

# **Summary of NMPA Late Fee Program Terms** **with Final Release, Waiver and** **Indemnification Provisions (Attachment 1) and** **Payment and Conflict Resolution Guidelines (Attachment 2)**

Please carefully review this Summary of NMPA Late Fee Program Terms, the MOU and the additional Late Fee Program materials available at [www.NMPAlatefeesettlement.com](http://www.NMPAlatefeesettlement.com) before deciding whether to opt in and participate. For more information, please visit [www.NMPAlatefeesettlement.com](http://www.NMPAlatefeesettlement.com) or call the Program's toll-free number 1-866-249-8110.

## **Introduction**

The Copyright Royalty Board (“**CRB**”) is empowered under U.S. copyright law to establish compulsory mechanical royalty rates to be paid by music users to music copyright owners for the right to distribute physical and digital phonorecords of musical compositions, including CDs, full downloads, limited downloads, interactive streams and ringtones. In the most recent CRB proceeding, the National Music Publishers’ Association (“**NMPA**”) requested, and the CRB ruled for the first time, that music copyright owners are entitled to collect a late fee of 1.5% per month (18% annually) for late payments of mechanical royalties from record companies and other music users under compulsory licenses (together with similar late fees under other mechanical licenses, “**Late Fees**”).

In response to the ruling, NMPA, The Harry Fox Agency (“**HFA**”), and the Recording Industry Association of America (“**RIAA**”) commenced a series of negotiations and entered into a Memorandum of Understanding on November 10, 2009 (the “**MOU**”). The MOU creates a comprehensive program (“**Late Fee Program**” or “**Program**”) whereby 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 resolution of licensing issues. NMPA will also offer independent (i.e., non-major) record companies (“**Independent Labels**”) the opportunity to participate in the Late Fee Program on substantially the same terms as the Participating Record Companies.

Under the Late Fee Program, in exchange for certain waivers of Late Fees (“**Late Fee Waivers**”) and releases (“**Legal Releases**”) from Publishers that choose to participate (“**Participating Publishers**”), the four major record companies (“**Participating Record Companies**”) will pay millions of dollars in “pending and unmatched” royalties (“**P&U Royalties**”) to be distributed to Participating Publishers. P&U Royalties are royalties due for the use of musical compositions that the Participating Record Companies have accrued but not paid due to a failure or inability to clear or obtain a license or to associate the royalties with a particular license or Publisher.

The product covered by the Late Fee Program is divided into three groups: “**Group I Product**,” which is product released by a Participating Record Company in the year 2006 or earlier; “**Group II Product**,” released in the years 2007 and 2008; and “**Group III Product**,” released in the years 2009 through 2012. These product groups encompass both physical and digital formats, including CDs, full downloads, limited downloads, interactive streams, ringtones, ringbacks and a relatively small amount of physical (but not digitally transmitted) product containing audiovisual material (e.g., DVDs). Somewhat differing terms and conditions apply to each product group under the Program.

The Participating Record Companies have represented that there is approximately \$275 million in accrued P&U Royalties for Group I Product, Group II Product and Group III Product combined. The P&U Royalties for Group I Product and Group II Product will be paid to a third-party administrator overseeing the Program (“**Administrator**”), who will distribute them on an equitable, market-share basis to Participating Publishers.

Key aspects of the Late Fee Program are described below. In reviewing this Summary of NMPA Late Fee Program Terms, please note that it does not address every aspect of the Late Fee Program. The complete MOU and additional information about the Program are available at [www.NMPAlatefeesettlement.com](http://www.NMPAlatefeesettlement.com). **In any case where MOU terms or provisions set forth in Attachment 1 or Attachment 2 to this Summary of NMPA Late Fee Program Terms are described or summarized here or elsewhere in Program materials, the actual terms of the MOU, Attachment 1 or Attachment 2 will control, and not the description or summary.** Please also note that NMPA and the Administrator are not able to provide legal advice concerning the Program. You should consult your own attorney if you believe you need legal guidance.

### **Term**

The MOU governing the Late Fee Program became effective on November 10, 2009 (“**Effective Date**”) and terminates on December 31, 2012 (“**Term**”). Certain provisions will continue in effect after the Term, however, including provisions relating to payments of P&U Royalties for ongoing sales of Group I Product and Group II Product and Late Fee Waivers applicable to such ongoing sales. In addition, Participating Publishers are agreeing to grant Legal Releases of certain claims that will continue in effect after the Term.

The MOU can be terminated by the RIAA if the Publishers opting in to the Program do not include the four largest Publishers and other Publishers representing an aggregated amount of at least 10% of the market shares of the P&U Royalties to be distributed under the Program (together, “**Participation Target**”).

### **Territory**

The Late Fee Program covers product made and distributed by Participating Record Companies in the United States, its territories and possessions.

### **Administrator**

NMPA has retained Kenneth R. Feinberg of Feinberg Rozen, LLP to be the Administrator of the Program. Under the MOU, NMPA has the option to substitute a different person or entity to act as Administrator of the Late Fee Program in the future. Accordingly, as used in this summary, “Administrator” refers to the current or future Administrator of the Late Fee Program, including the Administrator that oversees the Group I distribution process (“**Group I Administrator**”) and the Administrator that oversees the Group II distribution process (“**Group II Administrator**”).

### **Licensing Practices**

The Late Fee Program requires Participating Record Companies and Participating Publishers to take certain steps to improve licensing practices so that royalties can be paid more quickly to Publishers and songwriters. These are broken down into two categories, “**Default Rules**,” which address specific licensing concerns, and “**Best Practices**,” which are aimed at fostering cooperation between Participating Record Companies and Participating Publishers to facilitate clearance of licenses. The Best Practices became fully effective as of January 1, 2010 and the Default Rules are to be fully effective as of April 1, 2011. A Best Practices Group, consisting of representatives of Participating Record Companies, Participating Publishers, RIAA, NMPA and

HFA, is to meet on a quarterly basis to review implementation of the Default Rules and Best Practices and recommend any modifications thereto.

Under the Default Rules, after a transition period, a Participating Record Company must adhere to certain practices to obtain a Late Fee Waiver for Group III Product that is released before a license is obtained (i.e., to be excused from Late Fees that might apply to royalties past due). Key Default Rules include the following: (i) before each new release (excluding re-releases in the original album format), a Participating Record Company must circulate a Song Split Declaration form seeking to obtain ownership and split information from claiming parties; (ii) within four weeks after the scheduled release date, the Participating Record Company is to send a Split Status Report to the relevant Publishers and writers setting forth the claim information it has received to date; (iii) in the case of a split dispute, the Participating Record Company is to send a Song Split Dispute Notice to the relevant parties setting forth the nature of the dispute; (iv) in the case of claims to a musical composition totaling more than 100% but not more than 115%, the Participating Record Company will generally pay royalties through to Participating Publishers by adjusting the disputed shares on a prorated basis down to 100%; (v) with respect to claims totaling less than 100%, if a Participating Record Company has received claims on behalf of the artist and producer, as applicable, even if the other claims have not yet been made, starting two full quarters after release the Participating Record Company will begin paying royalties through to the claiming parties; and (vi) in other cases where the total claims are less than 100%, the Participating Record Company will send a Proposed Payment Notice to the relevant parties and, if it receives no objections or complete split information within 60 days, will begin paying through royalties according to the Proposed Payment Notice. **Participating Publishers are required to agree to and accept the Default Rules as part of the Late Fee Program. Please see Exhibit A to the MOU for the complete Default Rules.**

The Best Practices require Participating Record Companies and certain Participating Publishers to meet regularly to review priority pending licensing and payment issues based on each others' lists of such issues. They also require Participating Record Companies and Participating Publishers to engage in various efforts to improve communication and clearance rates, with particular attention to unsigned artist and producer agreements. In addition, subject to any contrary instruction it may receive from a Publisher client, assuming it represents at least some portion of a musical composition, HFA will for a period of time continue its policy of issuing licenses to digital service providers for 100% of the musical composition in the case of full downloads, limited downloads and interactive streams (but not ringtones), provided that the licensee pays any non-HFA-represented Publisher directly. **Participating Publishers are required to implement the Best Practices as part of the Late Fee Program. Please see Exhibit B to the MOU for the complete Best Practices.**

### **Group I Distribution Process**

After the Effective Date, each Participating Record Company determined the total amount of P&U Royalties it had accrued for Group I Product through September 2009 (“**Group I Cutoff Date**”) and reported that amount to the Administrator. Each Participating Record Company was required to retain an outside, “big four” accounting firm to attest to the amount reported.

In addition, each Participating Record Company provided the Administrator with a list of the names and addresses of the individual Publishers it paid from 2000 through the Effective Date. The Administrator used this contact information to reach out to Publishers that may wish to participate in the Late Fee Program.

Finally, each Participating Record Company has provided data indicating the payments it made to individual Publishers and HFA during the years 2000 through 2006 (the “**Group I Period**”), and a sample of that data was verified by outside accountants. Because Participating Record Companies frequently pay HFA on behalf of the Publisher, HFA has supplemented the Participating Record Company data by providing records of

HFA's payments of mechanical royalties to individual Publishers during the Group I Period. The payment data from the Participating Record Companies and HFA was used by the Administrator to calculate each Publisher's respective market share of P&U Royalties for Group I Product.

The Participating Record Companies have paid an initial deposit of approximately \$38.5 million of P&U Royalties for Group I Product to the Administrator (some of these P&U Royalties were being held by HFA and were paid to the Administrator on behalf of Participating Record Companies by HFA). The Participating Record Companies are obligated to pay an additional deposit of P&U Royalties to the Administrator when the Participation Target is met, and to make a further payment of P&U Royalties at the conclusion of the Opt-In Period so that all Group I market shares claimed by Participating Publishers have been paid to the Administrator and are available for distribution. Any unclaimed Group I market shares for Publishers that choose not to participate will remain with the Participating Record Companies.

During or following the Opt-In Period, as soon as is feasible, the Administrator will begin distributing Group I market shares (except for any that are claimed by more than one Participating Publisher, which will be subject to the conflict resolution process described below). Depending upon the amount of P&U Royalties already paid by the Participating Record Companies and available to be distributed, the Administrator may choose to make distributions of uncontested shares on a periodic, rolling basis. It is expected that the initial Group I distribution process will commence in the spring of 2010.

Because Group I Product will continue to be distributed by the Participating Record Companies in the future, including after the Term, Participating Record Companies will continue to pay any P&U Royalties for Group I Product that accrue after the Group I Cutoff Date on a quarterly basis (unless a Group I Product is cleared, in which case the royalties due will be paid to the relevant Publisher(s)). The ongoing payments of P&U Royalties for Group I Product will continue to be collected by the Administrator for the indefinite future (and after the Term), and distributed to Participating Publishers on a periodic basis based upon the Administrator's Group I market share calculations. If at some point the costs of administering ongoing payments become excessive in relation to the amount of such payments, NMPA, HFA and RIAA may agree to an alternative arrangement.

Under the Late Fee Program, a Participating Publisher that has concerns about accepting funds on behalf of a particular person or entity (e.g., an administered catalog) for legal or other reasons has the ability, for 18 months following the receipt of its initial Group I distribution, to exclude that person or entity from its distribution by returning a prorated amount of its distribution to the Administrator, who will then return those funds to the Participating Record Companies. The mechanism whereby a Participating Publisher can exclude a person or entity from its distribution is described in Section 4.21 of the MOU.

## **Group II Distribution Process**

Before the initial Group II distribution process occurs, the Participating Record Companies will use good faith, commercially reasonable efforts to clear Group II Product by employing the Default Rules and Best Practices. To the extent Group II Product is cleared, royalties will be payable to the relevant Publishers according to the applicable licenses.

P&U Royalties for Group II Product that has not been cleared by June 2010 ("**Group II Cutoff Date**") will be reported and paid to the Administrator under a process similar to the one for Group I Product, and will then be distributed by the Administrator. Initial distribution of Group II P&U Royalties is currently expected to take place starting in late 2010 or the first part of 2011. As with Group I Product, the Participating Record Companies will continue to pay P&U Royalties that accrue for ongoing sales of Group II Product after the Group II Cutoff Date on a quarterly basis, which the Administrator will continue to distribute.

All Publishers that became Participating Publishers in connection with the Group I distribution process will automatically participate in the Group II distribution process. The Administrator will establish another opt-in period to permit Publishers that did not previously opt in to the Late Fee Program to participate in the Group II distribution process. Publishers that opt in during this additional period will participate in the Group II distribution process, but not the Group I distribution process.

### **Distribution Methodology**

The Administrator is responsible for establishing fair and reasonable distribution and payment processes, including the methodology for determining the market share amounts to be distributed to Participating Publishers. The Administrator has adopted certain guidelines in this regard. The complete Payment and Conflict Resolution Guidelines are set forth in Attachment 2 to this Summary of NMPA Late Fee Program Terms.

Each Publisher that has registered will be mailed an Opt-In Form in which the Administrator has provided the estimated total market share to be distributed to that Publisher (“**Estimated Total Publisher Share**”). The Opt-In Form will include a breakdown of the Estimated Total Publisher Share into the market shares of particular entities owned or administered by the Registered Publisher that constitute the Estimated Total Publisher Share (“**Assigned Shares**”). In addition, the Opt-In Form will list any market shares of entities that were also identified by one or more other Registered Publishers (“**Unassigned Shares**”).

In the Opt-In Form, the Publisher will be asked to claim any Unassigned Shares for which it believes it is entitled to payment. Any Unassigned Shares claimed by only one Participating Publisher will be added to that Participating Publisher’s Total Publisher Share. If more than one Participating Publisher claims an Unassigned Share (rendering it a “**Contested Share**”), the funds will be held in escrow pending resolution of the conflict through submission of an appropriate letter of direction (“**LOD**”) to the Administrator. If the Contested Share is not resolved within seventy-five (75) days, and one of the claiming Participating Publishers is listed as the payee for the relevant entity in Participating Record Company payment data or HFA payment data (a “**Payment Data-Identified Publisher**”), the Administrator will pay the Payment Data-Identified Publisher. If the Contested Share cannot be resolved under this rule, the Administrator will continue to hold the funds for at least two additional months in escrow (“**Escrow Period**”). During the Escrow Period, a claiming Participating Publisher may obtain an LOD from a nonparticipating Payment Data-Identified Publisher directing payment to one or more claiming Participating Publishers. If no such LOD is provided during the Escrow Period, the Administrator will return the funds to the Participating Record Companies.

### **Expenses and Reserves**

The Administrator will pay the costs of administering the Late Fee Program and certain other expenses out of the P&U Royalties received from the Participating Record Companies, including both initial payments of P&U Royalties for Group I Product and Group II Product and ongoing payments based on continuing sales of those products. Before calculating and distributing payments to Participating Publishers, the Administrator will deduct an amount to cover administrative and legal expenses, and a donation to NMPA (“**NMPA Donation**”) of not more than 10% of the P&U Royalties paid by the Participating Record Companies. The NMPA Donation will help cover the significant legal expenses NMPA incurred in connection with the CRB proceeding that resulted in the favorable ruling on Late Fees. It is currently anticipated that the total amount of these deductions will be approximately 13% of the funds paid by the Participating Record Companies, but the actual amount deducted may be somewhat higher or lower once more is known about the costs of administering the Program, and the amount may be adjusted by the Administrator as appropriate from time to time. Additionally, the Administrator will withhold approximately 10% of the P&U Royalties paid by the

Participating Record Companies as a reserve, which reserve will be distributed to Participating Publishers if and when, and to the extent that, the Administrator determines such reserve is no longer necessary. The amount the Administrator chooses to withhold as a reserve may be adjusted over time depending upon the actual experience administering the fund.

### **Group III Product**

The Participating Record Companies are required to use good faith efforts to clear Group III Product, including by implementing the Default Rules and Best Practices. To the extent Group III Product is cleared, royalties will be payable to the relevant Publishers according to the applicable licenses.

### **Late Fee Waivers**

By opting into the Late Fee Program, Participating Publishers are agreeing to certain Late Fee Waivers. A Late Fee Waiver means that Late Fees will not accrue to the Publisher's benefit and will not be collected by the Publisher during the period for which the Late Fee Waiver is in effect. The Late Fee Waivers granted by a Participating Publisher are limited to the shares of musical compositions owned or controlled by that Participating Publisher and are effective to the full extent of the Participating Publisher's legal authority to grant the Late Fee Waivers.

With respect to Group I Product, so long as a Participating Record Company makes timely payments of P&U Royalties for Group I Product to the Administrator, a Late Fee Waiver applies to such P&U Royalties for Group I Product during and after the Term. With respect to Group II Product, so long as a Participating Record Company implements the Default Rules and Best Practices and also makes timely payments of P&U Royalties for Group II Product to the Administrator, a Late Fee Waiver applies to such P&U Royalties for Group II Product during and after the Term. With respect to Group III Product, so long as a Participating Record Company implements the Default Rules and Best Practices, a Late Fee Waiver applies to P&U Royalties for Group III Product through March 31, 2011; after that date, Late Fee Waivers for Group III Product are limited to certain specific circumstances described in Section 7 of the MOU and the Default Rules, and will not continue beyond the end of the Term.

In addition to any Late Fee Waivers applicable to P&U Royalties, Late Fee Waivers apply in specific situations where royalty payments are delayed for Group I Product, Group II Product or Group III Product, as follows: (i) accrued royalties totaling less than \$100 for a particular musical composition, which may be held by the Participating Record Company for up to two years before they are paid out; (ii) royalties paid late by a Participating Record Company because the Participating Record Company did not receive reporting or payment from a third-party service provider in time to be included in the Participating Record Company's quarterly payment to a Participating Publisher; (iii) royalties being held by a Participating Record Company due to actual or threatened litigation; and (iv) royalties that cannot be paid because a Publisher, having received a written request from a Participating Record Company, fails to provide specific, existing information within the Publisher's knowledge (e.g., tax or contact information, or confirmation that the Publisher represents a certain writer), is not locatable, or refuses payment.

### **Legal Releases and Indemnification**

By opting in to the Late Fee Program, a Participating Publisher is agreeing to grant certain Legal Releases and other waivers to the Participating Record Companies, RIAA, NMPA, HFA, any Administrator of the Program (including Feinberg Rozen, LLP), persons and entities acting under the authority of these parties (including The Garden City Group, Inc.), and other related persons and entities. The Legal Releases granted by a Participating Publisher are limited to the shares of musical compositions owned or controlled by that

Participating Publisher and effective to the full extent of the Participating Publisher's legal authority to grant the Legal Releases. The Legal Releases are permanent and irrevocable.

More specifically, the Participating Publisher is agreeing to release claims arising from the reproduction (including synchronization) and distribution of musical compositions embodied in particular units of Group I Product and Group II Product for which a Participating Record Company makes payment of P&U Royalties to the Administrator, including claims for payment, nonpayment, late payment and infringement ("**Release of Product-Related Claims**"). The Release of Product-Related Claims operates on a rolling basis: With respect to any particular units of Product, it becomes effective upon the Participating Publisher's receipt of its share of the P&U Royalties paid by the Participating Record Company for those units. As payments of P&U Royalties continue to be made for ongoing distributions by the Participating Record Company and received by the Participating Publisher, the claims arising from the units covered by each successive Participating Record Company payment are released. **The complete text of the Release of Product-Related Claims is set forth in Attachment 1 to this Summary of NMPA Late Fee Program Terms. In the event of any inconsistency between this summary and Attachment 1, Attachment 1 is controlling.** Please note that Attachment 1 supersedes and replaces Exhibit H to the MOU.

The Participating Publisher is also agreeing to release any claims arising from activities in connection with the formation, implementation and administration of the MOU ("**Release of Process-Related Claims**"). The Release of Process-Related Claims becomes effective upon the Participating Publisher's receipt of any payment of P&U Royalties from the Administrator and covers all claims arising through that date. It also rolls forward: As additional payments of P&U Royalties are received, the period covered by the Release of Process-Related Claims is extended to the date of the last payment received. **The complete text of the Release of Process-Related Claims is set forth in Attachment 1 to this Summary of NMPA Late Fee Program Terms. In the event of any inconsistency between this summary and Attachment 1, Attachment 1 is controlling.**

**Both releases cover claims that are both known and unknown to the Participating Publisher at the time of signing its Opt-In Form.**

In addition, by opting in to the Late Fee Program, a Participating Publisher is agreeing to indemnify RIAA, NMPA, HFA and any Administrator of the Program (including Feinberg Rozen, LLP), persons and entities acting under the authority of these parties (including The Garden City Group, Inc.), and other related persons and entities, from any claim arising from the Participating Publisher's receipt of funds under the Program, including a claim by another Publisher or entity that believes the funds were wrongly claimed by, paid to or accepted by the Participating Publisher ("**Indemnification for Payments**"). **The complete text of the Indemnification for Payments is set forth in Attachment 1 to this Summary of NMPA Late Fee Program Terms. In the event of any inconsistency between this summary and Attachment 1, Attachment 1 is controlling.**

### **Audits**

Under the Late Fee Program, the Administrator, acting on behalf of Participating Publishers, has the ability to audit the Participating Record Companies once every three years for their ongoing payments of P&U Royalties for Group I Product and Group II Product accruing after the Group I Cutoff Date and Group II Cutoff Date, respectively, to ensure that such payments accurately reflect the units distributed and, in the case of digitally transmitted product, to ensure that the P&U accrual rates are appropriate. The Administrator has the authority to assert and settle audit claims on behalf of Participating Publishers, and is to distribute any settlement funds to Participating Publishers. Payments of P&U Royalties for Group I and Group II Product accruing after the Group I Cutoff Date and Group II Cutoff Date are not subject to audit by individual

Participating Publishers (or by HFA on their behalf). P&U Royalties paid by the Participating Record Companies for the periods prior to the Group I Cutoff Date and Group II Cutoff Date are subject to confirmation by the Participating Record Companies' outside auditors, as described above, but are not subject to audit by Participating Publishers (or HFA on their behalf).

### **Corporate Transactions**

The Late Fee Program includes rules that clarify what happens when an entity is bought or sold by a Participating Publisher or Participating Record Company. These rules generally require participation in the Late Fee Program after such a corporate transaction. For example, if a Participating Publisher acquires a nonparticipating Publisher or other publishing entity (including by purchasing that entity's assets) before the end of 2011, the acquired entity is to be included in the Late Fee Program unless there is a legal reason that it cannot participate or a basis to exclude it under Section 4.21 of the MOU. If a Participating Publisher sells one of its publishing entities (including by selling that entity's assets), the relevant business unit will continue to participate in the Program. Analogous rules apply to the Participating Record Companies when they buy or sell entities. More details concerning the rules governing corporate transactions can be found in Amendment Number 1 to the MOU.

# **Attachment 1**

## **Final Release, Waiver and Indemnification Provisions**

These Final Release, Waiver and Indemnification Provisions supersede and replace Exhibit H of the MOU. The capitalized terms in this Attachment 1 have the same meaning as they do in the MOU. 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 I Administrator (including Feinberg Rozen, LLP) and any Group II 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 I Administrator or any Group II Administrator in connection with the MOU (and predecessor TOA) (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 the MOU, 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 in accordance with Section 4.22 or 5.11 of the MOU, as applicable; 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 the MOU 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 the MOU, 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 I Administrator (including Feinberg Rozen, LLP) and any Group II 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 the MOU (and the predecessor TOA) and the implementation and administration of the processes set forth in the MOU (and predecessor TOA); 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 the MOU, 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 I Administrator or Group II Administrator under the MOU; (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 I Administrator (including Feinberg Rozen, LLP) and any Group II 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 the MOU, 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 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 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 the MOU 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, the Opt-In Form and participation in the MOU 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 Opt-In Form, the MOU, this Attachment 1 to the Summary of NMPA Late Fee Terms, and Attachment 2 to the Summary of NMPA Late Fee Terms.

#### **(f) Miscellaneous**

The Opt-In Form and all matters arising out of or relating to the Opt-In Form, including the releases, waiver and indemnification set forth above that are incorporated into the 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 the MOU and 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

### Payment and Conflict Resolution Guidelines

The following guidelines will be interpreted and applied by the Administrator in a manner to promote fairness in the distribution process, and are subject to the Administrator's discretion further to establish reasonable payment procedures, as provided in Section 4.20 of the MOU.

- (1) Each Publisher that has registered ("**Registered Publisher**") will receive an Opt-In Form in which the Administrator will provide the estimated total market share and associated dollar amount potentially to be distributed to that Registered Publisher, exclusive of any Unassigned Shares (see below) ("**Estimated Total Publisher Share**"). The Opt-In Form will break down the Estimated Total Publisher Share into the market shares of particular entities owned or administered by the Registered Publisher that constitute the Estimated Total Publisher Share. In addition, the Opt-In Form will list any market share(s) identified by the Registered Publisher in response to Section II of the Registration Form that were also identified by one or more other Registered Publishers in response to Section II ("**Unassigned Shares**"), along with the identity(ies) of the other Registered Publisher(s) that identified such Unassigned Share(s).
- (2) In returning the Opt-In Form, the Registered Publisher will be asked to review any Unassigned Shares and indicate those Unassigned Shares for which the Registered 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 Estimated Total Publisher 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.)
- (3) 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 I Escrow Account or Group II Escrow Account, as applicable, to permit resolution of the Contested Shares between or among the Claiming Publishers, as described below.
- (4) Claiming Publishers will have a period of forty-five (45) days from the end of the Opt-In Period ("**Initial 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.
- (5) If the Administrator has not received an LOD resolving a Contested Share by the end of the Initial Resolution Period, it will send a notice to all Claiming Publishers to remind them of the Contested Share and will provide an additional thirty (30) days ("**Extended Resolution Period**") to resolve the Contested Share.
- (6) If the Administrator has not received an LOD resolving a Contested Share at the conclusion of the Extended Resolution Period, and the Administrator determines that one of the Claiming Publishers is listed as the payee for the Conflicted 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) If none of the Claiming Publishers is a Payment Data-Identified Publisher (i.e., because the Payment Data-Identified Publisher did not opt in to the Late Fee Program) and the Contested Share is not otherwise resolved by the end of the Extended Resolution Period, the Administrator will hold the Contested Share in escrow for at least two (2) additional months (the “**Escrow Period**”), during which time a Claiming Publisher may (but is not required to) obtain and submit an LOD from the nonparticipating Payment Data-Identified Publisher, also signed by any other necessary parties, instructing the Administrator to make payment to one or more of the Claiming Publishers, which LOD the Administrator will honor, subject to confirmation of its authenticity.
- (8) At the end of the Escrow Period, if no Claiming Publisher has submitted an LOD from a Payment Data-Identified Publisher with respect to the Contested Share, the Administrator will return the funds attributable to the Contested Share to the Participating Record Companies.
- (9) 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.