

SUMMARY OF NMPA LATE FEE PROGRAM TERMS—GROUPS III AND IV

Overview

The Copyright Royalty Board (“CRB”) is empowered under U.S. Copyright Law to set compulsory mechanical royalty rates to be paid by music users, including the four major record companies (“Record Companies”), to music publishers and foreign societies for the right to distribute and/or transmit physical and digital phonorecords, ringtones, interactive streams, and limited digital downloads. In the 2008 CRB proceeding, the National Music Publishers’ Association (“NMPA”) requested, and the CRB ruled, for the first time, that music publishers and foreign societies are entitled to collect a late fee of 18% annually for late payments of royalties from Record Companies and other music distribution services.

In response to the ruling, the NMPA, The Harry Fox Agency LLC, and the Recording Industry Association of America (“RIAA”) entered into a Memorandum of Understanding on November 10, 2009 (the “MOU”). Distribution of the initial installments of P&U royalties accrued for products released on or before December 31, 2008 (“Groups I and II”) has ended. In April 2012, the parties to the MOU agreed to extend similar arrangements through at least 2017 (“MOU 2”). MOU 2 creates a comprehensive program (“NMPA Late Fee Program” or “Late Fee Program”) whereby the Record Companies and music publishers will work together to improve mechanical licensing practices and encourage prompt dispute resolution. In exchange for waivers of certain late fees, the Record Companies must comply with the provisions of MOU 2, including paying participating music publishers and foreign societies their respective market-share of accrued P&U Royalties for products released from January 1, 2009 through December 31, 2017. Registration for distributions of P&U Royalties under MOU 2 commenced in late summer 2012. Under MOU 2, P&U Royalties will be distributed in four phases as follows:

Group III, Phase A—P&U royalties accrued for products released in 2009 and 2010,

Group III, Phase B—P&U royalties accrued for products released in 2011 and 2012,

Group IV, Phase A—P&U royalties accrued for products released in 2013 and 2014, and

Group IV, Phase B—P&U royalties accrued for products released in 2015 through 2017.

Such distributions will be based on accrued royalties that have not been cleared through the cooperative efforts of Record Companies and music publishers.

The NMPA has engaged The Harry Fox Agency LLC (“HFA,” the “Administrator,” or the “Program Administrator”) to determine and distribute payments to music publishers and foreign societies through the Late Fee Program for Group III and Group IV Product. In addition, the NMPA engaged HFA to handle continuing quarterly payments for Group I and Group II Product under the original MOU after the initial Group I and Group II Funds were distributed.

Participation in Group III and Group IV

Registration for Group III and Group IV-A of the Late Fee Program is now closed. Publishers and foreign societies with musical compositions initially distributed by one or more Record Companies in the United States during the years 2009 through 2017 who did not opt into Group III or Group IV-A of the Late Fee Program may register for Group IV-B by following the steps below. **Publishers and foreign societies that opted into Group I and Group II of the Late Fee Program, but did not opt into Group III or Group IV-A, must opt in again to participate in Group IV-B.** Publishers must take the following steps to participate in Group IV, Phase B of the Late Fee Program:

1. The Publisher (unless it is a Foreign Society) must be a member of NMPA at the time it submits its MOU 2 NMPA Late Fee Program Group III-B Opt-In Form ("MOU 2 Opt-In Form"). If a Publisher is not a member of NMPA, it may join by contacting the NMPA as indicated on the NMPA website at www.NMPA.org.
2. An authorized representative of the Publisher must complete and submit the attached MOU 2 NMPA Late Fee Program Opt-In Form ("MOU 2 Opt-In Form") to the Administrator. Unless the Publisher returns a valid MOU 2 Opt-In Form that is timely received, it will not participate in the Program for Group IV-B and cannot receive Group IV- B funds distributed under the Program.
3. The publisher must submit a completed Late Fee Program Registration Form ("Catalog Registration Form") or if the Publisher participated in Group III or Group IV-A of the Late Fee Program, a Catalog Confirmation Form ("Catalog Confirmation Form") to the Administrator.

The MOU 2 Opt-In Form and the accompanying Catalog Registration/Confirmation Form must be returned to the Administrator on or before January 30, 2020 ("Opt-In Period"). The completed Forms may be submitted (i) by mailing them to the Administrator, (ii) by e-mail in .PDF format to optin@gardencitygroup.com, or (iii) by submitting an electronically signed MOU 2 Opt-In Form online via the website, www.NMPALatefeesettlement.com.

A fuller description of the key provisions of MOU 2 follows. The NMPA strongly encourages all interested music publishers and foreign societies to opt in as soon as possible and to carefully review (i) MOU 2, which is available at www.NMPALateFeeSettlement.com; and (ii) the more detailed materials they will then receive concerning the NMPA Late Fee Program.

Each publisher should seek independent legal counsel regarding all matters relating to the Late Fee Program. The NMPA, the Program Administrator, HFA, or any vendor, including The Garden City Group agent or attorney representing the same, will not act as legal counsel to any publisher, and should not be relied on for legal advice. Each publisher seeking legal advice should obtain its own legal counsel.

The original MOU continues to apply to Group I and Group II, and Participating Publishers that opted into Group I and/or Group II will continue to receive payments based on ongoing sales of Group I and Group II Product irrespective of whether they participate in Group III and Group IV.

Summary of Key Provisions of the Late Fee MOU 2

Term: MOU 2 terminates at the conclusion of the next statutory rate period (likely December 31, 2017), unless extended in connection with the establishment of rates and terms for the period after the current 2013-2017 CRB Proceeding. However, certain provisions, including those relating to payments of P&U Royalties by Participating Record Companies for sale of Group III and Group IV Product after that date, as described below, will remain in effect past the termination date.

Territory: MOU 2 covers product made and distributed in the United States, its territories and possessions.

Initial Payments: Participating Publishers began to receive distributions of funds from the Program Administrator for accrued P&U Royalties based on a market share distribution methodology beginning in December 2013 for Group III Product and for Group IV-A beginning in June 2017. There is no schedule for distribution of funds for accrued P&U Royalties for Group IV-B at this time. Distributions of accrued royalties for Group III and Group IV Product are net of the costs and fees identified in the summary materials, Opt-In materials and MOU 2.

Product Clearance: MOU 2 requires each Participating Record Company and Participating Publisher to take certain actions to facilitate clearance of products, including implementing certain Default Rules and Best Practices (as described below). To the extent a Participating Record Company clears a product, royalties due will be payable under the applicable licenses and will not be treated as P&U Royalties under MOU 2.

Future Payments: The bulk distribution for Groups III and IV Phase A Product has already taken place. After the initial bulk distribution of funds for Group IV Phase B Product, Participating Record Companies will continue to accrue P&U Royalties for ongoing sales of Group IV Phase B Product and contribute them to the Group IV funds on a quarterly basis. The Program Administrator will make market share distributions for these ongoing sales to Participating Publishers for the indefinite future.

Audit Rights: The Program Administrator will have the right to audit Participating Record Companies on behalf of Participating Publishers for initial bulk distributions of Group III and Group IV Product and ongoing sales of Group III and IV Product, and will be able to examine the P&U accrual rates used by the Participating Record Companies with respect to ongoing sales of digital product.

Default Rules: Participating Record Companies and Participating Publishers will continue to implement certain rules to govern future licensing and payment procedures. Among other procedures, the Default Rules require Participating Record Companies to provide certain label copy information to writers or their representatives prior to release, and pay royalties through in certain situations, including some split disputes, if they are not to be potentially subject to statutory late fees (where applicable).

Best Practices: Participating Record Companies and Participating Publishers will adopt certain additional measures to improve the clearance process. Best Practices include various efforts to improve communications between Participating Publishers and Participating Record Companies, including regular meetings to review lists of priority pending issues. A Best Practices Group, composed of representatives from Participating Record Companies and Participating Publishers, will oversee implementation of the Best Practices and Default Rules.

Releases: In consideration for making Group III and Group IV payments, Participating Record Companies will receive a release from Participating Publishers for claims arising from the reproduction and distribution of Group III Product and Group IV Product as to which P&U Royalties have accrued, including claims for

nonpayment, late payment and infringement. A Participating Publisher's signed MOU 2 NMPA Late Fee Program Opt-In Form will bind it to the release, but the release will not be effective with respect to any particular units of product until the Participating Publisher has received payment based on P&U Royalty accruals for those units under MOU 2. The release will roll forward to cover additional units of product as the Participating Publisher receives additional payments based on sale of those units. Additionally, upon receiving payments under MOU 2, Participating Publishers will release the parties to MOU 2, Participating Record Companies, the Program Administrator and its vendors for claims relating to the implementation and administration of the MOU 2 itself.

Late Fee Waivers: In consideration for receiving Group III and Group IV payments and implementation of the Default Rules and Best Practices, Participating Publishers agree not to collect certain late fees that would otherwise apply to Group III and Group IV Product pursuant to the Section 115 statutory license or another mechanical license such as a Section 115 variance mechanical license (*e.g.*, an HFA license). A late fee waiver will apply to P&U Royalties attributable to ongoing distributions of Group III and Group IV Product so long as a Participating Record Company continues to make its required payments of P&U Royalties.

Market Share Methodology: In order to permit the Program Administrator to determine distribution amounts for Participating Publishers, the Participating Record Companies and HFA will provide the Program Administrator with records of payments made by the Participating Record Companies to music publishers and foreign societies (during 2009-2011 for Group III, and during 2012-2015 for Group IV). In addition, Participating Record Companies are to engage outside auditors to attest to the accuracy of historical payment information and the amount of their accrued P&U Royalties for Group III Product and Group IV Product. The payment data will be used by the Program Administrator to calculate the relative market shares of publishers who received payments from the Participating Record Companies during the Group III period, and similar calculations will be made for the Group IV period, which, in turn, will be used as the basis for distributing the Group III and Group IV funds.

A Participating Publisher will have the right to make a claim to the Program Administrator to contest the determination of the market share calculated by the Program Administrator. The period for such claims for Group III product has closed. Such claims must be made within 60 days of the date of the Group IV initial fund distribution payment made to such publisher, as applicable. The Program Administrator will have sole discretion to alter the market share calculation for a particular publisher or to maintain the first calculation. There will be no right of appeal after the Program Administrator adjudicates the Participating Publisher's claim.

We will update the official website – www.NMPALateFeeSettlement.com – with additional information as it becomes available. You may also learn more by calling our toll-free number at 1-866-249-8110.

Attachment 1
MOU 2 Final Release, Waiver and Indemnification Provisions

The capitalized terms in this Attachment 1 have the same meaning as they do in MOU 2. For clarity, “Participating Publisher” includes a Foreign Society that chooses to participate in the Late Fee Program.

(a) Release of Product-Related Claims

Participating Publisher, on its own behalf and on behalf of its Related Persons, hereby Waives, solely and to the full extent of its legal authority to do so, and solely with respect to any shares of any musical composition owned, administered or otherwise controlled by such Participating Publisher, any Claims against (i) the Participating Record Companies, the Parties, any Group III Administrator and any Group IV Administrator; (ii) persons or entities acting under authority of a Participating Record Company in connection with Covered Product (e.g., authorized manufacturers, distributors, customers, and joint ventures and so-called “distributed labels” of the Participating Record Company to the extent that the Participating Record Company is obligated to pay royalties for such joint ventures and distributed labels’ Product); (iii) any vendor, service provider, or other person or entity acting under the authority of the Parties, any Group III Administrator or any Group IV Administrator in connection with MOU 2 (including The Garden City Group, Inc.); (iv) any of the respective Affiliates, shareholders, predecessors, successors and assigns of the persons and entities in clauses (i) through (iii); and (v) any of the respective officers, directors, employees, agents and attorneys of the persons and entities in clauses (i) through (iv) (collectively, “**Product-Related Releasees**”) arising from the reproduction (including, as applicable under the terms of MOU 2, synchronization) and distribution in the United States of musical compositions as embodied in Covered Product, including, but not limited to, Claims for payment, late payment, nonpayment and infringement relating to Covered Product (collectively, “**Product-Related Claims**”), from the inception of such activities with respect to Covered Product for so long thereafter as such Covered Product continues to be distributed as contemplated by Section 4.1 of MOU 2; provided, however, that such release shall be effective only to the extent that payment of accrued P&U Royalties is made by a Participating Record Company for such musical compositions embodied in such Covered Product in accordance with MOU 2 and is received by the Participating Publisher (or Participating Publisher’s designee). Participating Publisher also hereby covenants not to assert Product-Related Claims that are Waived pursuant to this release, through a lawsuit or otherwise, and not to encourage litigation of such Product-Related Claims by third parties. With respect to any particular Covered Product, such release and covenant for Product-Related Claims shall be effective upon the receipt by Participating Publisher (or Participating Publisher’s designee) of funds resulting from a Participating Record Company’s payment for such Covered Product under MOU 2, and thereafter shall be effective forever with respect to such Covered Product. For the avoidance of doubt, the release granted hereunder does not extend to (a) any right of public performance; (b) any right of public display; or (c) any right to prepare a derivative work, except (I) to the extent of creation of a sound recording of a musical composition in the manner permitted under Section 115, including the arrangement privilege embodied in 17 U.S.C. § 115(a)(2), or (II) use of a sound recording of a musical composition to create an audiovisual work, but solely to the extent such audiovisual work is embodied in Covered Product.

(b) Release of Process-Related Claims

Participating Publisher, on its own behalf and on behalf of its Related Persons, hereby Waives, solely and to the full extent of its legal authority to do so, any Claims against (i) the Participating Record Companies, the Parties, any Group III Administrator and any Group IV Administrator; (ii) any vendor, service provider, or other person or entity acting under the authority of a person or entity in clause (i) (including The Garden City Group, Inc.); (iii) any of the respective Affiliates, shareholders, predecessors, successors and assigns of the persons and entities in clause (i) and (ii); and (iv) any of the respective officers, directors, employees, agents and attorneys of the persons and entities in clauses (i) through (iii) (collectively, “**Process-Related Releasees**”) arising from the activities of Process-Related Releasees in connection with the formation of MOU 2 and the implementation and administration of the processes set forth in the MOU 2; provided that, in the case of Participating Record Companies and any vendors, service providers or other persons or entities acting under their authority as described in clause (ii), the activities covered by this release of Process-Related Claims do not include the determination or making of payments (including deposits, advances or payment of royalties or Late Fees) pursuant to MOU 2, or the reproduction or distribution of musical compositions or obtaining of license authority therefor (it being understood that Claims with respect to such activities of Participating Record Companies are Waived only in accordance with the terms of the above release of Product-Related Claims to the extent they constitute Product-Related Claims) (collectively, “**Process-Related Claims**”). Participating Publisher also hereby covenants not to assert such Process-Related Claims that are Waived pursuant to this release, through a lawsuit or otherwise, and not to encourage litigation of such Process-Related Claims by third parties. To the extent any Process-Related Claim is based on rights in a musical composition, the foregoing release (but not the foregoing covenant) shall be effective solely with respect to any shares of any musical composition owned, administered, or otherwise controlled by Participating Publisher and to the extent of such Participating Publisher’s legal

authority to grant such release. Such release and covenant shall (a) become effective as of the date of receipt by Participating Publisher (or Participating Publisher's designee) of any payment of accrued P&U Royalties by the Group III Administrator or Group IV Administrator under the MOU 2; (b) be effective only with respect to Process-Related Claims arising through the date of such receipt, and thereafter, with respect to Process-Related Claims arising through the date of each successive receipt of a payment; and (c) as so limited, shall be effective forever with respect to such Process-Related Claims.

(c) Waiver of Unknown Claims

Participating Publisher hereby Waives, solely and to the full extent of its legal authority to do so, any right or benefit that may be available under Section 1542 of the California Civil Code or any similar laws of any other jurisdiction. Section 1542 of the California Civil Code provides:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

Notwithstanding the provisions of Section 1542 or any similar law of any other jurisdiction, and to provide a full and complete release of the beneficiaries of the releases set forth herein, Participating Publisher expressly acknowledges that the releases set forth herein are intended to include, without limitation, Claims as described in such releases that Participating Publisher does not know or suspect to exist in his favor at the time of execution of this document, and that the provisions hereof and payments under the MOU extinguish all such Claims to the extent provided in the releases set forth herein.

(d) Indemnification for Payments

Participating Publisher, on its own behalf and on behalf of its Related Persons (“**Indemnitor**”), hereby agrees and undertakes to secure, indemnify and hold harmless (i) the Parties, any Group III Administrator and any Group IV Administrator; (ii) any vendor, service provider, or other person or entity acting under the authority of any person or entity in clause (i) (including The Garden City Group, Inc.); (iii) any of the respective Affiliates, predecessors, successors and assigns of the persons and entities in clauses (i) and (ii); and (iv) any of the respective officers, directors, employees, agents and attorneys of the persons and entities in clauses (i), (ii) and (iii) (clauses (i), (ii), (iii) and (iv) collectively, “**Indemnitees**”), to the fullest extent permitted by law, against all losses, costs, expenses (including but not limited to court costs and reasonable experts’ and attorneys’ fees), claims, demands, penalties, assessments, interest charges, fees, liabilities and damages of any kind including, without limitation, exemplary or punitive damages, known or unknown, that are asserted against an Indemnitee arising out of, relating to, or in connection with an Indemnitor’s claim or receipt of funds under MOU 2, including but not limited to a claim by another Publisher or third party that such funds were wrongly claimed by, paid to or accepted by such Indemnitor.

(e) Acknowledgments

Participating Publisher acknowledges and shall never dispute that (i) the MOU 2 NMPA Late Fee Program Opt-In Form (“MOU 2 Opt-In Form”), which incorporates the releases, waiver and indemnification set forth above, is voluntarily entered into by Participating Publisher; (ii) Participating Publisher has been advised, and has had a reasonable opportunity, to consult with Participating Publisher’s attorney in deciding whether to execute the MOU 2 Opt-In Form; (iii) the releases set forth herein are of a continuing nature and will apply to certain activities occurring after the date of execution, provided that the conditions of the releases are satisfied; (iv) payments made by Participating Record Companies under MOU 2 and received by the Participating Publisher (or Participating Publisher’s designee) constitute good and valuable consideration for the releases set forth herein; (v) MOU 2, the MOU 2 Opt-In Form and participation in the Late Fee Program under MOU 2 by a beneficiary of the releases set forth herein shall not constitute an admission by such person or entity of any wrongful action or inaction; and (vi) no agreement or representation, express or implied, has been made to, or is being relied upon by, Participating Publisher with respect to the releases set forth herein, except as expressly set forth in the MOU 2 Opt-In Form, MOU 2, this Attachment 1 to the Summary of NMPA Late Fee Terms—Groups III and IV, and Attachment 2 to the Summary of NMPA Late Fee Terms—Groups III and IV.

(f) Miscellaneous

The MOU 2 Opt-In Form and all matters arising out of or relating to the MOU 2 Opt-In Form, including the releases, waiver and indemnification set forth above that are incorporated into the MOU 2 Opt-In Form, shall be governed by the internal laws of the State of New York without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of New York hereto. This document, in combination with MOU 2 and MOU 2 Opt-In Form, represents the entire understanding with respect to the releases, waiver and indemnification set forth herein and may not be altered or amended with respect to any beneficiary of the releases, waiver and indemnification set forth herein except by a written instrument executed by such beneficiary.

Attachment 2
Group III and Group IV Payment and Conflict Resolution Guidelines

The following guidelines will be interpreted and applied by the Administrator in such a manner as to promote fairness in the distribution process, and are subject to the Administrator's discretion to further establish reasonable payment procedures, as provided in Section 4 of MOU 2.

- (1) Each Publisher that opts into Group III and Group IV of the Late Fee Program ("**Participating Publisher**") will receive a Catalog Update Form, on which the Administrator will identify (a) the particular entities claimed by the Participating Publisher, upon which that Participating Publisher's total market share will be calculated ("**Assigned Share**"), and (b) any entities claimed by the Participating Publisher in MOU 2 Opt-In Forms, Catalog Registration Forms or Catalog Confirmation Forms that were also identified by one or more other Participating Publishers in their MOU 2 Opt-In Forms, Catalog Registration Forms or Catalog Confirmation Forms ("**Unassigned Shares**"), along with the identity(ies) of the other Participating Publisher(s) that identified such Unassigned Share(s).
- (2) The Participating Publisher will review any Unassigned Shares and indicate in the Catalog Update Form those Unassigned Shares for which the Publisher is entitled to payment, if any. If only one Participating Publisher claims an Unassigned Share through this process, it will be added to that Participating Publisher's Assigned Share. If more than one Participating Publisher claims an Unassigned Share, that Unassigned Share will be deemed a "**Contested Share**," and the Participating Publishers claiming such Contested Share will be deemed "**Claiming Publishers**." (Any Unassigned Shares that are not claimed by at least one Participating Publisher will not be included in the distribution process or used to determine Participating Record Company payments.) The Catalog Update Form must be returned within 60 days of the mailing date.
- (3) Each Participating Publisher will then receive a Contested Shares Form identifying Contested Shares for which it is a Claiming Publisher. The Contested Share Form will identify any relevant Claiming Publishers.
- (4) The Administrator will distribute funds without waiting for resolution of the Contested Shares. The Administrator will hold funds attributable to Contested Shares in the Group III Escrow Account or Group IV Escrow Account, as applicable, to permit resolution of the Contested Shares between or among the Claiming Publishers, as described below.
- (5) Claiming Publishers will have a period of sixty (60) days from the date the Catalog Update Form is mailed ("**Conflict Resolution Period**") to submit a letter of direction ("**LOD**") signed by all Contesting Publishers instructing the Administrator to pay the Contested Share to a specified party (or parties). The Administrator will honor LODs that provide sufficient information for the Administrator to make payment and are properly executed by all necessary parties.
- (6) If the Administrator has not received an LOD resolving a Contested Share at the conclusion of the Conflict Resolution Period, and the Administrator determines that one of the Claiming Publishers is listed as the payee for the Contested Share in the payment data provided to the Administrator by the Participating Record Companies or HFA ("**Payment Data-Identified Publisher**"), the Administrator will resolve the Contested Share in favor of the Payment Data-Identified Publisher. (If there is more than one Payment Data-Identified Publisher, each will receive its respective market share as reflected in the payment data.)
- (7) At the end of the distribution process, if no Claiming Publisher has submitted an LOD from a Payment Data-Identified Publisher with respect to the Contested Share, and the Administrator has not been able to resolve the claims to the Contested Share, the Administrator will return the funds attributable to the Contested Share to the Participating Record Companies.
- (8) If any party files a legal or equitable action in a U.S. court of competent jurisdiction asserting rights to a Contested Share or other market share before distribution is made, the Administrator may hold the Contested Share or other market share pending direction from the court, or notification that the action has been resolved or concluded.