

## **SUMMARY OF NMPA LATE FEE PROGRAM TERMS—GROUP V**

### **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 three major record companies (“Participating 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, that music publishers and foreign societies are entitled to collect a late fee of 1.5% per month (18% annually) for late payments of royalties from Participating Record Companies and other music users (“Late Fees”).

In response to the ruling, the NMPA and the Recording Industry Association of America (“RIAA”) entered into a Memorandum of Understanding on November 10, 2009 (“MOU 1”). In April 2012, the parties to MOU 1 agreed to extend similar arrangements through at least 2017 (“MOU 2”), and, in October 2016, the parties agreed to further extend such arrangements through at least 2022 (“MOU 3”). MOU 3 extends the program (“NMPA Late Fee Program” or “Late Fee Program”) whereby the Participating Record Companies and music publishers, including non-U.S. mechanical collecting societies (“Foreign Societies”) (music publishers and Foreign Societies referred to together as “Publishers”), will work together to improve mechanical licensing practices and encourage prompt dispute resolution.

In exchange for waivers of Late Fees and releases from Publishers that choose to participate (“Participating Publishers”), Participating Record Companies must comply with the provisions of MOU 3, including paying Participating Publishers their respective market share of accrued “pending and unmatched” royalties (“P&U Royalties”) for products released from January 1, 2018 through December 31, 2022. Registration for the distribution of P&U Royalties accrued for product released prior to 2018 has ended. Under MOU 3, P&U Royalties will be distributed in two phases as follows:

Group V, Phase A—P&U royalties accrued for products released in 2018 and 2019; and

Group V, Phase B—P&U royalties accrued for products released in 2020 through 2022.

The NMPA has engaged The Harry Fox Agency LLC (“HFA,” the “Administrator,” or the “Program Administrator”) to calculate and distribute payments to Participating Publishers through the Late Fee Program for Group V Product.

### **Summary of Key Provisions of the Late Fee MOU 3**

**Term:** MOU 3 terminates at the conclusion of the 2018-2022 statutory rate period (likely December 31, 2022). However, certain provisions, including those relating to payments of P&U Royalties by Participating Record Companies for sale of Group V Product after that date will remain in effect past the termination date.

**Territory:** MOU 3 covers product distributed in the United States, its territories and possessions.

**Initial Payments:** Participating Publishers will receive distributions of funds from the Program Administrator for accrued P&U Royalties for Group V, Phase A Product based on a market share distribution methodology beginning in the second quarter of 2022. Participating Publishers will receive distributions of funds from the Program Administrator for accrued P&U Royalties for Group V, Phase B Product based on a market share distribution methodology beginning in the second quarter of 2025. Distributions of accrued royalties for Group V Product are net of costs and fees identified in MOU 3 and summarized in the MOU 3 NMPA Late Fee Program Overview, available at [www.NMPAlatefeesettlement.com](http://www.NMPAlatefeesettlement.com).

**Product Clearance:** MOU 3 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 3.

**Future Payments:** After the initial bulk distributions of funds for Group V Product, Participating Record Companies will continue to accrue P&U Royalties for ongoing sales of Group V Product and contribute them to the Group V 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 V Product and ongoing sales of Group V 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 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 continue to follow “Best Practices” 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 continue to oversee implementation of the Best Practices and Default Rules.

**Releases:** In consideration for making Group V payments, Participating Record Companies will receive a release from Participating Publishers for claims arising from the reproduction and distribution of Group V Product as to which P&U Royalties have accrued, including claims for nonpayment, late payment and infringement. A

Participating Publisher's submission of "Yes" in the HFA Agreement Portal or, with respect to any Publisher that participated in distributions under MOU 2, the Participating Publisher's decision not to opt out of MOU 3, will bind it to the release, but the release will not be effective with respect to any units of product until the Participating Publisher has received payment based on P&U Royalty accruals for those units under MOU 3. 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 3, Participating Publishers will release the parties to MOU 3, Participating Record Companies, the Program Administrator and its vendors for claims relating to the implementation and administration of the MOU 3 itself.

**Late Fee Waivers:** In consideration for receiving Group V payments and implementation of the Default Rules and Best Practices, Participating Publishers agree not to collect late fees that would otherwise apply to Group V 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 V 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 will provide the Program Administrator with records of payments made by the Participating Record Companies directly to Publishers and Foreign Societies (during 2018-2019 for Group V, Phase A, and during 2020-2022 for Group V, Phase B). 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 V Product. In addition, HFA, as Program Administrator, will access its payment data for regular mechanical royalties received from Participating Record Companies and distributed by HFA. Data from the Participating Record Companies and HFA will be used to calculate the relative market shares of Publishers for the Group V, Phase A period, and similar calculations will be made for the Group V, Phase B period, which, in turn, will be used as the basis for distributing the Group V funds.

A Participating Publisher will have the right to contest the Program Administrator's determination of its market share. To do so, the Participating Publisher must make a claim with the Program Administrator within 60 days of the date of the Group V, Phase A initial fund distribution payment made to such Publisher or within 60 days of the date of the Group V, Phase B initial fund distribution payment made to such Publisher, as applicable. Claims must be in writing and provide sufficient supporting documentation to permit the Program Administrator to undertake a good faith review. Claims can be sent via email or mail to the Program Administrator. The Program Administrator's contact information is available at [www.NMPALateFeeSettlement.com](http://www.NMPALateFeeSettlement.com). The Program Administrator will have sole discretion to alter the contested market share calculation. There will be no right of appeal after the Program Administrator resolves the Participating Publisher's claim.

We will update the official website – [www.NMPALateFeeSettlement.com](http://www.NMPALateFeeSettlement.com) – with additional information as it becomes available.

**Attachment 1**  
**MOU 3 Final Release, Waiver and Indemnification Provisions**

The capitalized terms in this Attachment 1 have the same meaning as they do in MOU 3. 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, and any Group V 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 V Administrator in connection with MOU 3; (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 3, 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 5.1 of MOU 3; 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 3 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 3, 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, and any Group V Administrator; (ii) any vendor, service provider, or other person or entity acting under the authority of a person or entity in clause (i); (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 3 and the implementation and administration of the processes set forth in the MOU 3; 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 3, 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 V Administrator under the MOU 3; (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, and any Group V Administrator; (ii) any vendor, service provider, or other person or entity acting under the authority of any person or entity in clause (i); (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 3, 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) MOU 3 and this Attachment 1, as posted in the HFA Agreement Portal, are 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 agree to the MOU 3 and this Attachment 1; (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 3 and received by the Participating Publisher (or Participating Publisher’s designee) constitute good and valuable consideration for the releases set forth herein; (v) the MOU 3 and participation in the Late Fee Program under MOU 3 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 MOU 3 and this Attachment 1.

**(f) Miscellaneous**

MOU 3 and Attachment 1, and all matters arising out of or relating to the MOU 3 or Attachment 1, shall be governed by the 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 laws of the State of New York. MOU 3 and this Attachment 1 constitute 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 V 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 Article 5 of MOU 3.

- (1) Each Publisher that participates in Group V of the Late Fee Program ("**Participating Publisher**") will receive a Catalog Confirmation Form, on which the Administrator will identify (a) the 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 Catalog Update Forms or Catalog Confirmation Forms that were also identified by one or more other Participating Publishers in their Catalog Update 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 Confirmation 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 Confirmation 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 V Escrow Account 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 Confirmation Form is transmitted ("**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 in HFA's payment data ("**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.