of Advances as shown on Publisher's then most recent accounting to you.

8.02 You shall have the sole obligation to notify Licensees, Societies, Record companies and all other parties-in-interest that the Retention Period has expired and that you are

entitled to administer Your Interest in the Compositions thereafter. In no event will Publisher be in breach of this Agreement or an infringer of your copyright rights if Publisher collects your share of monies earned from exploitation of Your Interest in the Compositions after the Retention Period due to your failure to comply with the preceding sentence, and/or any failure by any Licensee, Society, Record company or other party-in-interest to pay any such monies directly to you; however, Publisher will pay you [REDACTED] of such monies, without retention of any amounts by Publisher for its own account, when Publisher would otherwise account to you hereunder. The foregoing shall not be deemed to limit Publisher's collection rights under paragraph 7.02(c) above.

**9. Advances.**

9.01 Publisher may recoup Advances from any and all royalties otherwise payable to or on behalf of you at any time pursuant to this Agreement.

9.02 Provided that you have fully complied with all of your material warranties, representations and obligations provided for in this Agreement, during the Term Publisher agrees to pay you Advances as follows (subject to the reductions specified in paragraph 9.03):

(a) (i) For the Initial Contract Period, [REDACTED]

[REDACTED]

(ii)

[REDACTED]

(b) (i) For each additional Contract Period, if any, for which Publisher exercises its Option to extend the Term, Publisher shall pay you an Advance for that additional Contract Period in an amount equal to

[REDACTED]

[REDACTED]

(ii)

[REDACTED]

(iii) The Advance for each additional Contract Period shall be payable, if at all, at any time not later than ten (10) business days following the commencement of the additional Contract Period concerned, provided, that Publisher has confirmed the Penny Rate for the corresponding Qualifying Album.

9.03

[REDACTED]

[REDACTED]



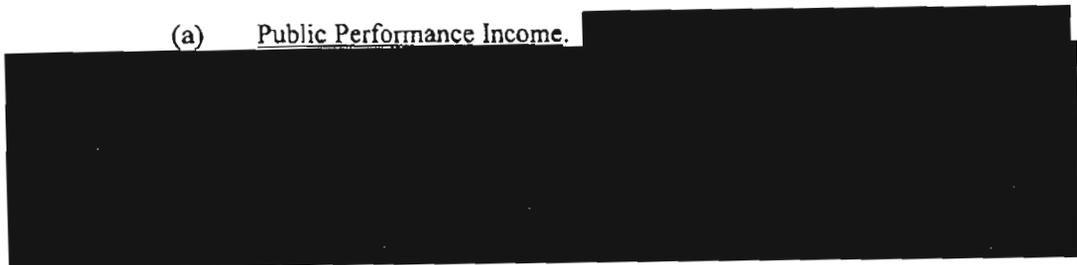
9.04 If Publisher makes an Overpayment to you in connection with an Advance, or otherwise, Publisher may elect to require you immediately to reimburse Publisher for the amount of that Overpayment. Alternatively, and without limitation of Publisher's rights under this Agreement or otherwise, Publisher, in its sole discretion, shall have the right to deduct the amount of that Overpayment from any amounts otherwise payable or becoming payable to you by Publisher.

**10. Royalties.**

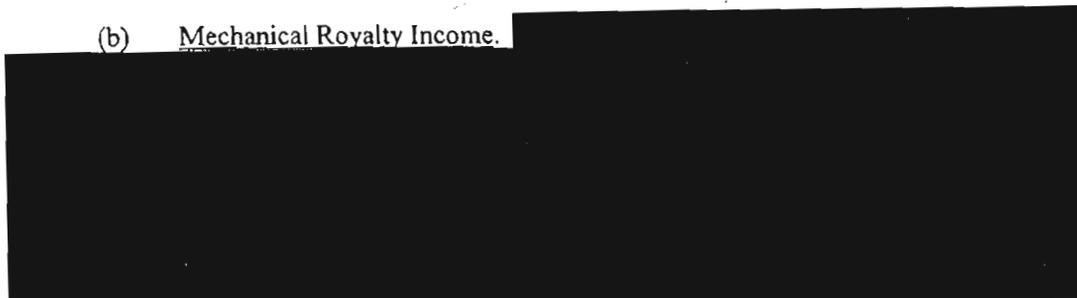
10.01 Royalty Account. Publisher shall establish one Royalty Account for you pursuant to this Agreement to which all royalties will be credited, and all Advances will be charged.

10.02 Royalty Rates. Publisher shall credit your Royalty Account with the following royalties derived from Publisher's exploitation, throughout the Territory, of Your Interest in the Compositions:

(a) Public Performance Income.



(b) Mechanical Royalty Income.



Nothing contained in this paragraph 10.02(b) shall authorize you to grant any license with respect to any Composition to any third party during the Term or Retention Period.

(c) Synchronization and Commercials Income and Video Uses.

from the synchronization licensing by Publisher of Your Interest in the Compositions for commercials, motion pictures, television programs, videos and other audiovisual uses, works and/or devices, provided, that the applicable synchronization license was secured by Publisher.

(d) Other Income. [REDACTED] derived from exploitations of Your Interest in the Compositions not specifically referred to in this paragraph 10, including, but not limited to, print exploitations where Publisher has licensed print rights to a third party. If Publisher exercises print rights directly (rather than through a print Licensee), then Publisher shall have the right to pay you a royalty based on the retail selling price of the printed editions concerned in accordance with industry standards.

10.03 Payments Received by You. Any direct or indirect payment or credit to you with respect to the Compositions (other than the songwriter share of public performance income) shall be immediately reported and turned over to Publisher for accounting under this paragraph 10. If you fail to so report or turn over such payment or credit to Publisher, then, without limitation of Publisher's other rights, Publisher shall be entitled to debit your Royalty Account in the amount of any such payment or credit.

10.04 Retention of Income. Publisher shall have the right to retain, for its account, all monies received by Publisher in connection with the Compositions during the Term, Retention Period and Collection Period, that exceed the amounts payable to you pursuant to this Agreement.

11. [Intentionally Deleted]

12. Royalty Accountings.

12.01 Publisher will determine what royalties, if any, are due you as of each June 30th and December 31st for the prior six (6) months. Publisher reserves the right to alter such accounting periods without Notice, but in no event shall Publisher account less frequently than every six (6) months. On or about the next September 30th or March 31st (or if Publisher alters the accounting periods, on or before the date ninety (90) days following the end of the period concerned) Publisher will send you a statement of your Royalty Account, and will pay you any net royalties that are due after Publisher has recouped, from royalties credited to your Royalty Account at any time, all Advances and other charges or expenses that Publisher is entitled to recoup under this Agreement. Publisher will not be required to send you a royalty payment for any period in which the royalties accrued to your account will be one hundred dollars (\$100.00) or less; such royalties shall be held and paid along with the next statement requiring payment in excess of one hundred dollars (\$100.00). Publisher will maintain royalty reserves with respect to print income in an amount not exceeding reserves permitted pursuant to the terms of Publisher's print agreements. If Publisher makes any Overpayment to you, then at Publisher's election in accordance with paragraph 9.04, you will immediately reimburse Publisher therefor; to the extent not immediately reimbursed, Publisher may deduct the Overpayment from any payments due or becoming due to you.

12.02 Exploitation of Compositions outside the United States is hereinafter called "foreign exploitation." Publisher will compute royalties for any foreign exploitation in the same national currency in which Publisher's Licensees pay Publisher for that exploitation, and Publisher will credit those royalties at the same rate of exchange at which the Licensees pay Publisher. For purposes of accounting to you, Publisher will treat any foreign exploitation as an

exploitation occurring during the same six-month period in which Publisher receives its Licensee's accounting and payment for that use. If any Publisher Licensee deducts any taxes from its payments to Publisher, Publisher may deduct a proportionate amount of those taxes from your royalties. If any law, any government ruling, or any other restriction affects the amount of the payments which a Publisher's Licensee can remit to Publisher, Publisher may deduct from your royalties an amount proportionate to the reduction in the Licensee's remittance to Publisher. If, after a final audit of its tax returns (including amended returns) by the Internal Revenue Service, or after expiration of the statute of limitations applicable to such audit, Publisher has claimed and is allowed a foreign tax credit against its U.S. income taxes for all, or a portion of, any taxes withheld by Publisher's affiliated Licensee from its royalty remittance to Publisher with respect to Compositions, the amount of such tax credit attributable to your royalties, to the extent utilized by Publisher, will be credited to your account. Such amount will be reasonably determined by Publisher in good faith; such determination will be conclusive and you will not be entitled to examine Publisher's tax returns, or any portion of them except as specified in the following two sentences. Publisher will, at your request and at your expense, deduct from the monies so blocked and deposit in a foreign depository designated by you, the equivalent in local currency of the royalties that would be payable to you on the foreign sales concerned, to the extent such monies are available for such purposes. All such deposits will constitute royalty payments to you for accounting purposes. If Publisher cannot collect payment for any foreign exploitation in the United States in United States Dollars, Publisher will not be required to account to you for that exploitation, except as specified in the following two sentences: Publisher will, at your request and at your expense, deduct from the monies so blocked and deposit in a foreign depository designated by you, the equivalent in local currency of the royalties that would be payable to you on the foreign sales concerned, to the extent such monies are available for such purposes. All such deposits will constitute royalty payments to you for accounting purposes.

12.03 Publisher will maintain books and records which reflect reports to Publisher of exploitation of Compositions, which are used by Publisher in calculating your Royalty Account (the "Royalty Records"). If you wish to verify the accuracy of a statement of your Royalty Account, you agree, for orderly processing and administration, to strictly follow either the procedures set forth in paragraph 12.03(a), or the procedures set forth in 12.03(b), below.

(a) Examination: You may, at your own expense, appoint a certified public accountant ("CPA") to examine the Royalty Records (a "Royalty Examination"). In the event you choose to conduct a Royalty Examination, the following procedures must be strictly followed:

(i) You must provide Notice of intent to conduct a Royalty Examination ("Examination Notice") within three years of Publisher sending a statement of your Royalty Account to you at the address set forth in the first paragraph of this Agreement, or an alternate address sent by you to Publisher by Notice. Following receipt of your Examination Notice, Publisher shall schedule commencement of the Royalty Examination.

(ii) Each Royalty Examination must be conducted by a CPA, and such CPA must, prior to commencement of the Royalty Examination, execute Publisher's standard form

confidentiality agreement then in effect. Your CPA may not conduct a Royalty Examination for you if he or his firm has begun an examination of Publisher's books and records for any Person except you, unless that examination has been concluded. Notwithstanding the preceding sentence, if Publisher notifies you that the CPA designated by you to conduct an examination of Publisher's books and records under paragraph 12.03(a), or the accounting firm with which he or she is associated, is engaged in an examination of Publisher on behalf of another Person (the "Other Examination"), you may nevertheless have your examination conducted by that CPA, and the running of the time within which such examination may be made shall be suspended until your CPA has completed the Other Examination, subject to the following conditions:

- (A) You shall notify Publisher of your election to that effect within 30 days after the date of Publisher's said notice to you;
- (B) Your CPA shall proceed in a reasonably continuous and expeditious manner to complete the Other Examination and render the final report thereon to the client and Publisher; and
- (C) Your CPA's examination: (1) shall not be commenced before the delivery to Publisher of the final report on the Other Examination; (2) shall be commenced within thirty (30) days thereafter; and (3) shall be conducted in a reasonably continuous manner.

(iii) Neither you nor your CPA will be entitled to examine any Royalty Records that do not specifically report exploitation of the Compositions. An Examination Notice, and the corresponding Royalty Examination, shall cover those statements of your Royalty Account sent by Publisher to you within the three years preceding your Examination Notice. You may conduct only one Royalty Examination with respect to any particular statement of your Royalty Account.

(iv) A Royalty Examination must take place only during Publisher's usual business hours, and only at the place where Publisher keeps the Royalty Records, which is currently at its administrative offices located at 810 Seventh Avenue, New York, New York.

(v) Each Royalty Examination must be completed within sixty (60) days from its commencement unless due to a reason within Publisher's sole control (provided, that Publisher's unwillingness to furnish books and records not typically furnished by Publisher in royalty examinations shall not be a reason "within Publisher's sole control"). Any report in which you or your CPA disputes any aspect of a statement of your Royalty Account ("Your Examination Report") must be in writing and delivered to Publisher within forty-five (45) days of completion of the Royalty Examination with respect to that particular statement.

(b) Notice of Objection: In the event you elect not to conduct a Royalty Examination, but nevertheless wish to object to, or assert a claim with respect to or relating to, a statement of Your Royalty Account, and wish to preserve any such claim, you shall strictly comply with the following procedure for objecting to such statement:

(i) You will give Publisher specific written Notice of any objection to a particular statement of Your Royalty Account, and your reasons for such objection in reasonable detail, within three (3) years after the date Publisher is required to send you such statement of Your Royalty Account under paragraph 12.01.

(c) Conclusively Binding: Irrespective of whether you conduct a Royalty Examination or make an objection under paragraph 12.01(b), each statement of Your Royalty Account will become conclusively binding on the date that is three (3) years after the date Publisher is required to send you such statement under paragraph 12.01, and you will have no further right to make any objections to it, or to make any claim with respect to or relating to it. You will have no right to sue Publisher in connection with any royalty accounting, or to sue Publisher for royalties derived from the exploitation of the Compositions during the period a royalty accounting covers, unless you commence the suit within six months after that three (3) year period has expired.

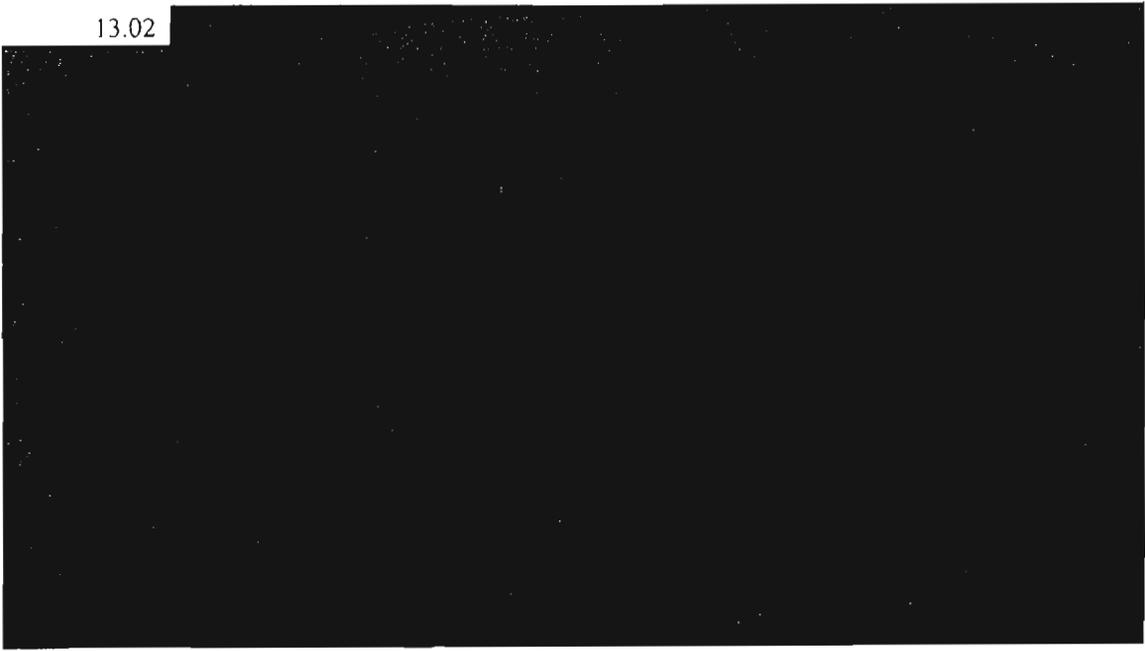
12.04 If you commence suit on any controversy or claim concerning or relating to royalties under this Agreement, the scope of the proceeding will be limited solely to the determination of the amount, if any, of the royalties due; and, the court will have no authority to consider any other issues or award any relief or remedy except recovery of any royalties found owing. Your recovery of any such royalties will be the sole relief or remedy available to you by reason of any claim related to Publisher's royalty accountings. Without limiting the generality of the preceding sentence, you will not have the right to seek rescission or termination of this Agreement, or avoid the performance of your obligations under it, or to impair any executory rights of Publisher by reason of any such claim. The preceding three sentences shall not apply to any item in any royalty accounting if you judicially establish that item was fraudulently misstated by Publisher.

### **13. Termination of Recording Agreement.**

13.01 It is the essence of this Agreement that you shall at all times during the Term have an exclusive Recording Agreement, as defined in paragraph 1.15. If the term of any such Recording Agreement terminates, you shall give Publisher immediate Notice of the termination of the term of the Recording Agreement (a "Recording Agreement Termination Notice"). At any time within thirty (30) days of the date of Publisher's receipt from you of a Recording Agreement Termination Notice, Publisher may, in its sole discretion, subject to paragraph 13.03, elect to (a) terminate the Term of this Agreement, in which event the provisions of paragraph 3.05 herein shall apply; (b) continue under the terms of this Agreement until you have given Publisher Notice that you have secured a new Recording Agreement ("Successor Recording Agreement"), in which event this Agreement shall, unless Publisher makes (or is deemed to have made) an election pursuant to paragraph 13.03, remain in effect for the shorter of (x) two (2) years from the date of Publisher's receipt from you of a Recording Agreement Termination Notice, or (y) thirty (30) days after receipt by Publisher of Notice that you have secured a Successor Recording Agreement; or (c) continue with the Agreement as modified by paragraph 13.02 below. Publisher may send you Notice of such election no later than thirty (30) days after its receipt of your Recording Agreement Termination Notice. If Publisher fails to give you such Notice within such thirty (30) day period, Publisher will be deemed to have elected to continue

under the terms of this Agreement pursuant to 13.01(b). No provision of this subparagraph 13.01 shall be applicable as against Publisher unless and until Publisher receives actual and accurate Notice strictly in conformity with the Notice provisions set forth in paragraph 18 of this Agreement. Without limiting any provision contained in this Agreement, actual notice other than by Notice, or constructive notice or knowledge shall in no event constitute Notice.

13.02



13.03 In the event Publisher elects to continue with this Agreement as modified as provided in paragraph 13.01(c), or elects or is deemed to have elected to continue under the terms of this Agreement pursuant to paragraph 13.01(b), at any time within thirty (30) days of the date of receipt from you of Notice that you have secured a Successor Recording Agreement prior to the expiration of the Term (or, in the event Publisher has elected or is deemed to have elected to continue under the terms of this Agreement pursuant to paragraph 13.01(b), if Publisher has not received Notice from you that you have secured a Successor Recording Agreement, at any time within the thirty (30) day period prior to the expiration of the two year term), Publisher may, in its sole discretion, elect to (a) terminate the Term of this Agreement, in which event the provisions of paragraph 3.05 herein shall apply; or (b) revert to the arrangement prior to Publisher's 13.01(b) or 13.01(c) election. Publisher may send you written Notice of such election no later than thirty (30) days after its receipt of your Notice that you have secured a Successor Recording Agreement. If Publisher fails to give you such Notice, Publisher will be deemed to have elected to revert to the arrangement which existed prior to Publisher's 13.01(b) or 13.01(c) election. If Publisher elects to revert to the arrangement which existed prior to Publisher's 13.01(b) or 13.01(c) election, the remaining Term will then be deemed (subject to Publisher's exercise of options) to be equal to the number of Contract Periods remaining hereunder after crediting you for any Contract Periods for which you have fulfilled Your 13.02 Delivery Commitment (if applicable) following the termination of your original Recording

Agreement; provided that such remaining Term shall (subject to Publisher's successive exercise of Options) in no event be less than one (1) Contract Period.

**14. Matching Right.**

14.01 For the purposes of this paragraph 14, the following terms shall have the following meanings:

(a) "Convey" or "Conveyance" shall refer to the grant, sale, assignment, license, transfer, encumbrance, or other conveyance, directly or indirectly, of any Interest.

(b) "Interest" shall mean any right or interest of any kind whatsoever (not already conveyed to or controlled by Publisher) in or with respect to (i) you and/or your publishing designee(s), and/or (ii) your personal services and/or any musical compositions written by you after the Term, and/or (iii) the Compositions or any of them, or any portion thereof, individually and collectively. An "Interest" includes, without limitation, the right to publish, administer, purchase, encumber, collect and/or retain income derived from, any musical composition(s) described in the preceding sentence.

(c) "Third Party Offer" shall mean a *bona fide* offer from a third party ("Third Party") for the Conveyance of an Interest.

14.02 If you at any time during the Term or the period ending three years thereafter receive a Third Party Offer and you desire to accept such Third Party Offer, you agree that Publisher shall have the exclusive right to match the Third Party Offer in accordance with its material commercial terms. Accordingly, you must promptly following your receipt of the Third Party Offer give Publisher Notice setting forth all of the material terms and conditions of the Third Party Offer, and shall simultaneously furnish to Publisher a complete *bona fide* copy of the Third Party Offer (and all related documents, including, without limitation, the relevant Third Party's specific acknowledgement of Publisher's rights pursuant to this paragraph). If Publisher agrees by Notice to you to match the material terms and conditions of the Third Party Offer within ten (10) business days after your full compliance with the immediately preceding sentence, then you shall promptly Convey the Interest solely to Publisher. If Publisher does not give you Notice accepting such Third Party Offer within such ten (10) business day period, then you will have the right to accept the Third Party Offer, provided that any Conveyance of an Interest by you to such third party must be consummated within the ensuing one hundred (100) days, and may only be consummated upon the same terms and conditions as contained in the Third Party Offer. If such Conveyance of an Interest to a third party is not so consummated, then you shall not Convey any Interest without again first offering to Convey such Interest to Publisher. Publisher shall not be required, as a condition of matching any Third Party Offer, to agree to any terms or conditions that are unique to and/or can only be performed by the third party, or to agree to any terms or conditions not directly related to the Conveyance of such Interest.

14.03 Notwithstanding anything to the contrary, nothing herein shall permit (a) a Conveyance by you of any Interest otherwise prohibited by the terms of this Agreement or which in any way conflicts with or otherwise affects Publisher's rights or your obligations hereunder, or

(b) a Conveyance of any Interest which you are not legally entitled or have the capacity to Convey, or are capable of Conveying.

14.04 You shall not at any time during the Term or the period ending three years thereafter Convey (or offer to Convey) an Interest, nor shall any Third Party acquire an Interest, except strictly in accordance with this paragraph 14. The provisions of this paragraph 14 are for Publisher's benefit and may, by specific written Notice to you, be waived in whole or in part, at any time, by Publisher.

**15. Intentionally Deleted.**

**16. Additional Warranties, Representations, Covenants and Agreements; Restrictions, Waivers, Indemnities.**

16.01 You warrant, represent, covenant and agree that:

(a) You have the full right, power, authority and legal capacity to enter into, deliver, and fully perform this Agreement and each and every term hereof. This Agreement constitutes a valid and binding agreement against you, is enforceable against you in accordance with its terms, and grants to Publisher the rights and licenses granted hereunder. Neither you, nor the Compositions (or any rights therein) are or may become subject to any contractual or other prohibition affecting your obligations hereunder or rights granted to Publisher hereunder, including without limitation, so-called "matching rights," or "collection rights."

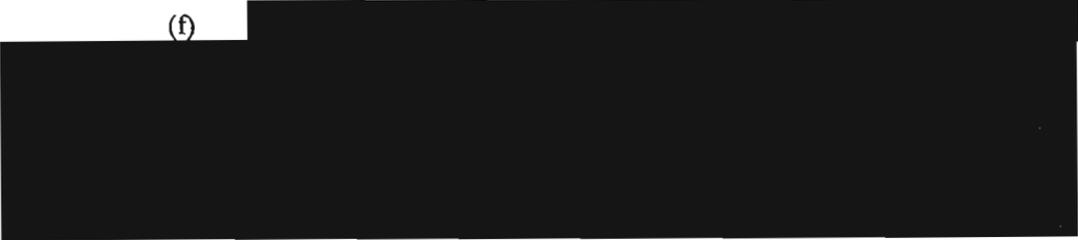
(b) Your Interest in the Compositions and all rights therein are your sole property and are, and shall throughout the Term and Retention Period be, free from any claims, liens and encumbrances of any kind whatsoever by any Person, including, but not limited to, claims of defamation, copyright infringement, trademark infringement, Lanham Act violation, moral rights violation, and/or invasion of privacy. During the Term and Retention Period, you will immediately give Notice to Publisher of any claim. As of the Effective Date, you neither know of any such claim, nor have any information which, upon reasonable inquiry, would cause you to learn of any such claim.

(c) No (i) Composition; (ii) name used by you (either individually or as a group), or (iii) other musical, dramatic, artistic or literary material, idea, or other intellectual property furnished or selected by you and contained in or used in connection with the Compositions, or any use thereof, does or at any time will violate any law or infringe upon any other work or violate any rights in any other work or the rights of any Person, including, without limitation, such Person's contractual rights, publicity rights, privacy rights, intellectual property rights (e.g., copyrights, moral rights, and trademark, trade name, service mark and similar rights), nor will any of the foregoing items violate any other law or regulation, including, without limitation, the laws of libel, defamation, slander, obscenity or product liability, or otherwise result in any liability of any kind to Publisher. Without limiting the foregoing, no Composition is or shall be derived from or based on any other work, and no Person other than you owns any rights in any derivative work based on any Composition except as specifically stated on Schedule A.

(d) All rights and remedies in or pertaining to Your Interest in the Compositions granted to Publisher pursuant to this Agreement are and shall throughout the Term and Retention Period remain available to Publisher throughout the Territory without restriction or limitation.

(e) At no time shall Publisher be required to make any payments or credits, or have any liabilities or obligations of any nature for, or in connection with, the acquisition, exercise or exploitation of rights by Publisher pursuant to this Agreement except as specifically provided in this Agreement. Without limiting the generality of the foregoing, you shall be solely responsible for any payments, liabilities or obligations due to any third parties from whom you have acquired an interest in the Compositions.

(f)



(g) You are, or intend to become, a writer member in good standing of ASCAP and a publisher member in good standing of ASCAP. If at any time you are not a writer member in good standing of ASCAP or a publisher member in good standing of ASCAP, you hereby grant Publisher the right to index Your Interest in the Compositions solely in its name, and to claim One Hundred percent (100%) of the publisher's share of public performance income with respect to the Compositions, until such time as you become writer member in good standing of ASCAP or a publisher member in good standing of ASCAP, subject, however, to Publisher's payment to you of your pro-rata share of such royalties. In the event that Publisher elects with your prior written consent, to pay performing rights society membership fees on your behalf, which Publisher is not obligated to do, such payment shall constitute an Advance, for which Publisher will be entitled to reimburse itself from any monies payable to you hereunder. In the event that at any time during the Term or Retention Period you wish to become affiliated with a different Society, you shall give Publisher 30 days' prior Notice of such intention and shall execute any documents reasonably required by Publisher to ensure that Publisher is entitled to collect all monies derived from exploitation of Compositions. In no event will such affiliation in any way affect any of Publisher's rights under this Agreement or result in any diminution of monies payable to Publisher.

(h) You will at all times use reasonable efforts to cause any other writer with whom you write to execute and deliver to Publisher any document it may reasonably require to effectuate its rights under this Agreement subject to any pre-existing agreements between such other writer and any third-party music publisher.

(i) You will at all times take no action (nor fail to take any required action) the result of which would be to derogate from or otherwise impair or limit the rights granted to Publisher hereunder. Without limiting anything contained in the prior sentence, you will at all

times take no action (nor fail to take any required action) that will result in divestiture, reduction, limitation of, or otherwise affect any interest you may or should have in any Composition (for example, where a Composition is co-written by you, agreeing to a split with any other writer, or otherwise granting any interest to any other writer, that does not fairly and equitably reflect your contribution to the Composition), unless Publisher consents in writing. You will throughout the Term diligently pursue your professional careers as songwriters and recording artists.

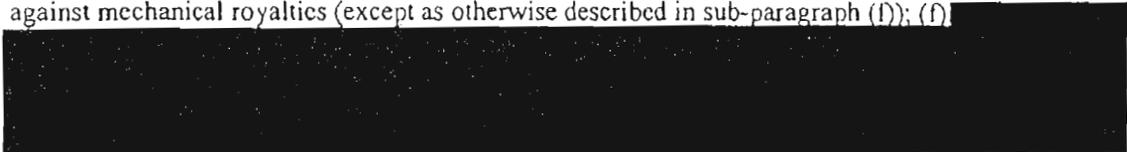
16.02 During the Term, you will not: (a) enter into any agreement, incur any obligation, or suffer any liability which would interfere with the full and prompt performance of your obligations hereunder, or (b) either directly or indirectly write musical compositions for, or Deliver or convey musical compositions or any interest therein to, any Person other than Publisher (except as otherwise set forth in paragraph 7.07(e)), or (c) otherwise act at any time in any manner inconsistent with Publisher's rights or your obligations hereunder.

16.03 All Affiliates (as defined in paragraph 1.02) existing as of the Effective Date are hereby deemed parties to this Agreement and shall be bound by all terms hereof. Upon formation subsequent to the Effective Date of an entity that is an Affiliate, and that may own or control an interest, direct or indirect, in and to musical compositions you shall promptly notify Publisher in writing of such formation, and simultaneously therewith shall deliver to Publisher a counterpart to this Agreement executed by such Affiliate, binding such Affiliate as a party to this Agreement and subject to the terms and conditions hereof. You hereby covenant, represent, warrant and personally guarantee that no Person who hereafter becomes an Affiliate, during the Term and/or Retention Period, shall have or be granted any right to your services as a songwriter, or any rights, title or interest in any musical composition, unless and until said Affiliate duly executes a counterpart of this Agreement as set forth in the immediately preceding sentence. Such execution shall not relieve you of any of your warranties, representations, obligations or other agreements hereunder.

16.04 (a) Without limitation of Publisher's exclusive rights hereunder, at no time shall you grant to any record company or others any license with respect to any Composition, including, without limitation, any mechanical license for the reproduction of any Composition on Records. You warrant and represent that you have not granted any license with respect to the Compositions prior to the execution of this Agreement except as provided in your Current Recording Agreement.

(b) Notwithstanding paragraph 16.04(a), if during the Term you are required, as part of a new Recording Agreement with a Major Label, to agree to a mechanical licensing provision, you may do so, provided that: (a) you give Publisher prior notice of the negotiations concerned, consult in good faith with Publisher with respect thereto, and provide copies of draft provisions to Publisher for its reasonable review and comment (and Publisher shall not withhold or delay any such review and/or comment so as to affect adversely or deny you your ability to enter into such Recording Agreement); (b) the license concerned is limited to Records; (c) the rate granted is [REDACTED] (d) the license does not otherwise limit or prejudice Publisher's rights under this Agreement or under law; (e) the license concerned does not provide for any diminution of Publisher's ability or right to collect

mechanical royalties or for the deduction or recoupment of any monies of any kind from or against mechanical royalties (except as otherwise described in sub-paragraph (f)); (f)

 The preceding provisions of this Paragraph 16.04(b) shall not, however, be deemed to limit the definition of "Full New Composition", or restrict any of Publisher's other rights hereunder.

16.05 The Compositions are unique and extraordinary. You acknowledge and agree that should you engage in any action which affects, hinders, or obstructs Publisher's rights in and to any Composition(s), Publisher's loss cannot be adequately compensated in damages, and Publisher shall be entitled to enjoin you from engaging in such action, and/or seek other injunctive or other equitable relief.

16.06 You will at all times fully indemnify and hold harmless Publisher and/or its affiliates, employees, officers, directors, agents, distributors or Licensees (each, an "Indemnified Party") from and against any and all claims, damages, liabilities, costs, losses and expenses, including outside legal expenses and reasonable counsel fees, arising out of any breach, or alleged breach, by you of any of your obligations, warranties or representations in this Agreement. You will reimburse any Indemnified Party on demand for any payment made at any time after the date hereof for any liability or claim that has resulted in a judgment against Publisher or which has been settled by Publisher with your prior written consent. Further, you will reimburse any Indemnified Party, on demand, for any legal expenses (including, without limitation, reasonable outside counsel fees) incurred by any Indemnified Party in connection with any liability or claim arising out of any breach or alleged breach by you, of any of your obligations, warranties or representations in this Agreement, whether or not the related liability has resulted in a judgment or has been settled by Publisher. Pending the resolution of any claim in respect of which any Indemnified Party is entitled to be indemnified, Publisher may, in its discretion, withhold monies which would otherwise be payable to you in an amount not exceeding your potential liability to Publisher under this paragraph. If a claim is asserted against Publisher and/or its Licensees and no action or proceeding is commenced within one year after Publisher's receipt of that claim, Publisher will, upon your request, release those withheld monies, unless Publisher reasonably and in good faith considers that the commencement of an action or proceeding is imminent. If Publisher continues to withhold monies following that 12 month period because Publisher considers the commencement of an action or other proceeding to be imminent, Publisher shall release such monies if that action or other proceeding has not been commenced within six months following that 12 month period. In lieu of Publisher withholding such monies, you may make bonding arrangements, satisfactory to Publisher in its reasonable discretion, to assure Publisher of reimbursement for all damages, liabilities, costs and expenses (including outside counsel fees and expenses) which Publisher and/or its Licensees may incur as a result of such claim.

16.07 Publisher shall have the sole right, but not the obligation, to initiate, prosecute, defend, settle, and compromise, in its sole discretion, any and all claims, demands, lawsuits,

actions, or other proceedings in respect of Your Interest in the Compositions, including, but not limited to, any action it may take against any alleged infringer of any Composition. Without limiting the generality of the preceding sentence, you agree to cooperate with Publisher in connection with any such claims, demands, lawsuits, actions, or other proceedings in respect of the Compositions, at Publisher's request.

16.08 In the event of your dissolution or the liquidation of your assets, or the filing of a petition in bankruptcy or insolvency, or for an arrangement or reorganization, by, for, or against you, or the appointment of a receiver or a trustee for all or a portion of your property, or if you make an assignment for the benefit of creditors or commit any act for, or in, bankruptcy or become insolvent, then at any time after the occurrence of any such event, in addition to any other remedies under this Agreement or otherwise, Publisher shall have the right to terminate the Term of this Agreement, without in any manner affecting any rights or interests previously granted to Publisher hereunder.

16.09 Your representations, warranties and indemnifications shall be effective and shall apply throughout the Term and Retention Period and shall survive the expiration (if any) of the Term and Retention Period hereof, unless otherwise expressly limited in time herein.

**17. Agreements, Approval & Consent.**

17.01 As to all matters treated herein to be determined by mutual agreement, or as to which any approval or consent is required, such agreement, approval or consent will not be unreasonably withheld and shall be deemed given unless you notify Publisher otherwise within ten (10) days following the date of Publisher's written request therefor, except in those instances when a different time period is provided for in this Agreement.

**18. Notices.**

18.01 Except as otherwise specifically provided for in this Agreement, all notices hereunder ("Notice(s)") shall be in writing. Notices to you shall be given by personal delivery, certified mail return receipt requested, or by overnight courier (including but not limited to FedEx or UPS), to you at your address specified on page one, or at such other address as may be designated by you in writing under this paragraph. Courtesy copies of notices to you shall be sent to your representative, Michael McKoy, Esq., Serling, Rooks and Ferrara, 119 Fifth Avenue, 3<sup>rd</sup> floor, New York NY 10003 until you advise Publisher to the contrary in writing hereunder. Your failure to keep Publisher fully apprised at all times, during and after the Term, of your changes of address shall be deemed a material breach of your obligations under this Agreement. Statements of Your Royalty Account, payments and courtesy copies of notices may be sent by ordinary mail. Notices to you shall be deemed given when mailed, except that Notice of change of address shall be effective only from the date of its receipt. Notices to Publisher shall be given by personal delivery, certified mail return receipt requested, or by overnight courier (including but not limited to FedEx or UPS), to the address shown above. Each Notice sent to Publisher shall be directed to its Chairman, with a copy of such Notice to be sent, simultaneously, to Publisher's Senior Vice-President, Legal and Business Affairs. Each Notice sent to Publisher shall be deemed given when received. Any Notice given by you under this Agreement must specifically refer to this paragraph 18 and any other applicable paragraph(s) of this Agreement

that are the subject matter of the Notice. It is the essence of this Agreement that wherever Notice is required to be given to Publisher, it is given in accordance with the terms of this paragraph 18, and wherever Publisher is to act within a certain time from receipt of Notice, such time period shall not begin to run unless and until Publisher receives Notice given in accordance with the terms of this paragraph 18, regardless of whether Publisher has received actual or constructive Notice through other means. Publisher may, in its sole and absolute discretion, waive the provisions of the immediately preceding sentence. Any such waiver shall be deemed to be a one-time waiver, and shall not constitute a waiver of Publisher's future right to receive Notices strictly in accordance with this paragraph.

**19. Force Majeure; Events of Default; Remedies.**

19.01 If because of: act of God; act of war; criminal or terrorist activity; unavoidable accident; fire; lockout, strike or other labor dispute; riot or civil commotion; act of public enemy; enactment, rule, order of act of any government or governmental instrumentality (whether federal, state, local or foreign); failure of technical facilities; failure or delay of transportation facilities; or other cause of a similar or different nature not reasonably within Publisher's control, or which would otherwise constitute force majeure (individually and collectively, "Force Majeure"), Publisher is materially hampered in the exploitation or administration of musical compositions, then, without limiting Publisher's rights, Publisher shall have the option by giving you Notice to suspend the then current Contract Period for the duration of any such contingency (not to exceed six months if the Force Majeure affects only Publisher, and not to exceed 12 months if the Force Majeure affects a major portion of the music publishing industry) plus such additional time as is necessary so that Publisher shall have no less than thirty (30) days after the cessation of such contingency in which to exercise its option, if any, for the next following Option Period. Publisher shall not withhold payment of royalties hereunder during a Force Majeure if Publisher continues to administer royalty payments for a majority of its writers.

19.02 If you do not Release a Qualifying Album [REDACTED]

[REDACTED]  
or, if you have otherwise materially breached any of your obligations under this Agreement, then, subject to your ability to cure any breach under paragraph 23.02(b) below, Publisher will have the following options:

(a) to suspend Publisher's obligations to make payments or credits, or permit any examination pursuant to paragraph 12.03 hereunder, until you have cured the default (provided, that Publisher will continue to render accountings to you); and/or

(b) to terminate the Term of this Agreement; and/or

(c) [REDACTED]

Publisher may exercise each of those options by sending you the appropriate Notice. If Publisher terminates the Term under subparagraph 19.02(b), all parties will be deemed to have fulfilled all

of their obligations under this Agreement, except those obligations which survive the end of the Term (such as the parties' obligations under paragraph 3.05, and your obligations under paragraph 19.02(c)). No exercise of an option under this paragraph will limit Publisher's rights, remedies or options under this Agreement, including but not limited to Publisher's right to recover damages by reason of your default.

**20. Assignment; Change of Control.**

20.01 This Agreement, the rights, opportunities and obligations created pursuant to this Agreement, and any of your rights or interest in this Agreement and/or with respect to Compositions, are not assignable or transferable in any manner by you, nor shall you delegate any of your rights or obligations without the prior written consent of Publisher, except that you shall have the right to assign your aggregate rights under this Agreement to a corporation or L.L.C. of which you are sole shareholder (or, in the case of the L.L.C., sole member) and over which you exercise sole management control, provided that:

(a) No such assignment will be effective until Publisher has received written notice of such assignment, duly signed by you and such corporation, and relevant corporate documents reasonably satisfactory to Publisher;

(b) Such corporation or L.L.C. must be duly incorporated or duly organized, as applicable, and in good standing in the jurisdiction of its incorporation or organization;

(c) You shall remain personally responsible for all of the obligations, agreements, warranties and representations imposed upon you pursuant to this Agreement;

(d) In no event will such assignment in any way affect the rights granted to Publisher pursuant to this Agreement;

(e) Publisher's inadvertent failure to comply with such assignment shall not constitute a breach of this Agreement; and

(f) You and the assignee(s) shall execute, and deliver to Publisher, without charge, any additional instruments (in the nature of inducement letters, etc.) that Publisher may reasonably request.

20.02 Publisher may assign or license its rights under this Agreement in the ordinary course of its business. Publisher may also assign this Agreement and its rights hereunder in whole or in part to any Person which controls, which is controlled by, or which is under common control with, Publisher, or which is in partnership with Publisher and/or any of its affiliates, or to any Person acquiring all, or a substantial part of, Publisher's stock and/or assets or with whom Publisher may merge.

21. Choice of Law/Venue.

21.01 THIS AGREEMENT SHALL BE DEEMED ENTERED INTO IN THE STATE OF NEW YORK AND THE VALIDITY, INTERPRETATION AND LEGAL EFFECT OF THIS AGREEMENT SHALL BE GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS ENTERED INTO AND PERFORMED ENTIRELY WITHIN THE STATE OF NEW YORK, WITH RESPECT TO THE DETERMINATION OF ANY CLAIM, DISPUTE OR DISAGREEMENT WHICH MAY ARISE OUT OF THE INTERPRETATION, PERFORMANCE OR BREACH OF THIS AGREEMENT OR WHICH IN ANY OTHER RESPECT RELATES TO THIS AGREEMENT. ANY PROCESS IN ANY ACTION OR PROCEEDING COMMENCED IN THE COURTS OF THE STATE OF NEW YORK OR ELSEWHERE ARISING OUT OF ANY SUCH CLAIM, DISPUTE OR DISAGREEMENT, MAY, AMONG OTHER METHODS, BE SERVED IN THE MANNER SET FORTH IN PARAGRAPH 18.01 HEREOF. ANY SUCH DELIVERY OR MAIL SERVICE SHALL BE DEEMED TO HAVE THE SAME FORCE AND EFFECT AS PERSONAL SERVICE WITHIN THE STATE OF NEW YORK OR THE JURISDICTION IN WHICH SUCH ACTION OR PROCEEDING MAY BE COMMENCED. ANY CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE INSTITUTED AND MAINTAINED EXCLUSIVELY IN ANY FEDERAL OR STATE COURT LOCATED WITHIN THE COUNTY OF NEW YORK IN THE STATE OF NEW YORK. YOU IRREVOCABLY SUBMIT TO THE PERSONAL JURISDICTION OF SUCH COURT, AND AGREE NOT TO ASSERT, BY WAY OF MOTION, AS A DEFENSE OR OTHERWISE, THAT (I) YOU ARE NOT SUBJECT PERSONALLY TO THE JURISDICTION OF SUCH COURT, (II) THE LITIGATION IS BROUGHT IN AN INCONVENIENT FORUM, (III) THE VENUE OF THE LITIGATION IS IMPROPER OR THE LITIGATION SHOULD BE TRANSFERRED FOR ANY REASON TO ANY OTHER VENUE, OR (IV) THIS AGREEMENT OR THE SUBJECT MATTER HEREOF MAY NOT BE ENFORCED IN OR BY SUCH COURT.

21.02 NOTWITHSTANDING THE FOREGOING, IN THE EVENT ANY PERSON ASSERTS A CLAIM AGAINST ANY INDEMNIFIED PARTY (WHETHER ASSERTED AS A CLAIM, COUNTERCLAIM, CROSS-CLAIM OR OTHERWISE) (A "THIRD-PARTY CLAIM"), IN AN ACTION OR PROCEEDING OTHER THAN IN A COURT OF THE STATE OF NEW YORK, AS TO WHICH ANY INDEMNIFIED PARTY BELIEVES IT IS ENTITLED TO BE DEFENDED, INDEMNIFIED AND/OR HELD HARMLESS BY YOU PURSUANT TO THIS AGREEMENT, AND YOU ARE GIVEN NOTICE OF SUCH THIRD-PARTY CLAIM, YOU IRREVOCABLY SUBMIT TO THE PERSONAL JURISDICTION OF SUCH COURT OR TRIBUNAL, AND AGREE NOT TO ASSERT, BY WAY OF MOTION, AS A DEFENSE OR OTHERWISE, THAT (I) YOU ARE NOT SUBJECT PERSONALLY TO THE JURISDICTION OF SUCH COURT OR TRIBUNAL, (II) THE LITIGATION IS BROUGHT IN AN INCONVENIENT FORUM, (III) THE VENUE OF THE LITIGATION IS IMPROPER OR THE LITIGATION SHOULD BE TRANSFERRED FOR ANY REASON TO ANY OTHER VENUE, OR (IV) THIS AGREEMENT OR THE SUBJECT MATTER HEREOF MAY NOT BE ENFORCED IN OR BY SUCH COURT OR TRIBUNAL. IN ALL EVENTS, YOU AGREE THAT YOU ARE BOUND BY ANY AND ALL JUDGMENTS, ORDERS, DECREES AND/OR AWARDS ENTERED IN SUCH ACTION OR PROCEEDING. NOTHING CONTAINED IN THIS PARAGRAPH SHALL BE DEEMED A WAIVER BY

ANY INDEMNIFIED PARTY OF ITS RIGHT TO ASSERT THAT (I) SUCH INDEMNIFIED PARTY AND/OR YOU ARE NOT SUBJECT PERSONALLY TO THE JURISDICTION OF SUCH COURT OR TRIBUNAL, (II) THE LITIGATION IS BROUGHT IN AN INCONVENIENT FORUM, (III) THE VENUE OF THE LITIGATION IS IMPROPER OR THE LITIGATION SHOULD BE TRANSFERRED FOR ANY REASON TO ANY OTHER VENUE, OR (IV) THIS AGREEMENT OR THE SUBJECT MATTER HEREOF MAY NOT BE ENFORCED IN OR BY SUCH COURT OR TRIBUNAL.

22. Group Artist.

22.01 Joint and Several Obligations. Your obligations, representations, warranties, covenants, restrictions, waivers and indemnities under this Agreement are joint and several. All references to "you" shall include all members of METRO STATION (the "Group") who are signatory to this Agreement inclusively and each member individually, unless otherwise specified.

22.02 New Members. You represent and warrant that as of the Effective Date there are no members of the Group other than MASON MUSSO, TRACE CYRUS, BLAKE HEALY and ANTHONY IMPROGO, each of whom is a signatory to this Agreement. You further represent and warrant that, in the event any new member is added to the Group during the Term, whether as a replacement or otherwise, (a) each such Person shall be deemed a "New Member," (b) You will promptly identify each New Member by Notice to Publisher ("New Member Notice"), and (c) You will, prior to the commercial release of any Record containing a Composition written or performed in whole or in part by any New Member, cause such New Member to execute such instruments as Publisher shall reasonably require to cause the New Member to be bound by this Agreement as an additional signatory.

22.03 Leaving Members. If during the Term any member of the Group ceases to be a member of the Group, you will promptly provide Notice to Publisher ("Leaving Member Notice"). On the date Publisher receives such Leaving Member Notice, such member shall be deemed a "Leaving Member," and you will have no obligation to Deliver the Leaving Member's Interest in any Leaving Member Composition. For the purposes of this Agreement, a "Leaving Member's Interest" in a composition shall mean that percentage interest in any composition resulting from a Leaving Member's authorship and/or ownership of rights in that composition (as applicable), and a "Leaving Member Composition" shall mean any composition, other than a Composition, written entirely after the date such Leaving Member becomes a Leaving Member. you will continue to Deliver Your Interest, including the Leaving Member's Interest, in all Compositions, and you (and the Leaving Member individually) will continue to be bound by the other provisions of this Agreement, including, without limitation, paragraph 20.05 below.

22.04. Termination Upon Leaving Member Notice. Publisher will have the right to terminate the Term of this Agreement with respect to the remaining member(s) of the Group by Notice given to you at any time before the expiration of forty-five (45) days after Publisher's receipt of your Leaving Member Notice. In the event of such termination, all of the members of the Group will be deemed Leaving Members as of the date of the Leaving Member Notice, and paragraph 22.05 will apply to all of them, collectively or individually, as Publisher elects.

22.05 Engagement of Leaving Members. You hereby grant to Publisher an option to engage the exclusive songwriting services of any and all Leaving Member(s) ("Leaving Member Option"). Publisher may exercise the Leaving Member Option with respect to a Leaving Member whether or not it has elected to terminate the Term of the Agreement with respect to the remaining members of the Group, as provided in paragraph 22.04. The Leaving Member Option may be exercised by Publisher by Notice to Leaving Member at any time before the expiration of forty-five days after the date of the later of: (a) Publisher's receipt of your Leaving Member Notice, or (b) Publisher's termination Notice pursuant to paragraph 22.02(a)(2), as the case may be. If Publisher exercises the Leaving Member Option, the Leaving Member concerned will be required to execute an agreement substantially in the form of Publisher's standard form of co-publishing agreement in use at the date such Leaving Member Option is exercised, containing, without limitation, the following provisions:

(1) the term will commence on the date of Publisher's exercise of such Leaving Member Option and may be extended by Publisher, at its election exercisable in the manner provided in paragraph 3.03 of this Agreement, for the same number of Option Periods, if any, remaining pursuant to paragraph 3.03 at the time of Publisher's exercise of the Leaving Member Option (but an option for at least one such additional period in any event);

(2) the MDRC for each Contract Period of such term will be the same (*mutatis mutandis*) as that granted to Publisher in paragraph 4.01 of this Agreement, unless the Leaving Member is not party to a Recording Agreement, in which case, the MDRC for each Contract Period will be [REDACTED]

(3) unless Publisher in its sole discretion provides otherwise, the advance payable to the Leaving Member for each such Contract Period shall be a sum equal to [REDACTED] of the corresponding Advance otherwise payable pursuant to paragraph 9.02 of this Agreement; and

(4) [REDACTED]

A Leaving Member's failure to execute such an agreement shall constitute a breach suspending Publisher's obligations to (x) credit your royalty account or pay any Advance under this Agreement, and/or (y) credit Leaving Member with any royalty or pay any advance to Leaving Member.

22.06 Group Name. You represent, warrant, covenant and agree that you shall not assign the professional name METRO STATION, or permit the use of the professional name

METRO STATION, without Publisher's prior written consent, and any attempt to do so shall be null and void and shall convey no right or title.

23. Miscellaneous.

23.01 This Agreement contains the entire understanding of the parties to this Agreement relating to the subject matter of this Agreement and cannot be changed, modified, amended, cancelled or terminated except by an express written instrument signed by an officer of Publisher and you. All prior and contemporaneous conversations, negotiations, agreements, and alleged agreements, representations, covenants and warranties concerning the subject matter of this Agreement are merged herein. This is a fully integrated agreement. No waiver by Publisher or modification of this Agreement shall be effective unless it is in writing and signed by Publisher's Chairman or Senior Vice President, Business and Legal Affairs, or such other authorized signatory of whom Publisher gives you Notice.

23.02 (a) You shall not be entitled to recover damages or impose on Publisher any other remedy by reason of any breach by Publisher of its obligations hereunder, if at all, unless Publisher has failed to remedy such breach within 30 days following receipt of your Notice thereof and thereafter continues to diligently remedy such breach. You acknowledge that your rights and entitlements under this Agreement are purely economic in nature, and that the impairment thereof is clearly calculable and compensable in damages. You shall not, under any circumstances, be entitled to terminate this Agreement, based upon, without limitation, any claimed breach by Publisher, of which you give Notice to Publisher hereunder, whether or not the same is cured, and your sole and exclusive remedy shall be for money damages.

(b) Publisher shall not be entitled to recover damages or impose on you any other remedy by reason of any breach by you of your obligations hereunder unless you have failed to remedy such breach within 30 days following your receipt of Publisher's notice thereof. Notwithstanding anything to the contrary contained in this Paragraph 2302(b), there shall be no "cure" period in connection with any breach by you of: (i) your obligations to Deliver all Compositions exclusively to Publisher during the Term; and (ii) other obligations that are not capable of cure.

23.03 You agree that any actual or threatened breach by you of this Agreement, including without limitation, any covenant, representation or warranty contained herein, shall cause Publisher to suffer immediate and irreparable harm for which Publisher shall not have an adequate remedy at law. Accordingly, without in any way limiting or affecting any right or remedy Publisher has under this Agreement or otherwise, it is agreed that Publisher shall be entitled to immediate, temporary, preliminary and permanent injunctive or other equitable relief to prevent any threatened or actual violation of Publisher's rights under this Agreement. You shall have the right to oppose Publisher's application for such relief on other grounds.

23.04 This Agreement shall not become effective until executed by all proposed parties hereto.

23.05 Any and all riders, exhibits and schedules annexed hereto, together with this basic document, shall be taken together to constitute the agreement between you and Publisher.

23.06 Each Option granted to Publisher in this Agreement is separate and distinct, and the exercise of any such Option will not operate as a waiver of any other Option.

23.07 If any part of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction or by any other legally constituted body having jurisdiction to make such determination, the remainder of this Agreement will remain in full force and effect.

23.08 Nothing herein contained shall create any association, partnership, joint venture or relationship of principal and agent between the parties hereto, it being understood that the parties hereto are with respect to each other independent contractors; and neither party shall have any authority to bind the other or the other's representatives in any way and shall not hold itself out to any third party as having such authority. Nothing herein shall act as a bar or limitation to Publisher's entering into any agreement with any party which is similar or dissimilar to this Agreement.

23.09 A waiver by either party of any term or condition of this Agreement in any instance shall not be deemed or construed as a waiver of such condition for the future or of any subsequent breach thereof. Without limiting the force and effect of the foregoing, compliance with any provision of this Agreement may be waived by the party hereto entitled to demand such compliance; however, such waiver must be in writing. No waiver of a provision of this Agreement shall be construed as a continuing waiver of such provision (unless the writing waiving such compliance expressly sets forth the continuing waiver of the provision) or of any other provision. All remedies, rights, undertakings, obligations and agreements contained in this Agreement shall be cumulative, and none of them shall be in limitation of any other remedy, right, undertaking, obligation or agreement of either party, whether expressed herein, or otherwise.

23.10 If any period of time prescribed in this Agreement would expire on a Saturday, a Sunday, or any other day on which Publisher's offices in New York City are not open for business, the period will be extended and continue throughout the next regular business day.

23.11 All payments due to you pursuant to this Agreement shall be made payable to the order of \_\_\_\_\_, Fed ID/Social Security Number \_\_\_\_\_.

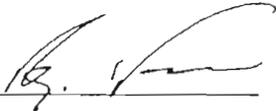
**24. Opportunity to Consult Independent Legal Counsel.**

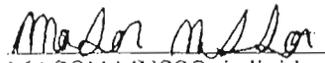
24.01 YOU ACKNOWLEDGE AND AGREE THAT YOU HAVE BEEN REPRESENTED BY INDEPENDENT COUNSEL OR HAVE HAD THE UNRESTRICTED OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL OF YOUR OWN CHOICE FOR PURPOSES OF ADVISING YOU IN CONNECTION WITH THE NEGOTIATION AND EXECUTION OF THIS AGREEMENT. YOU WAIVE ANY CLAIM

OR ANY DEFENSE TO THE FULL ENFORCEMENT BY US OF THIS AGREEMENT  
BASED ON THE LACK OF INDEPENDENT, COMPETENT, OR EXPERIENCED LEGAL  
REPRESENTATION.

AGREED:

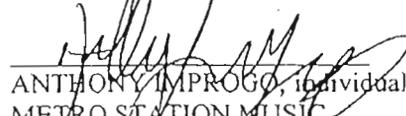
EMI APRIL MUSIC INC.

By: 

  
MASON MUSSO, individually and d/b/a  
METRO STATION MUSIC

  
TRACE CYRUS, individually and d/b/a  
METRO STATION MUSIC

  
TIMOTHY BLAKE HEALY, individually and d/b/a  
METRO STATION MUSIC

  
ANTHONY IMPROGO, individually and d/b/a  
METRO STATION MUSIC

*currently collectively p/k/a METRO STATION*

SCHEDULE A

to the Agreement dated as of May 1, 2007 between EMI APRIL MUSIC INC. and the members of METRO STATION.

(Reference paragraph 5.04)

---

Compositions

<u>Title</u>	<u>Writer(s)/Share</u>	<u>Publisher(s)/Share</u> <u>(Prior to assignment to EMI)</u>
--------------	------------------------	------------------------------------------------------------------

EXHIBIT A

to the Agreement dated as of May 1, 2007 between EMI APRIL MUSIC INC. and the members of METRO STATION (the "Agreement").

(Reference paragraph 7.01)

---

ASSIGNMENT

KNOW ALL MEN BY THESE PRESENTS:

The undersigned:

Name: MASON MUSSO, TRACE CYRUS, TIMOTHY BLAKE HEALY and ANTHONY IMPROGO, each individually and d/b/a METRO STATION MUSIC (individually and collectively, "Assignor")

Address: Scrling, Rooks and Ferrara,  
119 Fifth Avenue, 3rd floor  
New York NY 10003,

for good and valuable consideration now received, hereby sells and assigns unto:

Name: EMI APRIL MUSIC INC. ("Assignee")

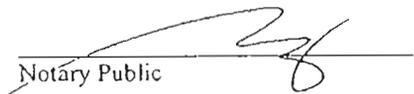
Address: 1290 Avenue of the Americas  
New York, New York 10104

and its successors and assigns, for the "Term" and "Retention Period" (as such terms are defined in the Agreement), [REDACTED] of Assignor's right, title and interest in all of the musical composition(s) written and/or acquired by Assignor (the "Compositions"), including, but not limited to, each of the musical compositions(s) listed on Schedule A annexed to this Assignment, including, but not limited to, [REDACTED] in Assignor's interest in the copyrights in the Compositions, together with any and all renewals, extensions, continuations and reversions of such copyrights, secured or to be secured under the United States Copyright Act of 1976 or under any other copyright law or similar law (statutory or common law) now or hereafter in force and effect in the United States or any other countries throughout the world or pursuant to any treaties, conventions, or proclamations.



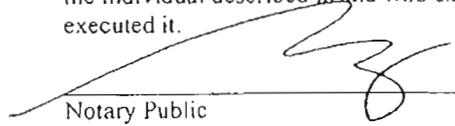
STATE OF Ny )  
 ) ss.: MICHAEL LEE MCKOY  
COUNTY OF Ny ) Notary Public, State of New York  
 No. 02MC6133499  
 Qualified in New York County  
 Commission Expires 9/19/2009

On 5/2/07, before me personally came Tina Cyrus, known to me to be the individual described in and who executed the foregoing instrument, and acknowledged to me that he executed it.

  
Notary Public

STATE OF Ny )  
 ) ss.: MICHAEL LEE MCKOY  
COUNTY OF Ny ) Notary Public, State of New York  
 No. 02MC8133499  
 Qualified in New York County  
 Commission Expires 9/19/2009

On 5/2/07, before me personally came Timothy Haly, known to me to be the individual described in and who executed the foregoing instrument, and acknowledged to me that he executed it.

  
Notary Public

STATE OF Ny )  
 ) ss.: MICHAEL LEE MCKOY  
COUNTY OF Ny ) Notary Public, State of New York  
 No. 02MC6133499  
 Qualified in New York County  
 Commission Expires 9/19/2009

On 5/2/07, before me personally came Anthony Frigo, known to me to be the individual described in and who executed the foregoing instrument, and acknowledged to me that he executed it.

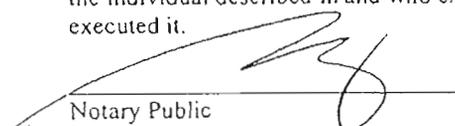
  
Notary Public

EXHIBIT B

to the Agreement dated as of May 1, 2007 between EMI APRIL MUSIC INC. and the members of METRO STATION (the "Agreement").

(Reference paragraph 7.02)

---

DIRECTION LETTER

As of May 1, 2007

To: ALL RECORD MANUFACTURERS ALL PERFORMING RIGHTS  
LICENSED TO MECHANICALLY SOCIETIES  
REPRODUCE COMPOSITIONS SPECIFIED  
HEREINBELOW

HARRY FOX AGENCY

ALL OTHER PARTIES IN INTEREST

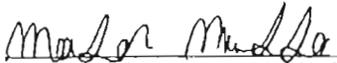
Please be advised that effective as of May 1, 2007, I have granted to EMI APRIL MUSIC INC. ("Publisher") and its licensees and assigns, the exclusive right, throughout the world, in respect of compositions of which the undersigned is the copyright proprietor, including those compositions listed on Schedule A annexed (the "Compositions"):

- (i) to license and cause others to license the use of the Compositions; and
- (ii) to administer and grant rights in and to the Compositions and the copyrights therein; and
- (iii) to publish and sell sheet music and/or folios of the Compositions if it so elects; and
- (iv) to collect all monies payable with respect to the Compositions, including monies earned but not paid prior to the effective date hereof; and

(v) to otherwise administer the Compositions and the copyrights therein and to act as the publisher thereof.

Accordingly, you are hereby irrevocably directed and authorized to pay all such monies solely and directly to Publisher. This letter is binding on any and all Affiliates of the undersigned and is subject to the terms and conditions of the Agreement.

Very truly yours,



MASON MUSSO, individually and d/b/a  
METRO STATION MUSIC



TRACE CYRUS, individually and d/b/a  
METRO STATION MUSIC



TIMOTHY BLAKE HEALY, individually and d/b/a  
METRO STATION MUSIC



ANTHONY IMPROTA, individually and d/b/a  
METRO STATION MUSIC

*currently collectively p/k/a METRO STATION*

EXHIBIT C

to the Agreement dated as of May 1, 2007 between EMI APRIL MUSIC INC. and the members of METRO STATION.

(Reference paragraph 7.02)

---

Dated as of May 1, 2007

American Society of Composers,  
Authors and Publishers  
ASCAP Building  
One Lincoln Plaza  
New York, New York 10023

Gentlemen:

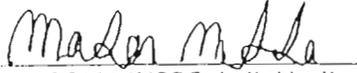
This is to advise you that I intend to assign any publisher's share of royalties which are now or may become due to me from you to EMI APRIL MUSIC INC. up to the amount of \$ \_\_\_\_\_. I understand that EMI APRIL MUSIC INC. may not make a further assignment of these royalties except to another ASCAP member or to another bank, and any further purported assignment not so limited will not be honored by you. A copy of the proposed Exclusive Writer and Co-Publishing Agreement is attached as Exhibit 1 to this Notice.

I have read the Society's Regulation issued pursuant to Article XX, Section 4 of the Society's Articles of Association, and this will certify that the Exclusive Writer and Co-Publishing Agreement conforms in all particulars with the terms of that Regulation, a copy of which is annexed hereto.

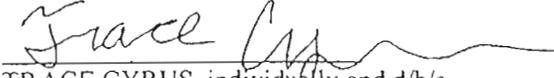
In consideration of your agreeing to this assignment, I agree that I may not resign from membership nor will I take any action which would diminish the number of works in my catalog or reduce my present interest in such works, by assignment or otherwise until my obligations pursuant to the Exclusive Writer and Co-Publishing Agreement are fully met. If the Exclusive Writer and Co-Publishing Agreement is still in effect, I further agree, on behalf of myself or any other person or persons who may acquire, by will or under any law, my right, title and interest in any musical works in my catalog, to execute any new assignment vesting in you the right to license, upon a non-exclusive basis, the non-dramatic public performance of such works which may be approved for the members generally in accordance with Article III, Section 6 of ASCAP's Articles of Association.

I further agree that either I or the assignee will inform you when all sums due pursuant to the assignment have been paid to the assignee, that ASCAP is under no obligation to monitor such payments or modify its records when said assignment is satisfied until I or the assignee has informed you of such satisfaction; and that I hereby indemnify and hold ASCAP harmless from any liability for all payments made to the assignee until such notification has occurred. If you agree to this Assignment, please so indicate at the foot hereof in the place provided.

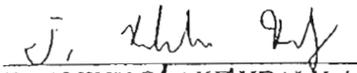
Very truly yours,



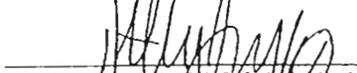
MASON MUSSO, individually and d/b/a  
METRO STATION MUSIC



TRACE CYRUS, individually and d/b/a  
METRO STATION MUSIC



TIMOTHY BLAKE HEALY, individually and d/b/a  
METRO STATION MUSIC



ANTHONY IMPROGO, individually and d/b/a  
METRO STATION MUSIC

*currently collectively p/k/a METRO STATION*

Accepted & Agreed:

AMERICAN SOCIETY OF COMPOSERS,  
AUTHORS AND PUBLISHERS

By: \_\_\_\_\_

Subject to the terms of the  
Regulation issued pursuant to  
Article XX, Section 4 of the Society's  
Articles of Association

Pursuant to Article XX, Section 4, assignment of royalties will be permitted with the prior written approval of the Society, in order to provide for the repayment of an advance or loan to a member, on the following conditions:

The assignment is for a specified amount of money, not to exceed the amount of the loan or advance given to the member.

The assignee is a member of ASCAP or a bank who may not further assign except to another member or bank.

A copy of the proposed assignment or loan agreement shall be furnished to the Society prior to the execution of the document, together with a statement on a form supplied by the Society, (a)

summarizing the terms of assignment; and (b) waiving the member's right to resign from membership until the full amount of the loan or advance covered by the assignment has been repaid.

The Society reserves the right, in its discretion, to withhold approval of any assignment for reasons such as, but not limited to, the following: the member is indebted to the Society; the member has any other outstanding assignments; or a tax or judgment lien against the member has been served on ASCAP.

If the advance or loan provides for recoupment or repayment from other sources, it shall provide that the assignee shall furnish ASCAP, upon receipt of a written request from the assignor or the Society, with a certified statement showing all amounts recouped or repaid and the current balance owed.

(Exhibit C-1)

1. Amount of Assignment - \$ \_\_\_\_\_
2. Amount of loan or advance given to member -  
\_\_\_\_\_
3. Assignee is: EMI APRIL MUSIC INC.  
(Check appropriate blank)  
\_\_\_\_\_ Bank  
\_\_\_\_\_X\_\_\_\_\_ Member
4. Advance or loan (check appropriate blank)  
\_\_\_\_\_X\_\_\_\_\_ does  
\_\_\_\_\_ does not  
provide for recoupment from other sources.

EXHIBIT D

to the Agreement dated as of May 1, 2007 between EMI APRIL MUSIC INC. and the members of METRO STATION.

(Reference paragraph 4.06)

---

Controlled Composition Provision of Current Recording Agreement



EMI MUSIC PUBLISHING  
 DPD Income Analysis - Inception thru 3Q'07  
 Royalties Received As Of March 7, 2008

LABEL GROUP	EXPECTED	% of Total	RECEIVED	% of Total	SHORTFALL	% of Total	Amt Paid as % of Expected
UMG							
A&M							
MOTOWN							
POLYGRAM							
UMG							
Label Group Total:							
SONY/BMG							
BMG							
SONY							
SONY DISCOS							
Label Group Total:							
WEA							
ATLANTIC_ELEKTRA							
WARNER							
RHINO							
Label Group Total:							
CAPITOL							
MISC							
HOLLYWOOD							
WALT DISNEY							
ROADRUNNER							
CURB							
DOMINO							
OTHER							
PENDING							
Label Group Total:							
GRAND TOTALS							

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED