

AFM/Recording Industry Term Sheet - April 18, 2017

Subject to (1) the dismissal of *American Federation of Musicians & Employers Pension Fund vs. Atlantic Recording Corp. et. al.*, 1:15-cv-6267-GHW, (2) the approval of each of UMG Recordings, Inc. and Capitol Records LLC, Hollywood Records, Sony Music Entertainment, Atlantic Recording Corp. and Warner Bros. Records, Inc., and (3) ratification by the American Federation of Musicians, the parties will extend and modify the Sound Recording Labor Agreement to include the following terms:

1. **Resolving Administrative Burdens and Issues.** Agree to convene a committee of AFM and Industry members to work to resolve the following:
 - a. Industry's proposals to delete the requirement to provide the AFM with copies of physical product and to require the provision of the digital equivalent of "label copy" for new releases on a regular basis.
 - b. AFM's proposals to require the provision of the digital equivalent of label copy and all associated metadata identifying all producers, contractors, arrangers, orchestrators, copyists, leaders, instrumental musicians and instruments performed, and to provide copies of physical product on request.
 - c. The provision of B-forms and other session reporting options. Discussion shall include the UMG session tracker system.
 - d. The language regarding new use obligations that is used by the Companies in licenses for new uses.
 - e. The information the Companies provide the AFM about new uses licenses.

2. **Use of Phonograph Records**

Modify paragraph 7 of the SLRA as follows:

Notwithstanding the restriction set forth in Paragraph 7 of the SLRA, and upon notification to the Federation, a track or tracks without vocals may be used in a live performance which is not a drama, symphony, opera, ballet, chamber or theatrical performance of any kind, where every musician whose performance on the track or tracks is used but who is not participating in the live performance is paid in accordance with either (a) or (b) below:

- a. Each such musician receives a payment of \$170 plus pension contribution at the SLRA rate for each live performance during which his/her performance on the track or tracks is used, and each such payment and pension contribution is reported on a monthly B-7 Form filed with the Federation; or
- b. Each such musician receives a lump-sum payment prior to the first performance of a tour of either

1. \$5,000 plus pension contribution at the SRLA rate, which payment shall cover all performances within a six-month period beginning on the day of the first performance of the tour, or
 2. \$9,000 plus pension contribution at the SRLA rate, which payment shall cover all performances within a twelve-month period beginning on the day of the first performance of the tour.
 3. Such lump-sum payment shall be reported on a B-7 Form filed with the Federation at the time of payment.
- c. In the event the Company was unaware of the use of a track or tracks on tour, payment under either (a) or (b) above can be made within thirty (30) days of notice to the Company.

3. New Use

Modify Article 21(a) to provide as follows:

A. Low Fee Traditional Uses

- a. If a Company licenses its covered recording for use in the United States or Canada in a television broadcast, cable exhibition or motion picture at a fee of \$7,500 or less (each such license, a "Low Fee Traditional Use License"), the total new use payment payable in connection with each such license shall be the greater of 7% of the Company's revenue from such license or \$165. In addition, the Company also will make a pension payment at the applicable SRLA rate. Such AFM-EPF contributions shall not constitute contributions on behalf of any particular individual.
- b. Company (or its designee) shall condition the rights granted to the licensee under each Low Fee Traditional Use License on such licensee's payment of the new use fee and pension payment prescribed in subparagraph (a) above.
- c. Company shall send each licensee under a Low Fee Traditional Use License a single invoice showing the license fee, the new use fee and pension payment payable in respect of such license, unless the licensee requests that Company send separate invoices -- one showing the license fee, and one showing the new use fee and pension payment. Company will advise the Union of each licensee that has requested separate invoices.
- d. For each Low Fee Traditional Use License issued during the quarter concerned, the Company will provide the Union with a quarterly report showing the recording name, featured artist name, the licensee, the specific nature of the use (including the title, if possible), the date of the license and the amount of the licensee fee.

e. The Company shall remit 2/3 of any new use fees payable in connection with a Low Fee Traditional Use License that it receives under this provision to the Special Payments Fund ("SPF"), and 1/3 of any new use fees payable in connection with a Low Fee Traditional Use License that it receives under this provision to the Music Performance Trust Fund ("MPTF"), on a semiannual basis. The fees the Company remits hereunder shall be accompanied by a report indicating the name of each licensed recording for which it is remitting such monies, the title of the use and the amount being remitted for each such recording. Company's efforts to collect the new use fees and pension payments payable pursuant to Low Fee Traditional Use Licenses hereunder will be comparable in all material respects with the Company's efforts to collect the license fees payable pursuant to such licenses. Under no circumstances will Company be required to pay any new use fees or pension payments pursuant to a Low Fee Traditional Use License if such fees have not been paid to Company by the licensee. In the event Company receives the license fee payable pursuant to a given Low Fee Traditional Use License, but does not also receive the new use fee or pension payment payable in respect of such Low Fee Traditional Use License, and Company's efforts to collect the new use fee and pension payment payable pursuant to such license were not comparable to Company's efforts to collect such license fee, then in this limited circumstance only, Company shall be required to remit to the SPF and MPTF, pursuant to the aforementioned formula, and AFM-EPF, the full amount of the unpaid new use fee and pension payment payable pursuant to such license despite the fact that Company did not receive such fees and payments from the licensee concerned.

B. Non-Traditional Uses

- a. If a Company licenses its covered recording for use in the United States or Canada for Non-Traditional Uses (as defined below), the new use fee payable for such uses shall be 3% of the Company's revenue from such licenses (including license fee, per unit royalty or other form of payment for such license).
- b. "Non-Traditional Uses," as used herein, shall be defined as the use in (i) a digital chip (or its equivalent) in connection with a consumer product, (ii) consumer-based Internet synch licensing, or (iii) an audio/visual program made for initial exhibition in "new media" (e.g., webisodes, video podcasts, etc.) but not including uses in programs comparable to traditional full-length, scripted television programs that are produced for initial exhibition on paid streaming services (e.g., "House of Cards," "Transparent").
- c. The foregoing new use fee for Non-Traditional Uses will be allocated as follows: 2/3 of the new use fee to the SPF and 1/3 of the new use fee to the MPTF.

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

- a. Current contract language regarding Video Games to remain, and will cover both Foreign and Domestic uses of Video Games.

D. Mobile Applications

- a. Notwithstanding any other provision of the SRLA, if a covered recording is licensed for use in a Mobile Application (as defined below) in the United States or Canada, the Company will only be required to pay a new use fee if Company receives revenue pursuant to such licenses. If a Company licenses its covered recording for use in the United States or Canada for use in a Mobile Application (as defined below), the new use fee payable for such uses shall be 3% of revenue from such licenses.
- b. A "Mobile Application," as used herein, shall mean mobile applications of any kind (other than music players or other applications designed for the primary purpose of playing covered recordings) on the IOS and Android mobile operating systems and any other similarly functioning mobile operating systems requested by Company that the Federation approves, which approval Federation shall not unreasonably withhold.
- c. Such new use fees shall be payable 2/3 to the SPF and 1/3 to the MPTF.
- d. The terms of this provision shall expire and have no further effect on January 31, 2020, except that this sunset will not impact any license granted prior to January 31, 2020. All such licenses prior to January 31, 2020 shall continue to be governed by the terms of this Agreement.

E. Low Fee Life Cycle and Similar Licenses

- a. If a Company licenses its covered recording for use in the United States or Canada for \$2,500 or less for use exclusively (i) in audio/visual productions of life cycle or other similar personal or non-commercials videos (e.g., weddings, bar/bat mitzvahs, quinceañeras, yearbooks, photo montages, etc.) whether through direct licensing to consumers, third-party videographers, aggregation services, or other means, or (ii) in or at business conferences or presentations, where such licenses do not permit such uses to be made publicly available in any form, the new use fee payable shall be 3% of revenue from such licenses.
- b. Such new use fees shall be payable 2/3 to the SPF and 1/3 to the MPTF.
- c. In the event that the SPF determines to make individual payments to musicians for Low Fee Life Cycle licenses, the SPF shall promptly inform the Companies. Effective as of the first day of the six-month reporting period that commences at least 30 days after the SPF informs

the Companies, contributions to the SPF shall be subject to a pension contribution by the Companies. Companies shall make such contributions to the SPF, and the SPF shall then remit such contributions to the AFM-EPF.

- d. Company's efforts to collect the new use fees payable pursuant to Low Fee Life Cycle Licenses hereunder will be comparable in all material respects with the Company's efforts to collect the license fees payable pursuant to such licenses. Under no circumstances will Company be required to pay any new use fees pursuant to a Low Fee Life Cycle License if such fees have not been paid to Company by the licensee. In the event Company receives the license fee payable pursuant to a given Low Fee Life Cycle License, but does not also receive the new use fee payable in respect of such Low Fee Life Cycle License, and Company's efforts to collect the new use fee payable pursuant to such license were not comparable to Company's efforts to collect such license fee, then in this limited circumstance only, Company shall be required to remit to the SPF and MPTF, pursuant to the aforementioned formula, the full amount of the unpaid new use fee payable pursuant to such license despite the fact that Company did not receive such fees from the licensee concerned.

F. Foreign Use Licenses

Effective upon ratification:

- a. New use fees for covered recordings that are licensed for use in programs for television broadcast, programs for cable exhibition, motion pictures and commercials that are created and exploited exclusively outside the United States and its territories or Canada ("Foreign Traditional Use Licenses") shall be as set forth in this paragraph. The term "used exclusively outside the United States or Canada" shall include availability on the Internet in the United States and/or Canada, provided that such Internet availability in the United States and/or Canada is incidental to the primary licensed use (e.g., a foreign television commercial that can be accessed on an advertiser's Web site).
- b. With respect to Foreign Traditional Use Licenses for commercials, the new use fee payable shall be 4% of the Company's revenue from such licenses, subject to a minimum of \$150 and a maximum of \$3,500. Effective January 31, 2020, AFM-EPF contributions will be made in respect of each such license at the applicable SRLA rate. Such AFM-EPF contributions shall not constitute contributions on behalf of any particular individual.
- c. With respect to all other Foreign Traditional Use Licenses, the new use fee payable shall be 3% of the Company's revenue from such licenses, subject

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to a minimum of \$100 and a maximum of \$3,500. Effective January 31, 2020, AFM-EPF contributions will be made in respect of each such license at the applicable SRLA rate. Such AFM-EPF contributions shall not constitute contributions on behalf of any particular individual.

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- d. New use fees for covered recordings that are licensed for any non-traditional use provided for in Paragraphs B and D above for use in productions created and exploited exclusively outside the United States and its territories and Canada, shall be under the same terms and conditions as set forth in those paragraphs; however, the maximum new use fee for any such use shall be \$3,500.
 - e. With respect to all licenses under this provision, Company shall provide its foreign affiliates a "Union Obligations Letter" in the form attached hereto as Exhibit ___ and shall work with the foreign affiliate to have the foreign affiliate provide the Union Obligations Letter with each license of a covered recording.
 - f. The Union Obligations Letter shall include language directing licensees to pay such 2/3 of such new use fees to the SPF and 1/3 of such new use fees to the MPTF.
- G. For the avoidance of doubt, the foregoing new use fees shall be payable solely by the Company in the country where the covered recording originates (i.e., by the repertoire owner in the United States or Canada, but not both), based on such Company's receipts.
- H. For all new use fees paid to the SPF, such payments shall be added to the general pool of funds for distribution to avoid the Fund's administrative burden of identifying the individual musicians.
- I. There shall be no new use obligations with respect to music preparation work.
- J. Company shall provide the AFM with copies of each payment report it provides to the SPF and MPTF in connection with the payments remitted hereunder.
- K. Except as set forth in Paragraph A and E above, the new use payment may be paid directly by either the licensee or Company. If a covered recording is licensed for a use other than those defined in Paragraph A above and the AFM has been provided notice of the license, the AFM shall look only to the licensee for such payment. The new use fee shall not be considered in determining the amount of the license.
- L. The AFM, on behalf of itself and its members, waives any claim against any Company for new use payments for licensing covered recordings for any use described in paragraphs A-F at any time before the execution of this Agreement.

Nothing herein, however, precludes the AFM from collecting new use payments directly from any licensee.

4. **Charitable Recording.** Enter into a side letter whereby the Federation will entertain and promptly respond to requests for a waiver of collective bargaining agreement application to a phonograph record when all proceeds received by the Company and any Royalty Artists in connection with that phonograph record are donated to a charitable nonprofit organization (e.g., 501(c)(3) organization), and all other performers in the event are waiving payment. In the absence of a response within 7 days, the request will be deemed granted. For each such recording where waiver is granted, project credits shall acknowledge the donation of the AFM and musicians to the project.

5. **Low Budget Location Recordings.** Revise the first paragraph of section 6 of the Low Budget Location Recording Side letter to read as follows:

“Low Budget Recordings shall apply to recordings of live performances made in locations other than traditional recording studios (e.g., Apple Store, music conferences such as SXSW), provided that the recording is made to promote an artist or recording, and that tickets to the performance are not purchased for the purpose of hearing any particular artist. A traditional recording studio does not include a performance or concert venue, a soundstage, or any other facility not designed and established as a permanent recording studio. Low Budget Location Recordings shall be subject to the terms of the current Side Letter Agreement - Low Budget Recordings except as modified herein”.

6. **Streaming Payments.** The following Streaming terms are intended to supersede the payment terms of the 1994 MOA. Accordingly, the parties will make all necessary revisions to the 1994 MOA payment obligation and the Digital Exploitation provisions of the SRLA.

a. Effective as of January 1, 2017, each Company shall pay 0.36% of Receipts for Audio Streams exploited throughout the world, subject to the limits prescribed in subparagraph 6(b) below, and paid as described in Paragraph 6(c) below (the “Streaming Obligation”). Audio Streams that are subject to the compulsory license created by 17 U.S.C. Section 114 will continue to be governed by the provisions of Section 114.

b. The Streaming Obligation shall be no greater than 0.55% of Receipts for Audio Streams exploited in the United States and no less than 0.5% of Receipts for Audio Streams exploited in the United States.

c. The Streaming Obligation shall be paid as follows:

i. The Companies shall make an aggregate, lump-sum payment to the AFM-EPPF in each year of the contract (“Pension Lump Sum”), which shall be paid in semiannual installments on August 15 and February 15 of each year, beginning in August 2017.

ii. The Pension Lump Sum shall be paid as follows:

Year	UMG and Capitol	Hollywood Records	Sony Music	Warner Music Group	Total
2017	\$2,335,458.41	\$ 138,532.09	\$ 1,489,752.32	\$ 1,036,257.18	\$ 5,000,000.00
2018	\$2,569,004.25	\$ 152,385.30	\$ 1,638,727.56	\$ 1,139,832.89	\$ 5,500,000.00
2019	\$2,802,550.09	\$ 166,238.51	\$ 1,787,702.79	\$ 1,243,508.61	\$ 6,000,000.00

Notwithstanding the above:

1. In the event that the Streaming Obligation of any Company for any year is less than its share of the Pension Lump Sum for that year, that Company's share of the Pension Lump Sum shall be reduced to its Streaming Obligation for that year and the Pension Lump Sum total shall be reduced by the same amount.
2. In the event that the Streaming Obligation of any Company for any year exceeds that Company's share of the Pension Lump Sum in that year, 2/3 of the excess shall be paid to the SPF and 1/3 of the excess shall be paid to the MPTF.

iii. If a new agreement is not reached by the expiration date, this provision shall continue, except that the Pension Lump Sum shall continue at the rate of \$6,000,000 per year, subject to 6(c)(ii)(1) above, with each Company's share to be paid as described below, until a new agreement is reached or the parties otherwise exercise their rights under the National Labor Relations Act.

UMG and Capitol	Hollywood Records	Sony Music	Warner Music Group	Total
\$2,802,550.09	\$ 166,238.51	\$ 1,787,702.79	\$ 1,243,508.61	\$ 6,000,000.00

d. For the purpose of this paragraph relating to Streaming Payments, the term "Receipts" shall be defined as the fees (without deductions) actually received by Company in connection with Audio Streams. By way of illustration, the parties acknowledge that percentage of gross service revenue payments, percentage of advertising revenue payments, per-subscriber payments, per-unit royalty, per-use payments, unrecouped advances and unrecouped guarantees will generally be within the type of revenues that are included within the calculation of "Receipts." The parties further acknowledge that content origination fees and digitization fees are not generally within the types of revenues that would be included within the calculation of "Receipts." For non-U.S. exploitations, "Receipts" shall only

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include the amount received by the Company from its foreign affiliate for such exploitation.

- e. The definition of "Audio Stream" set forth in Section II(10)(c) of the Special Payment Funds Agreement shall be modified to include Non-Permanent Audio Downloads (i.e., "Tethered Downloads,"), which currently are defined in Section II(10)(b) of the Special Payment Funds Agreement. Going forward, all references to Non-Permanent Audio Downloads or Tethered Downloads shall be deleted from the agreement.
 - f. The definition of Audio Streams shall include "ringbacks."
7. **Additional SPF Contribution.** In each of June 2017, June 2018, and June 2019 the Companies shall make an aggregate, lump-sum supplementary payment of \$700,000 to the SPF and the MPTF, with 2/3 to the SPF and 1/3 to the MPTF. Each Company's share shall be paid as follows:

UMG and Capitol	Hollywood Records	Sony Music	Warner Music Group	Total
\$294,510	\$16,640	\$220,150	\$168,700	\$ 700,000

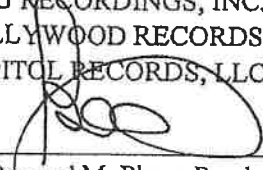
8. **Pension.** Effective the first Monday of the month after ratification, increase the AFM-EPF "pre-rehab plan" rate to 11.75%.
9. **SPF and MPTF Audit Settlement.** Each Company will pay, within 30 days of the date of ratification, a lump sum of 9% of its total contributions paid to the SPF and MPTF for the period of 2012 through 2016. The AFM, the SPF and the MPTF on behalf of themselves and all AFM members and Fund participants waive any claim under the SRLA for any payments to the SPF and MPTF for the period of 2012 through 2016. No Company shall have any claim to overpayment for any contributions due during this time period with the exception of Sony's claim for a credit of \$108,777 for amounts paid on ringback revenues for 2012 through the first half of 2016. This shall exclude Atlantic Recording Corp. and Warner Bros. Records, Inc., to be discussed separately.
10. **Wages.** Increase wages effective the first Monday of the month following ratification as follows:
- a. Year 1 3.0%
 - b. Year 2 3.0%
 - c. Year 3 3.0%
11. **Health and Welfare.** Increase contribution amount as follows, effective the first Monday of the month following ratification:



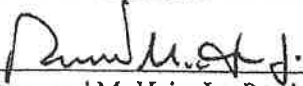
- a. Year 1 \$26, and \$20 for additional service that day.
 - b. Year 2 \$27, and \$21 for additional service that day.
 - c. Year 3 \$28, and \$22 for additional service that day.
12. **Cartage.** Effective the first Monday of the month following ratification, increase cartage fees from \$30 to \$35, and from \$12 to \$17, respectively.
13. **Non-Symphonic Large Ensembles Wage Scale.** The following large ensemble discounts shall be available in the case of non-symphonic sessions: (a) Where the ensemble of instrumental musicians present and on contract for the session equals or exceeds 35 musicians, there shall be a 15% discount on scale wages; (b) Where the ensemble of instrumental musicians present and on contract for the session equals or exceeds 60 musicians, there shall be an additional 15% discount on scale wages. These discounts shall not apply to a separate session of a smaller size, even if the session is for the purpose of creating tracks for the same song material as a session to which the discount did apply. These discounts shall not apply to theme park sessions or low-budget recordings, and shall not affect new use rates collected by the AFM or to soundtrack releases from film/television. This was a concept proposal and detailed language shall be provided by the AFM.
14. **Withdrawal of Proposals.** The parties agree that all proposals that have been made and withdrawn in this negotiation have been done so without prejudice to any parties' position with respect to the interpretation of the current terms of the collective bargaining agreement and such proposal, withdrawals and any and all bargaining history related to the fact that such proposals were made and withdrawn in negotiations for the 2017-2020 SRLA shall not be cited by either party as evidence regarding the interpretation of the SRLA (or any of its provisions) in any future proceeding, including, without limitation, as evidence of an "unachieved bargaining demand."
15. **Term.** The contract term shall be February 1, 2017 to January 31, 2020.
16. **Miscellaneous**
- a. Conform internal dates as appropriate to reflect new Agreement term.
 - b. Continue existing sideletters and conform internal dates as appropriate to reflect term of the new Agreement.

April 18, 2017

WARNER BROS. RECORDS, INC.
ATLANTIC RECORDING CORP.
SONY MUSIC ENTERTAINMENT
UMG RECORDINGS, INC.
HOLLYWOOD RECORDS
CAPITOL RECORDS, LLC

By: 
Bernard M. Plum, Proskauer Rose LLP 4/17/17

AMERICAN FEDERATION OF MUSICIANS OF THE UNITED STATES AND CANADA

By: 
Raymond M. Hair, Jr., President 4/19/17

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