

**SYMPHONY, OPERA OR BALLET
ORCHESTRA
INTEGRATED MEDIA AGREEMENT**

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INTEGRATED MEDIA AGREEMENT**

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EXHIBITS

Exhibit A. Reserved

**Exhibit B. Side Letter Regarding Audio and Audio-Visual Recording with
Non-Classical Featured Artists**

SYMPHONY, OPERA OR BALLET ORCHESTRA INTEGRATED MEDIA AGREEMENT

The American Federation of Musicians of the United States and Canada (the “Federation”), and the undersigned Symphony, Opera or Ballet Orchestra Institution (the “Employer”) which is an employer located in the United States of America and which employs musicians under the terms and conditions of a Collective Bargaining Agreement (“Local CBA”) with a Local of the Federation (“Local Union”), hereby agree to the following terms and conditions for the creation and distribution of audio and audio-visual media (“Agreement”).

The purposes of this Agreement are to:

- ◆ facilitate the Employer’s ability to produce and exploit covered media;
- ◆ simplify the terms that apply to national television and radio broadcast;
- ◆ simplify the terms that apply to a broad range of other audio and audio-visual media;
- ◆ facilitate the release of programs on multiple platforms without difficulty;
- ◆ increase permitted uses for news and promotion; and
- ◆ recognize the value of the creative contribution of the covered musicians.

For signatories to this Agreement, it replaces and supersedes the 2009-2013 Integrated Media Agreement, the Symphony, Opera or Ballet Audio-Visual Agreement, the Symphony, Opera or Ballet Live Recording Agreement and/or the Symphony, Opera or Ballet Internet Agreement.

I. SCOPE OF AGREEMENT

A. Audio and Audio-Visual Media Included

This Agreement shall cover all musicians, including instrumentalists, copyists, orchestrators, arrangers, and those librarians who are covered by the Local CBA (“Musicians”), employed by the Employer in the production and release of audio recordings from live performances of symphony, opera or ballet orchestras, audio-visual recordings from live performances or special calls, or audio or audio-visual recordings from archival tapes of live performances, in all cases where the live performance is subject to the Local CBA.

B. Exclusions from Coverage

1. *Local Radio and Television Excluded:* This Agreement does not cover radio or television broadcast locally (i.e. broadcast or syndicated within the geographical boundaries of the Local Union), which may be covered by the Local CBA.

- a. In the event that a local radio station does not carry classical programming, the station nearest to the Local's jurisdiction that is willing to carry a broadcast of the orchestra shall be deemed to be "local" within the meaning of this IMA. If a station in the Local's jurisdiction resumes or begins carrying classical programming, then the definition of local broadcast shall revert to that station. In the event that the local radio station broadcast signal is carried over repeater stations within the state, then those broadcasts shall be deemed to be local within the meaning of the IMA. The Employer will provide, on an annual basis, a list of the local radio stations which intend to carry Employer orchestra broadcasts on repeater stations pursuant to this provision. The Federation will raise any questions about the validity of the list in a timely fashion.
2. *Audio Studio Recording Excluded:* This Agreement does not cover studio recording of audio recordings, which is covered by the Sound Recording Labor Agreement or other relevant Federation agreement.
3. *Standard Commercial Television Excluded:* This Agreement does not cover standard commercial television programs broadcast on commercial network television, nor does it cover "Olympics-type programs." Such programs are covered by the appropriate Federation agreement for commercial television.
4. *Per-Service Orchestra Limitations:* If a per-service orchestra does not guarantee its full season of services to a musician core (defined, for this purpose, as 50% of the roster defined as the tenured or tenure-track musicians), all projects must have the prior approval of the Musicians via secret ballot vote of the Local CBA bargaining unit. Such orchestras are not eligible to use the special audio buffet option established by Article XVIII (Audio Buffet Option).

C. Symphony Concerts and Opera/Ballet Performances

Where used in this Agreement, the "concert" or "concert program" shall include symphony concerts, opera performances and ballet performances.

II. RECOGNITION

The Employer hereby recognizes the Federation as the exclusive bargaining representative of Musicians who are employed by the Employer in the creation of audio and audio-visual media covered by this Agreement for the purpose of establishing the wages, terms and conditions applicable to the creation of those media.

III. UNION SECURITY

The following provisions contained in this paragraph shall apply to services rendered pursuant to this Agreement and shall be included in and, whether or not so included, shall

be deemed a part of all contracts calling for such services between the Employer and persons employed in a classification covered by this Agreement: "Employees of the Employer on the date of signing of this Agreement or on its effective date (whichever is later), who are members of the Federation, shall be continued in their employment by the Employer for services rendered hereunder only so long as they continue their membership in good standing in the Federation. All other employees in a classification covered by this Agreement shall, on or before the thirtieth day following the commencement of their employment or the effective date of this Agreement, whichever is later, become and continue to be members in good standing of the Federation as a condition of their employment. The provisions of this paragraph shall not become effective unless permitted by applicable law."

IV. WAGES AND WORKING CONDITIONS

For services covered by this Agreement the Employer shall make the payments described herein and shall fully and faithfully perform the other terms and conditions set forth in this Agreement as well as any terms and conditions in the Local CBA that relate to this Agreement.

V. GRANTING OF RIGHTS

In consideration of its agreement to pay the payments and benefits, and to comply with the working conditions provided herein, the Employer is hereby granted the right to make audio recordings from live performances of symphony, opera or ballet orchestras, audio or audio-visual recordings from archival tapes of live performances, and audio-visual recordings from live performances and special calls, and to exploit those recordings subject to the provisions of this Agreement.

VI. RECORDINGS FOR PURPOSES NOT SET FORTH IN THIS AGREEMENT

A. The Employer may not use audio or audio-visual recordings produced pursuant to this Agreement (or sell, lease, license or assign to any other party the right to use such recordings) for any purpose not expressly set forth in this Agreement (such as, e.g., motion picture soundtracks, commercial announcements (jingles), videogames, etc.) unless the Employer receives advance written permission from the Federation and pays to or on behalf of all Musicians who rendered services in the preparation, production and recording of the music, 100% of all amounts that would be required under the appropriate Federation agreement (using terms which are in effect at the time of such use), as though the recordings were originally made for the purpose set forth in such Federation agreement.

B. If the Employer makes use of audio or audio-visual recordings produced pursuant to this Agreement (or sells, leases, licenses or assigns to any other party the right to use such recordings) for any purpose not expressly set forth in this Agreement without having received advance written permission from the Federation, it shall pay to or on behalf of all Musicians who rendered services in the preparation, production and recording of the music, 150% of all amounts that would be required under the appropriate Federation agreement (using terms which are in effect at the time of such use), as though the recordings were originally made for the purpose set forth in such Federation agreement.

VII. AUTHORITY OF THE ORCHESTRA COMMITTEE

A. The Orchestra Committee shall have the following authority under this Agreement:

1. On an annual basis, agree to additional capture for news and promotion purposes beyond that allowed in VIII.A. below.
2. On an annual basis, agree to terms and conditions for audio and audio-visual capture for archives or for future use or broadcast.
3. On a project basis, agree to terms and conditions for certain audio projects as set forth in Article XI (Other Audio Products) below.
4. Other authority as set forth in this Agreement.

B. By mutual agreement of the Musicians and the Employer, the authority of the Orchestra Committee may be exercised during the term of this Agreement by a Local Oversight Committee, Media Oversight Committee or other committee, if that committee was in existence and functioning prior to the effective date of this Agreement. Mutual agreement to this procedure shall be signified by the execution of a side letter to this Agreement in the form prescribed by the Federation.

NEWS, PROMOTION AND DONOR GIFTS

VIII. AUDIO AND AUDIO-VISUAL NEWS AND PROMOTION

A. Capture

1. No more than 40 minutes of any service may be captured for news media or promotional uses.
2. The Orchestra Committee may agree to additional capture for news and promotion purposes consistent with B. and C. below.
3. Archival material may be used for news or promotion in accordance with the provisions of B. and C. below.

B. Use of Captured Material for News.

1. Audio or audio-visual material captured per A. above must be edited down to no more than ten (10) minutes from any work or movement for news or “magazine program” broadcast. In addition to use by the news broadcaster, the newscast may be distributed on the Internet, on the Employer’s own website, on television or on other media outlets, by the Employer or by third parties as defined in and in accordance with VIII.C.2.
2. In the case of a radio or television broadcast pursuant to B.1. above, up to 10 (ten) minutes of audio or A-V material captured per A. above may be provided to the broadcaster for posting on its website. This material may not include a complete work or movement longer than three (3) minutes.
3. *New Platforms*: New platforms for delivering news broadcasts (e.g. wireless) are included under “news or magazine program broadcast.” Online news magazines may have up to ten (10) minutes on their websites.

C. Use of Captured Material for Promotion.

1. Audio or audio-visual material captured pursuant to A. above must be edited down to no more than five (5) minutes for promotional uses. Such uses may be made on the Internet, on the Employer’s own website, on television or on other media outlets, by the Employer or by third parties.
2. Notwithstanding C.1. above, the Employer may use up to fifteen (15) minutes, provided that the fifteen minutes consists of non-consecutive segments, no one of which is longer than five (5) minutes. This option may not be used by any third party or for television or radio broadcast. The Institution may use this option for promotional purposes on its own website, in conjunction with its media or other institutional sponsors or partners on their websites, on other internet sites such as YouTube or social media

sites, in kiosks or monitors at its location or in tourist or other promotional locations, in cell phone or wireless transmission, in streaming e-mails, or on podcasts as long as the segments used for promotional purposes are not themselves being sold.

- a. Not more than six (6) times per year the Employer may use up to 15 minutes of continuous captured content for promotional purposes; provided that (i) each fifteen-minute segment shall be from a different work or movement; (ii) each fifteen-minute segment shall contain either one composition up to fifteen minutes in length or one movement of one composition up to fifteen minutes in length; and (iii) the Employer does not provide media payments to anyone else.
- b. The Employer will report the use of media pursuant to above paragraph 2.a. to the Federation on the form provided by the Federation.

3. *New Platforms:* The Employer may use new platforms or technologies now existing or yet to be developed for promotion. Prospective treatment of new platforms or technologies is subject to negotiation at the Federation's option after reasonable notice to the Employer. If the Federation initiates negotiation regarding a new platform or technology, permission for prospective new promotional uses on that platform or via that technology ceases from three (3) months after the Federation's notice until agreement is reached.

4. *Promotion via Performance Streaming:* One time in each season, the Employer may make available on its website, for on-demand streaming, for forty-five (45) days, a concert that was free to the public, with no additional payment to the musicians. In the event that the Employer charges a nominal ticket price (in lieu of presenting the concert free to the public), the Employer shall be required to obtain Orchestra Committee approval in order to make the concert available on its website for on-demand streaming for forty-five (45) days without additional payment to the musicians. In addition, one time in each season, with orchestra approval, the Employer may make available on its website, for on-demand streaming, for forty-five (45) days, one concert that was not free to the public, without additional payment to the musicians.

5. *Contrary Provisions:* More liberal news and promotion provisions in existence in the Local CBA as of the date of this Agreement are grandfathered.

D. Volunteer Promotional Recordings

1. The following provisions set forth the conditions upon which the Employer may record and use audio or audio-visual interviews/activities of musicians in which musician(s) perform on musical instruments ("Volunteer Promotional Recordings") without compensation to the musicians.

2. *Purpose:* Volunteer Promotional Recordings are for the purpose of news and promotion and may be distributed on the internet, on the Employer's own website, on

television news and news magazine programs, or on other media outlets by the Employer or by third parties.

3. *Voluntary Program:* Musicians shall not be required to record Volunteer Promotional Recordings but may provide them on a voluntary basis. Musicians may accept or decline to volunteer without prejudice to their status with the Employer, and Volunteer Promotional Recordings shall not be used in discipline or tenure decisions.
4. *Notice of Opportunities:* At the beginning of and periodically during each season, an Employer interested in recording Volunteer Promotional Recordings shall ask all musicians if they are interested in participating. The Employer shall provide an equitable and suitable distribution of opportunities among interested musicians.
5. *Location, Scheduling, Duration and Term:* Recording shall be done at a time and place agreed upon by the volunteer musician(s) and the Employer. The maximum length of recording shall not exceed forty-five (45) minutes. The maximum length of the resulting Volunteer Promotional Recording shall not exceed fifteen (15) minutes. The Employer shall have the right to use the Volunteer Promotional Recording for two years from the date of posting.
 - a. Notwithstanding the limits set forth in D.5, when the Musician is being paid for his or her time, the capture and use may be extended with the approval of the Orchestra Committee and the Federation. Federation approval will not be denied without good cause. This subparagraph D.5.a. will sunset on June 29, 2017.
6. *Musician Approval:* The volunteer Musician's approval shall be required for the repertoire to be performed, and when controlled by the Employer, for the release of the final Volunteer Promotional Recording. The Employer shall take down a Volunteer Promotional Recording from its website or any site or platform which it controls upon the request of any Musician performing on the recording.
7. *Reporting:* Volunteer Promotional Recordings shall be reported to the Federation on a form provided by the Federation.

E. Gifts to Donors, Corporate Sponsors and Subscribers

1. *Donors:* Without compensation to the musicians, the Employer may conduct annual donor gift projects in accordance with *either* subparagraph 1.a. *or* 1.b. below.
 - a. *Donor CD, DVD, Audio Download or A-V Download.*
 - i. Once per year, the Employer may distribute a CD, DVD, Audio Download or A-V Download to donors as a donor gift.

- ii. The minimum donation required to receive a donor gift shall be the greater of \$250.00 or the amount required to obtain program recognition.
 - iii. There shall be a maximum of 1000 units distributed, except that more may be distributed with the permission of the Orchestra Committee.
 - iv. Upon request of the Orchestra Committee, each musician shall be entitled to one copy. Any musician copies shall be in excess of the maximum number of units allowed for donors.
 - v. Orchestra Committee approval is required for the project.
 - vi. The Orchestra Committee shall have the right of artistic approval, which shall include approval of the choice of repertoire.
 - vii. Distributed units shall be labelled for personal use only, no resale or commercial use.
- b. *Donor Portal on the Orchestra Website (or, where the Orchestra does not have the ability to host the portal on its own website, on a third party website).*
- i. Donor eligibility for access to the portal shall be by season.
 - ii. The minimum donation required to be eligible for access to the portal shall be the greater of \$250.00 or the amount required to obtain program recognition.
 - iii. There shall be a maximum of ninety (90) minutes of unpaid-for material available on the portal at any one time. Material paid for under the IMA may be posted during its rights period, in addition to the ninety (90) minutes of unpaid material. Full works are permitted on the portal.
 - iv. Access to the portal shall be password-protected or otherwise access-restricted.
 - v. Orchestra Committee approval is required for the project.
 - vi. The Orchestra Committee shall have the right of artistic approval, which shall include approval of the choice of repertoire.
 - vii. Material on the portal shall be available for on-demand streaming only; there shall be no downloads available.
 - viii. The Employer may not exceed any of the provisions above without approval of the Orchestra Committee.

2. *Major Corporate Sponsors or Underwriters:* No more than once per year, the Employer may make a proposal to the Federation to approve a CD or DVD gift to a major corporate sponsor or underwriter. Federation approval will not be denied without good cause.

3. *Subscribers or Multi-Ticket Buyers:*

a. Multi-Ticket Buyers shall be defined as individuals who have bought x tickets, “ x ” to be a number determined in conjunction with the Orchestra Committee.

b. Up to two (2) times per year, the Employer may provide subscribers or Multi-Ticket Buyers with a free download (or other perquisite like a maximum two-week period of access to a donor portal) in connection with a targeted marketing program that is specifically approved by the Orchestra Committee. For a download in connection with such a project, whole movements may be allowed, but the maximum number of minutes shall be ten (10) minutes.

AUDIO MEDIA

IX. NATIONAL AND FOREIGN RADIO AND WIRELESS AUDIO BROADCAST

Broadcast of live performances (whether the broadcasts are simultaneous, delayed or from the archive) on commercial over-the-air radio, non-commercial over-the-air radio, satellite radio, internet radio and all other wired or wireless broadcast formats shall be subject to the following provisions.

A. Rates

1. *Single Broadcast.* For each program that is broadcast, Musicians shall be compensated at the rate of 4% of weekly scale (32% of per-service performance scale in the case of per-service orchestras), with a floor of \$53.05, except where the Employer guarantees the broadcast of four or more programs per year.
2. *Guarantee of Four or More Programs Broadcast per Year.* Where the Employer guarantees the broadcast of four or more programs per year, Musicians shall be compensated at the rate of 3% of weekly scale (24% of per-service performance scale in the case of per-service orchestras), with a floor of \$42.44, for each national/foreign radio program that is broadcast.
3. *Foreign Radio Broadcast While on Tour in a Country Outside the Jurisdiction of the Federation.* A tour concert in a country outside the jurisdiction of the Federation may be broadcast on the radio within the country where the live concert occurs for 75% of the applicable radio payment.
4. *Opera.* Rates for opera broadcasts shall be subject to local negotiation, but in no case shall be lower than a floor of \$90.18 per broadcast.
5. *Pension Contributions.* The payments described in A.1., 2. 3. and 4. above shall be considered to be scale wages and the Employer shall make 12% pension contributions on them to the American Federation of Musicians and Employers' Pension Fund.
6. *Payment Due Dates and Reporting.* Payments to Musicians, payments to the American Federation of Musicians and Employers' Pension Fund, and the appropriate B-form are due within fifteen (15) days after the broadcast.

B. Rights

1. *Three (3) Years Unlimited Broadcast, Simultaneous Streaming, Archiving.* The Employer may license the program for unlimited broadcasts, simultaneous streaming of broadcasts, and archiving for on-demand streaming of broadcasts for a period of three (3) years from the date of the initial broadcast.

2. *Foreign Radio Broadcast While on Tour.* In the case of a foreign tour concert paid pursuant to A.3. above, the Employer may license the program in the country where the live concert occurs for unlimited broadcast, simultaneous streaming of broadcasts, and archiving for on-demand streaming of broadcasts for a period of three (3) years from the date of the initial broadcast.

3. *Subsequent Licensing.* The Employer may license the program for subsequent three-year broadcast periods upon payment to the Musicians of 25% of the original rate.

4. *Radio Broadcasts on the Employer's Website.* Upon approval of the Orchestra Committee at the end of the license period, radio broadcasts may remain on the Employer's own website for an additional three (3) years of on-demand streaming beyond the three (3) year radio rights period, without further compensation to the musicians.

C. Grandfathering of Contrary Provisions

Contrary provisions in the Local CBA, a local media side letter or individual Employer agreement with the Federation in existence as of the date of this Agreement are grandfathered. Both radio provisions that are more favorable to the Musicians and radio provisions that are more favorable to the Employer are grandfathered. Provisions grandfathered pursuant to this provision shall be provided to the AFM.

D. Simultaneous Streaming of Local Radio Broadcasts

In accordance with Article I.B.1. regarding scope of this Agreement, rates for radio broadcasts that are local within the meaning of that provision shall be covered by the Local CBA. The simultaneous streaming of such local broadcasts is permitted under the terms of this Agreement with no additional payment to Musicians. On-demand streaming of such local broadcasts is subject to the audio streaming provisions of Article X.B.2.

X. LIVE RECORDING TO CDs OR DOWNLOADS OR FOR STREAMING

The following provisions replace the Symphony, Opera or Ballet Live Recording Agreement and the Symphony, Opera or Ballet Internet Agreement. They govern the terms and conditions for the creation, and the exploitation via streaming and/or via CDs and/or downloads, of audio recordings made from live performances.

These provisions may be replaced by the alternative provisions set forth *in X-A Alternative Option for Live Recording to CDs or Downloads*, subject to the approval of the Musicians by secret ballot majority vote of the CBA bargaining unit.

A. Ownership and Licensing

The ownership of the master recordings and all copyright rights in the recording shall be retained by the orchestra institution, and shall not be sold or transferred to any third party.

Licensing arrangements are permissible but the specifics of the license must be disclosed in advance in accordance with Paragraph E (Artistic and Financial Consultation) below. The duration of any license will be limited to no more than five (5) years (or no more than ten (10) years with the permission of the Orchestra Committee) or until the deletion of the recording from the licensee's catalog, whichever comes first. A license may be renewed but no renewal shall exceed five (5) years. Tier payments and revenue sharing as described below continue through new license periods.

The Employer may not enter into a licensing arrangement with a third party ("Third Party Licensee") which allows that Third Party Licensee to exploit the recording by entering into direct licenses with music services ("Music Service Licensees") for digital transmissions otherwise eligible for the statutory license pursuant to 17 U.S.C. Sec. 114, unless the license between the Third Party Licensee and the Music Service Licensee ("Direct Digital Streaming License") provides that 50% of the total royalties and other compensation payable by the Music Service Licensee in respect of the transmissions shall be paid to SoundExchange and passed on to the artists on the recording (including the Musicians as featured artists) pursuant to the provisions of 17 U.S.C. Sections 114(g)(B), (C) and (D). Such payments shall be the sole payments to which featured and non-featured artists are entitled by virtue of the digital transmissions under the Direct Digital Streaming License, and any payments made to the Employer by virtue of those digital transmissions shall not be included in the Employer's gross receipts or net earned revenue under Article XX.A.4 or XX.B.3.

B. Rates: Up-front Payments, Tier Payments, Pension, Revenue Sharing

1. Up-Front Payments and Tier Payments for the Creation and Sale of CDs or CDs + Downloads; Optional Higher Up-Front Payment Rate Without Tier Payments

a. *Symphonic*: An up-front payment will be made to each Musician in the amount of 5.5% of weekly scale or 44% of per-service performance scale, whichever is applicable, subject, in either circumstance, to a minimum up-front payment of \$84.87 per musician. The up-front payment shall cover a recording (including a recording of a choral work) containing 80 minutes of music or less. For every 13 additional minutes or portion thereof, an additional payment shall be made that is 1/6 of the original up-front payment. The up-front payment entitles the Employer to produce and sell 15,000 units.

b. *Opera*: An up-front payment will be made to each Musician in the amount of 5.5% of weekly scale or 35% of per-service performance scale, whichever is applicable, subject, in either circumstance, to a minimum up-front

payment of \$84.87 per Musician. The up-front payment shall cover a recording containing 130 minutes of music or less (whether the orchestra plays in the pit or on stage). For every 21 additional minutes or portion thereof, an additional payment shall be made that is 1/6 of the original up-front payment. The up-front payment entitles management to produce and sell 15,000 units.

c. *Per Service Symphony Orchestras and Opera Recordings:* If a per-service symphony orchestra has a separate per service rate for opera performances, then the up-front payment shall be the greater of 44% of its symphony per-service rate or 35% of its opera per-service rate.

d. *Special Provision for Certain Archive Recordings:* In the case of an archive recording older than eight (8) years where the number of Musicians to be paid is unusually large, the amount of the up-front payment may be reduced, provided that:

- i. The total amount paid shall not be less than 125% of the cost of paying all of the current orchestra members; and
- ii. The total amount paid shall be shared equally among the musicians entitled to be paid;
- iii. The orchestra committee approves.

e. *Tier Payments for the Sale of CDs:* Upon the sale of the 15,001st CD unit, each Musician will receive a tier payment of \$10. Thereafter, each Musician will receive a \$10 tier payment for every additional 1000 units sold, without limit. Tier payments shall be made annually or on some other mutually agreed-upon periodic basis.

For the purpose of calculating tier payments when both CDs and downloads are sold:

- i. One full-album digital download shall count as one CD unit sale.
- ii. Revenue from partial album downloads shall be aggregated by album and divided by the full album download price of the relevant service to determine the equivalent number of CD unit sales to be counted when calculating tier payments.

f. *Optional Rates Without Tier Payments:* At its option, the Employer may elect to substitute the following up-front rates for the rates set forth in 1.a. and 1.b. above, in which case no tier payments shall be owed.

- i. *Symphonic*: An up-front payment will be made to each Musician in the amount of 7.5% of weekly scale or 60% of per-service performance scale, whichever is applicable, subject, in either circumstance, to a minimum up-front payment of \$84.87 per musician.
- ii. *Opera*: An up-front payment will be made to each Musician in the amount of 7.5% of weekly scale or 48% of per-service performance scale, whichever is applicable, subject, in either circumstance, to a minimum up-front payment of \$84.87 per musician.

2. Up-Front Payments for Streaming and/or the Creation of Downloads Without CDs

An up-front payment will be made to each Musician in the amount of 1% of weekly scale or 8% of per-service performance scale, whichever is applicable, subject, in either circumstance, to a minimum up-front payment of \$15.91 per Musician. The up-front payment entitles the Employer to exploit up to 45 minutes of audio recordings, in any combination, via streaming and/or via digital downloads where no corresponding CD or other physical product is sold. An additional up-front payment of 1% of weekly scale or 8% of per-service performance scale is required for each subsequent release of up to 45 minutes of recordings.

3. Pension Contributions

Up-front and tier payments shall be considered to be scale wages and the Employer shall make 12% pension contributions on them to the American Federation of Musicians and Employers' Pension Fund.

4. Payment Due Dates and Reporting

Payments to Musicians, payments to the American Federation of Musicians and Employers' Pension Fund, and the appropriate B-form are due within fifteen (15) days after the final taping, or in the case of archival use, within fifteen (15) days of the patch session. In the absence of a patch session, payments and the B-form are due within fifteen (15) days of product release.

5. Revenue Participation

Musicians shall be entitled to participate in revenue derived from streaming, CDs and downloads in accordance with the provisions in Article XX (Revenue Participation).

C. Rehearsals

1. There shall be no taping at rehearsals for use on recordings made under this section, except that if there is to be only one performance of the concert, opera or ballet performance being recorded, then there may be taping at the last dress rehearsal before the taped performance. If there are to be multiple performances at different halls, but no more than one performance per hall, then there may be taping for use on recordings either at all performances, or at one performance and the last dress rehearsal for that performance.

2. Notwithstanding C.1. above, the final dress rehearsal may be taped for audio scratch tape purposes (checking balances, consulting with the conductor, etc.) only. The scratch tape may not be used in any product. If any portion of the scratch tape is edited into an audio product, the Employer shall pay a penalty of \$100 to each Musician.

3. Any rehearsal taped under C.1. or C.2. above must retain its character as a dress rehearsal for the live concert, and shall not be subject to the direction of the recording producer or sound engineer. If a rehearsal is taped pursuant to this provision, and the rehearsal goes into overtime, there may be no taping during the overtime unless, in addition to the normal overtime payment, the Musicians are also paid for a patch session pursuant to F. (Patch Sessions) below.

D. Project-by-Project Approval in Limited Circumstances Only

1. Recording projects under this section in which musician costs constitute less than 35% of the proposed project budget shall be contingent upon project-by-project approval of the orchestra musicians. In those circumstances, project approval is determined by secret ballot majority vote by the members of the Local CBA bargaining unit.

2. Where the musician costs for the project constitute 35% or more of the proposed project budget, the project may proceed without a vote of the Local CBA bargaining unit. However, in all circumstances, the Employer must engage in the artistic and financial consultation described in Paragraph E below.

E. Artistic and Financial Consultation

1. The Employer must comprehensively discuss the project with the orchestra committee in advance. The discussion will include, but will not be limited to, information about the repertoire, the economic terms of any deal with any partner (if any), the specifics of any proposed license, the elements of any distribution deal with any partners, the financial arrangements with any conductors and soloists, and the financial arrangements for the orchestra, the project budget, etc.

2. The consultation must be held in a timely fashion in order to determine whether the project is subject to project-by-project approval in accordance with Paragraph D above. If the consultation is not held at least four (4) weeks before the proposed taping, the project will require project-by-project approval.

3. The consultation process must identify the agreed-upon direct costs for purposes of revenue participation calculations. Specifically, the Employer and the orchestra committee must agree upon the costs or categories of direct costs paid by the Employer, consistent with the provisions of Article XX (Revenue Participation), which may be deducted from the Employer's gross receipts to determine the net earned revenue that must be shared with Musicians. In the absence of agreement, which may not be unreasonably withheld, no direct costs may be deducted from the Employer's gross receipts and the net revenue to be shared will be the Employer's gross receipts.
4. The consultation process will also reaffirm the artistic partnership of the Employer and the Musicians and involve artistic consultation.

F. Patch Sessions

1. A patch session of up to two (2) hours may be held after a live performance of the program being recorded and will be paid in 15-minute increments. For the first thirty (30) minutes, a patch session will be paid at the lesser of the concert overtime rate or the SRLA patch rate, assuming that the patch session is announced within 10 minutes and begins within 45 minutes of the concertmaster leaving the stage. After thirty (30) minutes of patch session, the payment rate will be the Sound Recording Labor Agreement patch rate. SRLA patch conditions apply in all events.
2. The Employer may call a special patch session of up to two (2) hours at a time other than immediately after a concert of the recorded program (including a special patch session to make corrections in an archived tape), provided that there is orchestra approval of the scheduling of the session. Such patch sessions shall be paid as follows: (i) If the patch session is scheduled to occur immediately after a regular orchestra service, the payment provisions of F.1. above will apply; or (ii) If a special patch session is scheduled as a separate service it will be paid at the SRLA patch rate and SRLA patch conditions shall apply. The minimum call for such a session shall be one half hour.
3. The Employer may request Orchestra Committee approval for a second patch session of up to two (2) hours. If a second patch session is approved by the Orchestra Committee, payment shall be at the SRLA patch rates and SRLA conditions shall apply. No such second patch session may occur after midnight, and any Local CBA rules that are more restrictive than the IMA shall apply.
4. There shall be no discipline of any Musician who is unable to attend a special patch session.

X-A. ALTERNATIVE OPTION FOR LIVE RECORDING TO CDs OR DOWNLOADS

The following provisions replace the Symphony, Opera or Ballet Live Recording Agreement and the Symphony, Opera or Ballet Internet agreement, in lieu of the

provisions set forth in Article X above, where this Alternative Option for Live Recording has been elected by the Employer and approved by the Musicians by secret ballot vote of the CBA bargaining unit in accordance with union rules. The Employer's election and the Musicians' approval remain in effect through the term of this Agreement. When these requirements are met, the provisions set forth in this Article X-A govern the terms and conditions for the creation, and the exploitation via streaming and/or via CDs and/or downloads, of audio recordings made from live performances.

A. Ownership and Licensing

1. The ownership of the master recordings and all copyright rights in the recording shall be retained by the orchestra institution, and shall not be sold or transferred to any third party.

Licensing arrangements are permissible but the specifics of the license must be disclosed in advance in accordance with Paragraph E (Artistic and Financial Consultation) below. The duration of any license will be limited to no more than five (5) years (or no more than ten (10) years with the permission of the Orchestra Committee) or until the deletion of the recording from the licensee's catalog, whichever comes first. A license may be renewed but no renewal shall exceed five (5) years. Tier payments and revenue sharing as described below continue through new license periods.

The Employer may not enter into a licensing arrangement with a third party ("Third Party Licensee") which allows that Third Party Licensee to exploit the recording by entering into direct licenses with music services ("Music Service Licensees") for digital transmissions otherwise eligible for the statutory license pursuant to 17 U.S.C. Sec. 114, unless the license between the Third Party Licensee and the Music Service Licensee ("Direct Digital Streaming License") provides that 50% of the total royalties and other compensation payable by the Music Service Licensee in respect of the transmissions shall be paid to SoundExchange and passed on to the artists on the recording (including the Musicians as featured artists) pursuant to the provisions of 17 U.S.C. Sections 114(g)(B), (C) and (D). Such payments shall be the sole payments to which featured and non-featured artists are entitled by virtue of the digital transmissions under the Direct Digital Streaming License, and any payments made to the Employer by virtue of those digital transmissions shall not be included in the Employer's gross receipts or net earned revenue under Article XX.A.4 or XX.B.3.

B. Rates: Up-front Payments, Tier Payments, Pension, Revenue Sharing

1. Up-Front Payments and Tier Payments for the Creation and Sale of CDs or CDs + Downloads; Optional Higher Up-Front Payment Rate Without Tier Payments

a. *Symphonic*: An up-front payment will be made to each Musician in the amount of 6% of weekly scale or 48% of per-service performance scale, whichever is applicable, subject, in either circumstance, to a minimum up-front

payment of \$84.87 per musician. The up-front payment shall cover a recording (including a recording of a choral work) containing 80 minutes of music or less. For every 13 additional minutes or portion thereof, an additional payment shall be made that is 1/6 of the original up-front payment. The up-front payment entitles the Employer to produce and sell 15,000 units.

b. *Opera*: An up-front payment will be made to each Musician in the amount of 6% of weekly scale or 37.5% of per-service performance scale, whichever is applicable, subject, in either circumstance, to a minimum up-front payment of \$84.87 per Musician. The up-front payment shall cover a recording containing 130 minutes of music or less (whether the orchestra plays in the pit or on stage). For every 21 additional minutes or portion thereof, an additional payment shall be made that is 1/6 of the original up-front payment. The up-front payment entitles management to produce and sell 15,000 units.

c. *Per Service Symphony Orchestras and Opera Recordings*: If a per-service symphony orchestra has a separate per service rate for opera performances, then the up-front payment shall be the greater of 48% of its symphony per-service rate or 37.5% of its opera per-service rate.

d. *Special Provision for Certain Archive Recordings*: In the case of an archive recording older than eight (8) years where the number of Musicians to be paid is unusually large, the amount of the up-front payment may be reduced, provided that:

- i. The total amount paid shall not be less than 125% of the cost of paying all of the current orchestra members; and
- ii. The total amount paid shall be shared equally among the musicians entitled to be paid;
- iii. The orchestra committee approves.

e. *Tier Payments for the Sale of CDs*: Upon the sale of the 15,001st CD unit, each Musician will receive a tier payment of \$10. Thereafter, each Musician will receive a \$10 tier payment for every additional 1000 units sold, without limit. Tier payments shall be made annually or on some other mutually agreed-upon periodic basis.

For the purpose of calculating tier payments when both CDs and downloads are sold:

- i. One full-album digital download shall count as one CD unit sale.
- ii. Revenue from partial album downloads shall be aggregated by album and divided by the full album download price of the

relevant service to determine the equivalent number of CD unit sales to be counted when calculating tier payments.

f. *Optional Rates Without Tier Payments:* At its option, the Employer may elect to substitute the following up-front rates for the rates set forth in 1.a. and 1.b. above, in which case no tier payments shall be owed.

- i. *Symphonic:* An up-front payment will be made to each Musician in the amount of 8% of weekly scale or 64% of per-service performance scale, whichever is applicable, subject, in either circumstance, to a minimum up-front payment of \$84.87 per musician.
- ii. *Opera:* An up-front payment will be made to each Musician in the amount of 8% of weekly scale or 50% of per-service performance scale, whichever is applicable, subject, in either circumstance, to a minimum up-front payment of 84.87 per musician.

2. Conditions for Streaming and/or the Creation of Downloads Without CDs

The following conditions shall govern the creation, and the exploitation via streaming and/or via downloads (with no accompanying CD), of audio recordings made from live performances, pursuant to the Alternative Option for Live Recording set forth in this Article X-A.

- a. The Orchestra Committee must approve the project.
- b. The Orchestra Committee shall monitor the project.
- c. The Orchestra Committee may determine whether any up-front payment must be made, and what the up-front payment will be, if all three of the following conditions are met:
 - i. The Musicians are entitled to revenue participation;
 - ii. The control of (i.e., the right to exploit) the product is retained by the Employer or reverts to the Employer at the end of any license period;
 - iii. No license period exceeds seven (7) years.
- d. The musicians' revenue participation shall be 60% (or 22% for opera or ballet where applicable) of the Employer's gross receipts, as set forth in XX.A.3 below.
- e. Where the conditions set forth in 2.a.-c. above are not met, an up-front payment of 6% of weekly scale shall be made to each musician who participated

in the performance or other service recorded, provided that the Orchestra Committee may agree to a lower up-front payment for an opera or ballet project.

3. Pension Contributions

Up-front and tier payments shall be considered to be scale wages and the Employer shall make 12% pension contributions on them to the American Federation of Musicians and Employers' Pension Fund.

4. Payment Due Dates and Reporting

Payments to Musicians, payments to the American Federation of Musicians and Employers' Pension Fund, and the appropriate B-form are due within fifteen (15) days after the final taping, or in the case of archival use, within fifteen (15) days of product release.

5. Revenue Participation

Musicians shall be entitled to participate in revenue derived from streaming, CDs and downloads in accordance with the provisions in Article XX (Revenue Participation). In the case of Streaming or Downloads Without CDs pursuant to X-A.B.2. above, the musicians' revenue participation shall be 60% of the Employer's gross receipts, as set forth in XX.A.3 (Revenue Participation) below.

C. Rehearsals

1. There shall be no taping at rehearsals for use on recordings made under this section, except that if there is to be only one performance of the concert, opera or ballet performance being recorded, then there may be taping at the last dress rehearsal before the taped performance. If there are to be multiple performances at different halls, but no more than one performance per hall, then there may be taping for use on recordings either at all performances, or at one performance and the last dress rehearsal for that performance.

2. Notwithstanding C.1. above, the final dress rehearsal may be taped for audio scratch tape purposes (checking balances, consulting with the conductor, etc.) only. The scratch tape may not be used in any product. If any portion of the scratch tape is edited into an audio product, the Employer shall pay a penalty of \$100 to each Musician.

3. Any rehearsal taped under C.1. or C.2. above must retain its character as a dress rehearsal for the live concert, and shall not be subject to the direction of the recording producer or sound engineer. If a rehearsal is taped pursuant to this provision, and the rehearsal goes into overtime, there may be no taping during the overtime unless, in addition to the normal overtime payment, the Musicians are also paid for a patch session pursuant to F. (Patch Sessions) below.

D. Project-by-Project Approval for CDs

1. No CD recording project can go forward without specific approval of the orchestra musicians, determined by secret ballot majority vote by the members of the Local CBA bargaining unit. If the result of the secret ballot vote on a project is “no,” the project will not go forward.

E. Artistic and Financial Consultation

1. The Employer must comprehensively discuss the project with the orchestra committee in advance. The discussion will include, but will not be limited to, information about the repertoire, the economic terms of any deal with any partner (if any), the specifics of any proposed license, the elements of any distribution deal with any partners, the financial arrangements with any conductors and soloists, and the financial arrangements for the orchestra, the project budget, etc.

2. The consultation must be held in a timely fashion prior to the vote on project approval in accordance with X-A.D above, or prior to the Orchestra Committee determination regarding streaming or downloads without CDs in accordance with X-A.B.2. above.

3. The consultation process must identify the agreed-upon direct costs for purposes of revenue participation calculations. Specifically, the Employer and the orchestra committee must agree upon the costs or categories of direct costs paid by the Employer, consistent with the provisions of Article XX (Revenue Participation), which may be deducted from the Employer’s gross receipts to determine the net earned revenue that must be shared with Musicians. In the absence of agreement, which may not be unreasonably withheld, no direct costs may be deducted from the Employer’s gross receipts and the net revenue to be shared will be the Employer’s gross receipts.

4. The consultation process will also reaffirm the artistic partnership of the Employer and the Musicians and involve artistic consultation.

F. Patch Sessions for CDs

1. A patch session of up to two (2) hours may be held after a live performance of the program being recorded and will be paid in 15-minute increments. For the first thirty (30) minutes, a patch session will be paid at the lesser of the concert overtime rate or the SRLA patch rate, assuming that the patch session is announced within 10 minutes and begins within 45 minutes of the concertmaster leaving the stage. After thirty (30) minutes of patch session, the payment rate will be the Sound Recording Labor Agreement patch rate. SRLA patch conditions apply in all events.

2. The Employer may call a special patch session of up to two (2) hours at a time other than immediately after a concert of the recorded program (including a special patch session to make corrections in an archived tape), provided that there is orchestra approval

of the scheduling of the session. Such patch sessions shall be paid as follows: (i) If the patch session is scheduled to occur immediately after a regular orchestra service, the payment provisions of F.1. above will apply; or (ii) If a special patch session is scheduled as a separate service it will be paid at the SRLA patch rate and SRLA patch conditions shall apply. The minimum call for such a session shall be one half hour.

3. The Employer may request Orchestra Committee approval for a second patch session of up to two (2) hours. If a second patch session is approved by the Orchestra Committee, payment shall be at the SRLA patch rates and SRLA conditions shall apply. No such second patch session may occur after midnight, and any Local CBA rules that are more restrictive than the IMA shall apply.

4. There shall be no discipline of any Musician who is unable to attend a special patch session.

G. Patch Session for Streaming or Downloads without CDs

Under this option, patch sessions are not allowed for streaming or download products where no CD is made.

XI. OTHER AUDIO PRODUCTS

Audio-only products or uses not covered by Articles IX, X or X-A above may be made from live rehearsals and performances, subject to the approval of the Orchestra Committee, in accordance with the following terms. These terms apply to platforms now known or later discovered, and are designed to facilitate the use of new media platforms.

A. Orchestra Committee Approval Required

1. The Orchestra Committee must approve the project or use.
2. The Orchestra Committee shall monitor the project or use.
3. The Orchestra Committee shall determine the direct costs, if any, that may be deducted from gross receipts in calculating revenue participation pursuant to Article XX (Revenue Participation).

B. Up-front Payment

1. The Orchestra Committee may determine whether any up-front payment must be made, and what the up-front payment will be, if all three of the following conditions are met:
 - a. The Musicians are entitled to revenue participation;

b. The control of (i.e., the right to exploit) the product is retained by the Employer or reverts to the Employer at the end of any license period;

c. No license period exceeds seven (7) years.

2. Where the conditions set forth in Paragraph 1 above are not met, an up-front payment of 6% of weekly scale or 48% of per service performance scale, whichever is applicable, shall be made to each Musician who participated in the performance or other service recorded, provided that the Orchestra Committee may agree to a lower payment for an opera or ballet project.

C. Rights

The rights period for uses under this section shall be seven (7) years, except in the case of products or uses sold to consumers or for which an end-user fee is paid, in which case the Employer is entitled to unlimited exploitation of these products in perpetuity via means designed to generate revenue to the Employer.

D. Pension Contributions

Any up-front payments shall be considered to be scale wages and the Employer shall make 12% pension contributions on them to the American Federation of Musicians and Employers' Pension Fund.

E. Payment Due Dates and Reporting

Payments to Musicians, payments to the American Federation of Musicians and Employers' Pension Fund, and the appropriate B-form are due within fifteen (15) days of product release.

F. Revenue Participation

Musicians shall be entitled to participate in revenue derived from these products or uses in accordance with the provisions in Article XX (Revenue Participation).

G. Platforms Covered

These terms apply to Internet platforms and non-Internet platforms now known (like wireless delivery to cell phones) or later discovered, and uses are expressly permitted if approved by the Orchestra Committee. However, the prospective treatment of such new platforms shall be the subject of negotiations at the option of the Federation after reasonable notice to the Employer. If the Federation initiates negotiations regarding a new platform or technology, permission for prospective new projects using that platform or technology ceases from three (3) months after the Federation's notice until agreement is reached on the terms of that use.

AUDIO-VISUAL MEDIA

XII. NATIONAL AND FOREIGN TELEVISION

The creation and broadcast of national and foreign television programs shall be subject to the following provisions.

A. Rates

1. Musicians shall be paid at the applicable per-minute rate times the length of the program. Per-minute rates shall always be paid in five-minute increments.
2. *Per-Minute Rate Television When There Have Been One or Two Audio-Visual Captures*: There shall be applicable per-minute rates for “Live” Television, defined as a television program involving no more than two audio-visual captures. The applicable per-minute rates shall be:

One (1) or Two (2) Captures	Rate
National Public Television ^A (Standard Rate) <i>NOTE: Payment of this Standard Rate entitles the Employer to license for three (3) years of unlimited broadcast on national public television, national non-standard and worldwide foreign television per B.1. below</i>	\$5.68 per minute
Non-Standard (Cable) Television ^B (60% of standard rate)	\$3.41 per minute
Unlimited Foreign Countries (4 or more) (65% of standard rate)	\$3.69 per minute
Three (3) Foreign Countries (55% of standard rate)	\$3.12 per minute
Two (2) Foreign Countries (45% of standard rate)	\$2.55 per minute
One (1) Foreign Country (35% of standard rate)	\$1.99 per minute
One (1) Broadcast Option (81.5% of applicable per-minute rate)	

^A As defined in E.1. & 2. below.

^B As defined in E.4. below.

3. *Per-Minute Rate for “Multi-capture” Television:* There shall be applicable per-minute rates for “Multi-Capture” Television, defined as a television program involving three (3) or more audio-visual captures.

Three (3) or More Captures	Rate
National Public Television ^A (Standard Rate) <i>NOTE: Payment of this Standard Rate entitles the Employer to license for three (3) years of unlimited broadcast on national public television, national non-standard and worldwide foreign television per B.1. below</i>	\$6.79 per minute
Non-Standard (Cable) Television ^B (60% of standard rate)	\$4.07 per minute
Unlimited Foreign Countries (4 or more) (65% of standard rate)	\$4.41 per minute
Three (3) Foreign Countries (55% of standard rate)	\$3.73 per minute
Two (2) Foreign Countries (45% of standard rate)	\$3.06 per minute
One (1) Foreign Country (35% of standard rate)	\$2.38 per minute
One (1) Broadcast Option (81.5% of applicable per-minute rate)	

4. *Pension Contributions:* Per-minute rate payments shall be considered to be scale wages and the Employer shall make 12% pension contributions on them to the American Federation of Musicians and Employers’ Pension Fund.

5. *Opera:* Opera television programs shall be paid at the applicable per-minute rate for up to two hours of program, and thereafter shall be paid at 75% of the applicable per-minute rate.

6. *Payment Due Dates and Reporting:* Payments to Musicians, payments to the American Federation of Musicians and Employers’ Pension Fund, and the appropriate B-form are due within fifteen (15) days of program release.

7. *Revenue Participation:* Musicians shall be entitled to participate in revenue derived from television programs in accordance with the provisions in Article XX (Revenue Participation).

^A As defined in E.1. & 2. below.

^B As defined in E.4 below.

B. Rights – Three (3) Years Unlimited Broadcast

1. *Standard Television Rate*: Payment of the standard television per-minute rate entitles the Employer to license the program for unlimited broadcast for three (3) years on national public television, national non-standard television and foreign television.

2. *Non-Standard (Cable) Rate*: payment of the non-standard (cable) television rate entitles the employer to license the program for unlimited broadcast for three (3) years on national non-standard television and in three (3) or fewer foreign countries.

a. *Step-Up to National Public Television*: Payment of the difference between the non-standard (cable) rate and the standard television rate shall entitle the Employer to license the program for three (3) years of unlimited broadcast on national public television and in unlimited foreign countries. Step-up payments, pension payments and the appropriate B-form shall be due within fifteen (15) days after the step-up release.

b. *Step-Up to Unlimited Foreign Countries Rate*: Payment of the difference between the non-standard (cable) rate and the unlimited foreign countries rate shall entitle the Employer to license the program for three (3) years of unlimited broadcast in unlimited foreign countries. Step-up payments, pension payments and the appropriate B-form shall be due within fifteen (15) days after the step-up release.

3. *Unlimited (4 or more) Foreign Countries Rate*: payment of the unlimited (4 or more) foreign countries television rate entitles the employer to license the program for unlimited broadcast for three (3) years in foreign countries and on non-standard (cable) television.

Step-Up to National Public Television: Payment of the difference between the unlimited foreign country rate and the standard television rate shall entitle the Employer to license the program for three (3) years of unlimited broadcast on national public television. Step-up payments, pension payments and the appropriate B-form shall be due within fifteen (15) days after the step-up release.

4. *Three (3), Two (2) or One (1) Foreign Country Rate*: payment of the three (3), two (2) or one (1) foreign country(ies) television rate entitles the employer to license the program for unlimited broadcast for three (3) years in three (3), two (2) or one (1) foreign country(ies), respectively.

Step-Up: The Employer can step up to unlimited broadcast for three (3) years in more foreign countries, unlimited foreign countries, non-standard (cable) television or national public television by paying the difference between the rate paid and the applicable rate for the desired distribution. Step-up payments, pension payments and the appropriate B-form shall be due within fifteen (15) days after the step-up release.

5. *Subsequent Rights Periods*: The Employer may license the program for subsequent three-year broadcast periods upon payment to the Musicians of 25% of the original rate.
6. *One Broadcast Option*: payment of the one broadcast option rate (81.5% of the applicable per-minute rate) entitles the Employer to license the program for one broadcast (unlimited plays for one week) on PBS, cable and/or foreign television. It shall not entitle the Employer to make a CD or audio-only download.

Step-Up: The Employer can step up to unlimited broadcast for three (3) years in one or more foreign countries, unlimited foreign countries, non-standard (cable) television or national public television by paying the difference between the rate paid and the applicable rate for the desired distribution. Step-up payments, pension payments and the appropriate B-form shall be due within fifteen (15) days after the step-up release.

C. Additional Rights – Full Price Television Bonus

Payment of the per-minute rates for standard television, non-standard (cable) television or unlimited foreign countries shall entitle the Employer to release the program in the following additional formats without additional up-front payments: CD, audio download, audio streaming, DVD, audio-visual download, audio-visual streaming and all other audio (other than radio) and audio-visual formats. Such products will be subject to revenue participation (including tier payments where relevant). The rights period for streaming or similar uses shall be the same as the rights period for standard television, non-standard (cable) television or unlimited foreign television (i.e., three (3) years). The “Full Price Television Bonus” set forth in this provision does not apply to projects to which the New Projects Discount pursuant to XII.D. applies, nor to any projects under the Side Letter Regarding Audio and Audio-Visual Recording with Non-Classical Featured Artists.

D. New Projects Discount

If the Employer has not made a national television program within the last ten (10) years, it shall be entitled, upon secret ballot approval of the CBA bargaining unit, to make a national television program upon payment of 25% of the applicable per-minute rates. The “Full Price Television Bonus” set forth in XII.C. above does not apply to projects under this section XII.D. The New Projects Discount set forth in this section XII.D. does not apply to any projects under the Side Letter Regarding Audio and Audio-Visual Recording with Non-Classical Featured Artists.

E. Definitions

1. *Standard Television*: Standard (free) television shall mean the remote transmission of video and audio signals comprising a schedule of programming intended for and capable of reception on one or more channels of television receivers utilized by

the ultimate consumer for viewing such video and audio signals, which transmissions originate from outside the place (or distant from the location of portable television receivers) where such television receivers are located and which video and audio signals are transmitted by means of over-the air VHF or UHF transmissions, satellite, cable or any other transmission means known or hereafter devised without a charge being made to the viewer by the telecaster for the right to receive and view such transmission.

2. National Public Television: Standard television on a public television network.
3. Commercial Television: Standard television on a commercial network. "Olympics-type programs" and programs broadcast on commercial television are not covered by this Agreement and must be made and broadcast pursuant to the applicable Federation agreement for commercial television.
4. Non-Standard Television: Non-Standard Television shall be defined as all forms of television exhibition other than Standard Television, whether now testing or developed in the future and however transmitted or delivered, including broadcast, satellite, and terrestrial microwave transmission, cassette and disc transmission, coaxial cable transmission, and Internet transmission. Non-Standard Television shall include, but not be limited to all transmissions on: basic cable and pay cable; over-the-air "pay" subscription television (STV) (except during such portions of the day, if any, as is broadcast on a free basis, as Standard Television), direct broadcast satellite (DBS), master antenna (MATV), multipoint distribution system (MDS), small antenna television system (SMATV); and transmissions via Non-Standard Television delivery systems to closed-circuit television systems such as hotel, motel or hospital rooms, educational institutions and military locations. Non-Standard Television transmission shall include all of the foregoing whether such transmission is on a subscription, pay-per-view, license, rental, sale, free or other basis. Non-Standard Television shall also include so-called "drop in" and "low power" VHF or UHF stations or VHF "limited facility" stations if these are not available to the viewer without charge.

XIII. REGIONAL TELEVISION

A. Rates

Musicians shall be paid the greater of:

1. The established local rate, if any, for either a local or regional television broadcast; or
2. \$37.13 per hour of finished product, with a two (2) hour minimum.
3. Pension Contributions: The regional television payment shall be considered to be scale wages and the Employer shall make 12% pension contributions on them to the American Federation of Musicians and Employers' Pension Fund.

4. Payments to Musicians, payments to the American Federation of Musicians and Employers' Pension Fund, and the appropriate B-form shall be due within fifteen (15) days of program release.

B. Rights

Payment of the above rates entitles the Employer to license the program for unlimited broadcast for three (3) years on regional television.

C. Subsequent Rights Periods

The Employer may license the program for subsequent three-year broadcast periods upon payment to the Musicians of 25% of the original rate.

D. Step Up

Payment of the difference between the original rate and the applicable per-minute rate for national television shall entitle the Employer to license the program for three (3) years of unlimited broadcast on national television. Step-up payments, pension payments and the appropriate B-form shall be due within fifteen (15) days after the step-up release.

E. Definition of Regional Television

Regional television broadcasts shall be defined as the transmission or exhibition of audio-visual product emanating and/or broadcast from within the geographical boundaries of the Employer's Designated Market Area ("DMA"), as defined by the Nielsen Company on August 1 annually ("Employer's DMA") and expanded either:

1. Statewide in the Employer's home state, or
2. to include the DMAs contiguous to the Employer's DMA.

XIV. DVDs, THEATRICAL RELEASE, STREAMING, DOWNLOADING AND ALL OTHER NON-TELEVISION AUDIO-VISUAL PRODUCTS

A. Rates Applicable Where the Employer Does Not Control the Product.

Where the Employer does not retain the right to exploit the product or the right to exploit the product does not revert back to the Employer at the end of the license period, Musicians shall be paid the standard television per-minute rates for the production and release of the product, and all television terms and conditions pursuant to Article XII (National and Foreign Television) above shall apply.

B. Rates Applicable Where the Employer Controls the Product.

The creation and exploitation of non-television audio-visual media where the employer controls the product shall be governed by the following provisions. The Employer shall be deemed to have retained control of the product when the Employer retains the right to exploit the product or the right to exploit the product reverts back to the Employer at the end of the license period.

1. Internet or Wireless Streaming

a. *Programs Streamed Without Charge to the Public.* Up to three (3) times per year, the Employer, without charge to the public, may stream a concert for an up-front payment of 4% of weekly scale (32% per-service performance rates), with a minimum payment \$57.29 per Musician, where there has been audio-visual capture of no more than one performance. Any additional streams where there is one audio-visual capture may be done at either the following one-capture rate or the following two-capture rate for a single program, at the Employer's option.

b. *Single Program Where There Is One Audio-Visual Capture.* The rates for audio-visual streaming on the Internet or by wireless means shall be 5% of weekly scale (40% of per-service performance rates), with a minimum payment of \$63.65 per Musician, when there has been audio-visual capture of no more than one performance. As set forth in XIV.B.6. (Non-Television Audio-Visual Products) and XX.A.3. (Revenue Participation) below, the musicians' revenue participation in this circumstance shall be 60% (or 22% for opera or ballet where applicable) of the Employer's gross receipts.

a. *Single Programs Where There Are Two Audio-Visual Captures.* The rates for audio-visual streaming on the Internet or by wireless means shall be 6% of weekly scale (48% of per-service performance rates), with a minimum payment of \$76.38 per Musician, when there has been audio-visual capture of no more than two performances.

d. *Single Programs Where There Are Three (3) or More Audio-Visual Captures.* The rates for audio-visual streaming on the Internet or by wireless means shall be 8% of weekly scale (64% of per-service performance rates), with a minimum payment of \$101.85 per Musician, when there has been audio-visual capture of three (3) performances or more.

e. *Guarantee of Five (5) or More Programs Streamed per Year.* Where the Employer guarantees the streaming of five (5) or more programs per year in addition to any programs streamed pursuant to Paragraph 1.a. above, the rates for audio-visual streaming on the Internet or by wireless means shall be 5% of weekly scale (40% of per-service performance rates), with a minimum payment of \$63.65 per Musician, when there has been audio-visual capture of no more than two performances, and 7% of weekly scale (56% of per-service performance

rates), with a minimum payment of \$89.12 per Musician, when there has been audio-visual capture of three (3) performances or more.

f. *Internet or Wireless Streaming of 60 minutes or less:*

- i. Thirty (30) minutes or less of a concert program may be streamed under any of these provisions XIV.B.1.a.-e. for 25% of the applicable rate. The minimum payment shall be 25% of the applicable minimum payment.
- ii. Sixty (60) minutes or less of a concert program may be streamed under any of these provisions XIV.B.1.a.-e. for 50% of the applicable rate. The minimum payment shall be 50% of the applicable minimum payment.
- iii. These rates are do not apply to documentary programs.

g. *Rights.* The payment of the above rates B.1.a. through B.1.f. shall entitle the Employer to engage in unlimited streaming, or to license the program for unlimited streaming by a third party, for three (3) years.

2. DVDs, Downloads, Theatrical Release and all other Non-Television Audio-Visual Products:

a. *Rates Where There Have Been One or Two Audio-Visual Captures:* The rates for DVDs, downloads, theatrical release and all other non-television audio-visual products shall be 8% of weekly scale (64% of per-service performance rates), with a minimum payment of \$101.85 per Musician, when there has been audio-visual capture of no more than two performances.

b. *Rates Where There Have Been Three (3) or More Audio-Visual Captures.* The rates for DVDs, downloads theatrical release and all other non-television audio-visual products shall be 11% of weekly scale (88% of per-service performance rates), with a minimum payment of \$140.04 per Musician, when there has been audio-visual capture of three (3) performances or more.

c. *Optional Rate for Theatrical Release Where There Is One Audio-Visual Capture.* At the Employer's option, the rates for theatrical release where there has been audio-visual capture of no more than one performance shall be 5% of weekly scale (40% of per-service performance rates), with a minimum payment of \$63.65 per Musician. As set forth in XIV.B.6. (Non-Television Audio-Visual Products) and XX.A.3. (Revenue Participation) below, the musicians' revenue participation in this circumstance shall be 60% (or 22% for opera or ballet where applicable) of the Employer's gross receipts.

- d. *DVDs and A-V Downloads of 60 minutes or less:*
- i. Thirty (30) minutes or less of a concert program may be produced as a DVD or A-V download under this provision for 25% of the applicable rate. The minimum payment shall be 25% of the applicable minimum payment.
 - ii. Sixty (60) minutes or less of a concert program may be produced as a DVD or A-V download under this provision for 50% of the applicable rate. The minimum payment shall be 50% of the applicable minimum payment.
 - iii. These rates do not apply to documentary programs.

e. *Rights.* Payment of the rates set forth in B.2.a-d above shall entitle the Employer to unlimited exploitation of these products in perpetuity via means designed to generate revenue to the Employer. Licensing is permitted but license periods shall not exceed seven (7) years (or no more than ten (10) years with the permission of the Orchestra Committee).

f. *Multiplatform Use:* Release of a product on one platform under this Paragraph B.2. entitles the Employer to release the product on another platform under this provision for no additional payment other than revenue participation, provided the additional product is one for which revenue is intended to be generated to the Employer via an end-user fee for each individual use, an extra fee for the service on which the media product is available, or from some other means. For example, if the Employer has released a program as a theatrical release, it may also release the program as a DVD and sell it via audio-visual downloads. Release of a product pursuant to this Paragraph B.2. also entitles the Employer to engage in streaming pursuant to Paragraph B.1., with no additional payment to musicians other than revenue participation.

3. Step Up:

a. From streaming to other non-television audio-visual products: If the Employer has paid the rates set forth in B.1. above for streaming, it can release the program in other non-television audio-visual platforms by paying the difference between the rates set forth in B.1. and the rates set forth in B.2. Step-up payments, pension payments and the appropriate B-form shall be due within fifteen (15) days after the step-up release.

b. From non-television audio-visual products to television: If the Employer has paid for non-television audio-visual products, it can release the program on television by paying the difference between the rates paid for the non-television audio-visual product and the applicable television per-minute rates. Step-up

payments, pension payments and the appropriate B-form shall be due within fifteen (15) days after the step-up release.

4. *Pension Contributions:* The non-television audio-visual payments shall be considered to be scale wages and the Employer shall make 12% pension contributions on them to the American Federation of Musicians and Employers' Pension Fund.

5. *Payment Due Dates and Reporting:* Payments to Musicians, payments to the American Federation of Musicians and Employers' Pension Fund, and the appropriate B-form are due within fifteen (15) days after the final taping, or in the case of archival use, within fifteen (15) days of the patch session. In the absence of a patch session, payments and the B-form are due within fifteen (15) days after release of the product.

6. *Revenue Participation:* Musicians shall be entitled to participate in revenue derived from non-television audio-visual programs in accordance with the provisions in Article XX (Revenue Participation). In the case of Internet or Wireless Streaming of Single Programs Where There Is One Audio-Visual Capture (B.1.b. above), and in the case of the Optional Rate for Theatrical Release Where There is One Audio-Visual Capture (B.2.c. above), the musicians' revenue participation shall be 60% (or 22% for opera or ballet where applicable) of the Employer's gross receipts, as set forth in XX.A.3 (Revenue Participation) below.

XIV-A. REHEARSAL PROVISIONS FOR NATIONAL AND FOREIGN TELEVISION (ARTICLE XII), REGIONAL TELEVISION (ARTICLE XIII) AND ALL OTHER NON-TELEVISION AUDIO-VISUAL PRODUCTS (ARTICLE XIV)

The following provisions govern rehearsal for all audio-visual projects including National and Foreign Television (Article XII), Regional Television (Article XIII) and all other Non-Television Audio-Visual Products (Article XIV).

A. Audio Visual Capture At Rehearsals

There shall be no audio-visual capture at rehearsals for use on audio-visual products made under this section, except that if there is to be only one performance of the concert, opera or ballet performance being recorded, then there may be audio-visual capture at the last dress rehearsal before the taped performance. If there are to be multiple performances at different halls, but no more than one performance per hall, then there may be audio-visual capture for use on audio-visual products either at all performances, or at one performance and the last dress rehearsal for that performance.

B. Working Tapes

Notwithstanding Paragraph A. above, the final dress rehearsal may be taped solely for test blocking, scratch tape, working tape or sound test purposes ("working tapes"). The

Employer shall require the audio-visual producer to provide the musicians with notice of intent to make such tapes. The Employer shall require the Producer to guarantee that no such tape shall be edited into the finished product nor used for any other purpose except those set forth in this paragraph. If any portion of the working tape is edited into the final product, the Employer shall pay a penalty of \$100 to each Musician.

C. Rehearsal Character; Overtime

Any rehearsal captured under Paragraph A. or B. above must retain its character as a dress rehearsal for the live performance, and shall not be subject to the direction of the audio or audio-visual recording producer or sound engineer. If a rehearsal is taped pursuant to these provisions, and the rehearsal goes into overtime, there may be no taping during the overtime unless, in addition to the normal overtime payment, the Musicians are also paid for a patch session pursuant to XVII.B. (Special Calls and Patch Sessions for Audio-Visual Product).

D. Concert Dress

Musicians may be required to wear concert dress for a rehearsal captured pursuant to Paragraph A. or B. above, but if concert dress is required, each Musician shall receive additional compensation in the amount of \$50.00.

XV. AUDIO-VISUAL EDUCATIONAL RELEASES

A. Eligible Releases

An institution may create and release educational programming for Pre-K through 12 classroom-based uses, via closed-circuit, internet with password protected entry, internet2 or other technologies designed to protect the work for classroom educational use, pursuant to the provisions in this section. The provision of a physical DVD, marked as not for sale, to an educational institution for classroom use, is covered by this section.

B. Capture

Capture is limited to one (1) or two (2) performances.

C. Rates

- a. Musicians shall be paid 2% of weekly scale (16% of per-service performance scale), with a minimum payment of \$37.13 for the creation and distribution of a program of up to forty-five (45) minutes.
- b. Musicians shall be paid 2.5% of weekly scale (20% of per-service performance scale), with a minimum payment of \$42.44 for the creation and distribution of a program of up to sixty (60) minutes.

- c. Musicians shall be paid 3% of weekly scale (24% of per-service performance scale), with a minimum payment of \$50.92 for the creation and distribution of a program of up to ninety (90) minutes.
- d. Notwithstanding the rates set forth in C.a-c. above, for no more than two separate projects during the term of this Agreement, the Employer may elect the following modified rate structure: no up-front payment for a program of forty-five (45) minutes or less, or an up-front payment of 2% of weekly scale (16% of per-service performance scale) with a minimum payment of \$37.13 for a program of more than forty-five (45) minutes. The allowable distribution period for such programs shall be seven (7) years. The rates set forth in C.a.-c. above, and the rights period set forth in F. below, shall apply to educational releases other than those made pursuant to this provision.

D. Pension Contributions

Educational audio-visual payments shall be considered to be scale wages and the Employer shall make 12% pension contributions on them to the American Federation of Musicians and Employers' Pension Fund.

E. Payment Due Dates and Reporting

Payments to the Musicians, payments to the American Federation of Musicians and Employers' Pension Fund, and the appropriate B-form shall be due within fifteen (15) days after the final taping.

F. Rights

The Employer shall be entitled to unlimited classroom distribution of the product for ten (10) years.

G. Step Up

The Employer may release the product in other forms covered by this Agreement upon payment of the difference between the educational rate paid and the applicable rate for the product under this Agreement. Step-up payments, pension payments and the appropriate B-form shall be due within fifteen (15) days after the step-up release.

XVI. DOCUMENTARIES, CLIP PROGRAMS, COMPILATIONS

New or existing audio-visual material may be used for documentaries, clip programs or compilations under the provisions of this section. A "Documentary," "Clip Program" or "Compilation Program" shall be defined as a program created from new and/or existing A-V Product extracted from one or more other programs for the purpose of including that material in a new product that is primarily informational.

A. Use of Three (3) Minutes or Less

1. The Employer may use a maximum aggregate of three (3) minutes or less of audio-visual material, created under this Agreement or predecessor agreements, for use in a clip, compilation or documentary program with no additional payment to the Musicians.
2. For new audio-visual material created under this Agreement, the Employer may tape a maximum of thirty (30) minutes of any rehearsal or concert from which a maximum of three (3) minutes may be used without payment.

B. Use of Thirty (30) Minutes or Less

1. The Employer may use a maximum aggregate of thirty (30) minutes or less of audio-visual material created under this Agreement or predecessor agreements, for use in a clip, compilation or documentary program, upon payment to Musicians as provided in B.3. below.
2. For new audio-visual material created under this Agreement, the Employer may tape a maximum of one (1) hour at each of two (2) services.
3. Each Musician who was paid for the original program, who performed on an archival tape used, or who participates in the taping of the new program shall receive a payment based on the number of minutes of the Musician's participation in the final product times the standard television multi-capture rate in effect at the time the program is released.
4. Documentary, clip and compilation payments shall be considered to be scale wages and the Employer shall make 12% pension contributions on them to the American Federation of Musicians and Employers' Pension Fund.
5. Payments to Musicians, payments to the American Federation of Musicians and Employers' Pension Fund, and the appropriate B-form are due within fifteen (15) days of the final taping, or in the case of archival use, within fifteen (15) days of the decision to use the archival material.

C. Use of More than Thirty (30) Minutes

Documentary, clip or compilation programs that include more than thirty (30) minutes of Musician participation shall be treated as television or non-television audio-visual product and shall be covered by the applicable provisions of this Agreement.

XVII. SPECIAL CALLS AND PATCH SESSIONS FOR AUDIO-VISUAL PRODUCT

A. Special Calls

1. For each orchestra service that has been called solely for rehearsal for an audio-visual product, or for audio and/or audio-visual capture for an audio-visual product, where the Musicians are not credited with a rehearsal or performance fee under the Local CBA (“Special Call” or “Studio Session”), each Musician shall be paid the greater of \$270.53, or 25% over the per-service rate in the Local CBA, for up to a three-hour service.
2. There shall be rest periods of not less than an average of ten (10) minutes per hour away from the stand. No musician shall be required to work more than sixty (60) consecutive minutes without a rest period of at least ten (10) minutes except during performances, or simulated performances, where the requirements of musical continuity dictate that a longer period of time is necessary, in which case the subsequent break period shall be no less than fifteen (15) minutes.
3. There shall be no more than two (2) Special Calls permitted in any one (1) day with at least a one (1) hour break between the end of the first Special Call and the beginning of the second Special Call.
4. The Employer shall provide Musicians with notice of its intent to schedule a Special Call in accordance with the notice provisions of the CBA.
5. A Special Call shall not be canceled, postponed or otherwise rescheduled less than seven (7) days prior to its scheduled date, except in the case of an emergency with the consent of the Office of the Federation President.

B. Patch Sessions

1. In the event the Employer requires a Musician to remain following the conclusion of a live service at which audio-visual material is captured for the purpose of re-taping a portion or portions, that Musician shall receive overtime pay, pro-rated in 15-minute increments, at time and one-half the Special Call rate, computed from the time that the performance ends. Within ten (10) minutes after the Concertmaster has left the stage, the Employer shall advise the musicians whether a patch session shall take place and, if so, the proposed length of that patch session. In the event that a patch session is called, the musicians shall be guaranteed such overtime pay for the time periods as follows:
2. No patch session shall exceed two (2) hours for a symphony orchestra, or three (3) hours for an opera or ballet orchestra, and any work after midnight shall be compensated at overtime rates, pro-rated in fifteen (15)-minute increments, at double the Special Call rate.

3. If re-takes of musical performances are taped at a regular concert service in which audio-visual material is taped, each musician shall be paid a 15-minute “patch session” payment, and the duration of the Regular Service may be extended for up to 15 minutes. If such regular concert extends into overtime under the terms of the Local CBA due to these interruptions, then each musician shall be paid either the 15-minute patch session payment or the applicable overtime payment under the Local CBA, whichever is greater, for each 15-minute segment of overtime.

C. Pension Contributions

Special call and patch payments shall be considered scale wages and the Employer shall make 12% pension contributions on them to the American Federation of Musicians and Employers’ Pension Fund.

D. Payment Due Dates and Reporting

Payments to Musicians, payments to the American Federation of Musicians and Employers’ Pension Fund, and the appropriate B-form are due within fifteen (15) days of the final taping.

SPECIAL AUDIO BUFFET OPTION FOR GREATER RIGHTS AND INCREASED FLEXIBILITY

For purposes of this Agreement, the “audio buffet option” is an option that may be available to an Employer that is willing and able to guarantee a certain level of annual media compensation (the “buffet payment”) to the Musicians in return for a package of increased rights and greater flexibility in creating and exploiting audio media. As set forth below, certain requirements must be met in order for the Employer to be eligible to make use of the audio buffet option.

XVIII. AUDIO BUFFET OPTION

Subject to the approval of the Musicians by secret ballot majority vote of the CBA bargaining unit in accordance with union rules, the Employer may elect to make audio products and uses under the audio buffet option, subject to the following terms and conditions. The Musicians’ approval remains in effect through the term of this Agreement. A per-service orchestra is not eligible to elect the audio buffet option unless it guarantees its full season of services to a musician core as defined in Article I.B.4 (Scope of Agreement – Per Service Orchestra Limitations).

A. Buffet Commitment

In order to be eligible to use the audio buffet option, the Employer must commit to use the audio buffet option for a minimum of one (1) year.

B. Approval

1. The Employer is not committed to electing the audio buffet option by virtue of having sought Musician approval to elect the option. Once the Employer has received Musician approval to elect the buffet option, election of the option is at the Employer’s discretion, as long as it elects the option within one (1) year of the Musician approval. In the event the Employer has received Musician approval to elect the buffet option within the last year of this Agreement, there shall be a two-year grace period at the beginning of the successor Agreement during which the Employer may implement the buffet option, at the rates in effect at the time of implementation.

2. If the Musicians deny approval, the Federation and the Employer may, at the Employer’s option, meet and confer to determine whether there is an alternative audio buffet option that is mutually acceptable to the Employer, the Federation and the Musicians. If no alternative audio buffet option is mutually acceptable, there shall be no alternative audio buffet option. An alternative audio buffet option shall be deemed to be mutually acceptable when the Federation recommends it for Musician approval, and the Musicians approve it by secret ballot vote.

C. Buffet Compensation

1. Buffet Payments

a. The Employer shall make a payment of 3% of base annual salary, with a minimum payment of \$954.81, to each current member of the orchestra, in each year that it elects the audio buffet option.

b. In the case of an eligible per-service orchestra, i.e., an orchestra that guarantees its full season of services to the musician core, the buffet payment shall be paid to all musicians on the roster. It shall consist of 3% of the core musician's base per-performance scale times the number of guaranteed services, with a minimum payment of \$954.81.

c. Buffet payments may be paid either in advance at the beginning of the applicable year, or in payroll installments prorated over the season. In the case of an annual payment, the appropriate B-form shall be due within 15 days of the buffet payment. In the case of prorated buffet payments, the appropriate B-forms may be filed monthly.

d. Substitute and extra musicians shall receive a buffet payment for each service worked (whether or not those services involved media), which shall consist of a 3% increase in the substitute or extra Musician's compensation for services. This payment shall be made when the Musician is paid for the live service. In an orchestra subject to the floor of \$954.81, the sub/extra buffet payment for each service shall be calculated by dividing floor payment by the number of services in the year.

2. Pension Contributions

Buffet payments shall be considered to be scale wages and the Employer shall make 12% pension contributions on them to the American Federation of Musicians and Employers' Pension Fund. When the buffet payment is made in advance at the beginning of the applicable year, the pension payment is due within fifteen (15) days of the buffet payment. When the buffet payment is prorated over the season, the pension payment and B-forms are due within fifteen (15) days of the last day of each month of the season.

3. Revenue Participation

Musicians shall be entitled to participate in revenue derived from the exploitation of products produced from material captured pursuant to the audio buffet option in accordance with the provisions in Article XX (Revenue Participation).

D. Buffet Capture

1. Performances

While exercising the audio buffet option, the Employer may make unlimited audio capture of all performances.

2. Rehearsals

If there is only one performance of a program, or no more than one performance per hall, the Employer may make audio capture of the final dress rehearsal for the program. Any rehearsal taped under this provision must retain its character as a dress rehearsal for the live concert, and shall not be subject to the direction of the recording producer or sound engineer. If a rehearsal is taped pursuant to this provision, and the rehearsal goes into overtime, there may be no taping during the overtime unless, in addition to the normal overtime payment, the Musicians are also paid for a patch session pursuant to X.F. (Patch Sessions) above.

E. Exploitation

1. Radio

The Employer may make or license unlimited broadcast of audio material captured pursuant to the audio buffet option on commercial over-the-air radio, non-commercial over-the-air radio, satellite radio, internet radio and all other wired or wireless broadcast formats for three (3) years or while it continues to exercise the buffet option, whichever is longer. Broadcast rights include simultaneous streaming of the broadcast and archiving for on-demand streaming for the duration of the license period.

2. CDs and Audio Downloads

From the audio material captured pursuant to the audio buffet option in each year, the Employer may make a total of 600 minutes of CD and/or audio download products, subject to the following restrictions:

- a. CDs, with or without corresponding download products, shall consist of no more than 300 minutes of music.
- b. In addition to the minute-limitation set forth in 2.a. above, there shall be no more than four (4) CD albums produced from the material captured pursuant to the audio buffet option in each year. An album shall be defined as no more than two (2) CDs, provided that where the album consists of two CDs, the second CD is caused by the length of the primary work, or all of the works on the two CDs were programmed as one concert, opera or ballet performance. In the case of opera, an album shall be defined as a single work or the recording of works that were performed in a single performance.

- c. Audio downloads without a corresponding CD shall consist of no more than 600 minutes of music minus the number of minutes of music on CDs produced pursuant to paragraph 2.a. and b. above.
- d. CDs and downloads need not be produced in the same year as the audio capture, but rather, the 600 minutes of product allowed under this provision may be banked and produced at any time during the term of this Agreement.
- e. The Employer may make CDs in excess of these restrictions, subject to project-by-project approval by secret ballot vote of the orchestra. Production of such excess CDs shall be pursuant to the provisions of Article X or Article X-A (Live Recording to CDs or Downloads). The up-front payment for such CDs may be reduced (under Article X) to 5% of weekly scale (40% of per-service performance scale) with tier payments or 7% of weekly scale (56% of per-service scale) without tier payments, or (under Article X-A) to 5.5% of weekly scale (44% of per-service performance scale) with tier payments or 7.5% of weekly scale (60% of per-service scale), whichever is applicable, subject in either circumstance to a minimum up-front payment of \$84.87 per musician.

3. Other

Audio material captured pursuant to the audio buffet option may be exploited without restriction via Internet streaming, wireless delivery, Internet2 programming, podcasts and any other audio formats currently in use or yet to be developed, without restriction, other than the restrictions set forth D.1. and 2. above. These terms apply to Internet platforms and non-Internet platforms now known (like wireless delivery to cell phones) or later discovered. However, the prospective treatment of new platforms shall be the subject of negotiations at the option of the Federation, upon reasonable notice. If the Federation initiates negotiations regarding a new platform or technology, permission for prospective new uses of that platform or technology ceases from three (3) months after the Federation notice until agreement is reached on the terms of that use.

F. Patch Sessions

The Employer may call a patch session, but it shall be paid pursuant to the provisions governing patch sessions for live recording to CDs as set forth in X.F. above.

G. Financial Reporting

For projects conducted under the Buffet, the Employer must provide financial reports and engage in financial consultation. For the purpose of establishing a project budget, the musician cost to be used is the a la carte rate that would be applicable to the project.

REPORTING

XIX. REPORTING

Compensation and pension contributions paid under this Agreement shall be reported to the Local Union, the Federation, and the American Federation of Musicians and Employers' Pension Fund on the B-form provided by the Federation.

REVENUE PARTICIPATION

XX. REVENUE PARTICIPATION

A. Revenue Participation for Single Projects

All media projects created and exploited pursuant to Sections IX through XVI of this Agreement (i.e., national radio and wireless audio broadcast, live recording to CDs and downloads, other audio products, national television, regional television, DVDs, theatrical release, streaming, downloading and all other non-television audio-visual products, educational products and documentaries) shall be subject to revenue participation.

1. For symphonic projects, the Musicians' revenue participation shall be 60% of net earned revenue to the Employer from the project. Net earned revenue is defined in A.4. below.
2. For opera projects or ballet projects, if the Employer has a revenue sharing agreement with one or more other bargaining units, the Musicians' revenue participation shall be 22% of net earned revenue to the Employer; otherwise it will be 60% of net earned revenue to the Employer.
3. Notwithstanding Paragraphs A.1. and A.2. above, the Musicians' revenue participation shall be 60% of the Employer's gross receipts from exploitation of the project on all platforms in the following circumstances:
 - a. Streaming and/or the Creation of Downloads without CDs pursuant to the Alternative Option for Live Recording to CDs or Downloads (Article X-A.B.2.d);
 - b. Audio-Visual Internet or Wireless Streaming of Single Program Where There Is One Capture (Article XIV.B.1.b); and
 - c. Optional Theatrical Release Rate Where There Is One Capture (Article XIV.B.2.c).

For opera projects or ballet projects, if the Employer has a revenue sharing agreement with one or more other bargaining units, the Musicians' revenue participation shall be the 22% of gross receipts to the Employer; otherwise it will be 60% of gross receipts to the Employer.

4. Net earned revenue to the Employer shall be the Employer's gross receipts from exploitation of the project on all platforms, minus the allowable direct costs actually paid by the Employer for the project. When a recording made pursuant to this Agreement is broadcast on radio or television, sold on CDs or DVDs, sold via audio or audio-visual downloads, exploited by other means on the Internet, shown in theaters, or exploited in any other way, the gross receipts to the Employer from the project will include any and all revenue from all such exploitation including license fees, sales, royalties, theatrical release ticket sales, shares of advertising, subscription or other revenue or any other receipts.

5. Allowable direct costs shall include Musicians' costs pursuant to this Agreement, the costs of vocalists specifically for the media project (not for the live performance) under any AGMA agreement, payments to conductors or soloists specifically for the media project (not for the live performance), marketing, distribution and similar costs actually paid by the Employer. Allowable direct costs shall not include overhead, allocated staff costs or similar costs to the Employer. Allowable direct costs shall not include EMGs if the EMG is included within the Musicians' salary rather than stated separately. Allowable direct costs shall be determined by the Orchestra Committee and the Employer jointly.

6. There shall be no cross-collateralization among projects.

7. The Musicians' revenue participation shall be divided evenly among the Musicians paid for the project.

8. All revenue participation payments shall be inclusive of a twelve percent (12%) contribution to the American Federation of Musicians & Employers Pension Fund. Thus, 89.29% of revenue participation payments shall be treated as wages, and the remaining 10.71% shall be contributed into the AFM&EPF on behalf of each such Musician.

9. The Orchestra Committee shall review revenue reports and shall meet and confer regarding any issues that arise with regard to revenue participation.

B. Revenue Participation for the Audio Buffet Option

1. For symphony orchestras, the Musicians' revenue participation shall be 60% of net earned revenue to the Employer from products made and exploited pursuant to the buffet option.

2. For opera or ballet orchestras, if the Employer has a revenue sharing agreement with one or more other bargaining units, the Musicians' revenue participation shall be

22% of net earned revenue to the Employer; otherwise it will be 60% of net earned revenue to the Employer.

3. Net earned revenue to the Employer shall be the Employer's gross receipts from exploitation of all of the products made and exploited on all platforms pursuant to the buffet option, minus the allowable direct costs actually paid by the Employer for those products. The gross receipts to the Employer from products made and exploited pursuant to the buffet option will include any and all revenue from all such exploitation including license fees, sales, royalties, shares of advertising, subscription or other revenue or any other receipts.

4. Allowable direct costs shall include Musicians' costs pursuant to this Agreement, the costs of vocalists specifically for the media project (not for the live performance) under any AGMA agreement, payments to conductors or soloists specifically for the media project (not for the live performance), marketing, distribution and similar costs actually paid by the Employer. Allowable direct costs shall not include overhead, allocated staff costs or similar costs to the Employer. Allowable direct costs shall be determined by the Orchestra Committee and the Employer jointly.

5. Each Musician member of the orchestra, or, in the case of an eligible per-service orchestra, each Musician on the roster, shall have an equal, full share of revenue participation for each contract year in which he or she is employed the Employer and the Employer is using the buffet option. All extra and substitute musicians will receive a fractional revenue share derived according to the following formula: the numerator will be the individual sub or extra musician's wages for the contract year, and the denominator will be the base annual wage for that contract year. Each Musician's share for the contract year shall apply to all revenue earned for products produced from that year's capture, whenever that revenue is generated.

6. All revenue participation payments shall be inclusive of a twelve percent (12%) contribution to the American Federation of Musicians & Employers Pension Fund. Thus, 89.29% of revenue participation payments shall be treated as wages, and the remaining 10.71% shall be contributed into the AFM&EPF on behalf of each such Musician.

7. The Orchestra Committee shall review revenue reports and shall meet and confer regarding any issues that arise with regard to revenue participation.

C. Revenue Participation Accounting

1. The Employer shall calculate the Revenue Participation payments due under B. and C. above for each twelve (12)-month period from September 1 to the following August 31 ("Accounting Year") for which it has gross receipts as described in A.3. and B.3 above. The calculation shall be reported on a statement provided to each Musician, the Federation, the Local and the Orchestra Committee. The payments and the statement shall be due by November 30 immediately following the Accounting Year.

2. For single projects, the statement shall specify the gross receipts to the Employer from each platform or source for each project, the allowable direct cost deductions for each project, the net earned revenue to the Employer for each project, the calculation of the Musicians' share of the net earned revenue for the project, the number of Musicians entitled to Revenue Participation for the project, and the calculation of the individual Musician share for the project.
3. For the audio buffet option, the statement shall specify the gross receipts to the Employer from each platform or source for all projects recorded in a single audio buffet year, the allowable direct cost deductions for that audio buffet year, the net earned revenue to the Employer for that audio buffet year, the calculation of the Musicians' share of the net earned revenue for that audio buffet year, the number of Musicians entitled to Revenue participation, and the calculation of the individual Musician shares including the calculation of substitute and extra Musicians' fractional shares as described in B.5.
4. Revenue Participation payments shall be due to a Musician during his or her lifetime. After the Musician's death, Revenue Participation payments shall be due to the Musician's beneficiary for the life of the beneficiary. After the death of the beneficiary, the Musician's individual share shall revert to the Musicians' share of the net earned revenue to be divided by the remaining Musicians.
5. If the Revenue Participation payment due to any Musician on November 30 for all projects and/or the audio buffet is less than ten dollars (\$10.00), the Employer may carry that Musician's payment forward to successive Accounting Years until the accumulated Revenue Participation payment due that Musician is equal to or greater than ten dollars (\$10.00).

D. Right to Examine Books

1. If the Employer fails to provide the revenue statement required by C. above within sixty (60) days of the due date, the Federation (or its designated accounting firm) shall have the right to examine the Employer's books and records related to gross receipts, costs and net earned revenue.
2. At any time within three (3) years after a revenue statement is provided, the Federation (or its designated accounting firm) shall have the right to examine the Employer's books and records related to gross receipts, costs and net earned revenue.
3. Such examinations shall be at the Employer's expense. They shall be made during the Employer's usual business hours at the location where the Employer maintains the books and records.
4. The Federation acknowledges that the Employer's gross receipts, costs and net earned revenue constitute confidential trade information, and shall not communicate such

information to others or use that information other than in pursuit of the enforcement of this Agreement.

GENERAL PROVISIONS

XXI. PENSION CONTRIBUTIONS

All media payments (up-front, step-up, tier, patch, special call, buffet, etc.) shall be considered to be scale wages and the Employer will make 12% pension contributions on them to the American Federation of Musicians and Employers' Pension Fund. In the case of revenue sharing, 89.29% of any revenue sharing amount payable to any Musician will be treated as scale wages, and the remaining portion (i.e., 12% of the scale wages (10.71% of the total revenue sharing amount)), will be treated as a pension contribution payable on behalf of the Musician to the American Federation of Musicians and Employers' Pension Fund. The Employer agrees to be legally bound to the terms and conditions of the Agreement and Declaration of Trust establishing the American Federation of Musicians and Employers' Fund, as amended from time to time, which is incorporated by reference into the Agreement. The 12% pension contribution rate shall be inclusive of contributions required under the rehabilitation plan of the American Federation of Musicians and Employers' Pension Fund as of December 18, 2014, and shall not be reduced if additional contributions are no longer required under the Fund's rehabilitation plan.

XXII. HEALTH AND WELFARE

Health and Welfare contributions shall be paid only on behalf of each individual Musician covered by this Agreement for whom the Employer does not contribute to any other Health and Welfare Fund. With respect to each such musician, the Employer shall make contributions to his/her Local Union Health and Welfare Fund (and, commencing thirty (30) days after notice in writing, to any other lawful fund as may be established hereafter by any other Federation Local) in the following amounts: \$18.00 per day (maximum of \$90.00 per week). With respect to any service performed hereunder by a musician whose Local has no such fund established, the Employer shall pay the aforesaid applicable amounts of money directly to each individual musician.

XXIII. ELECTRONIC MEDIA GUARANTEE (EMG)

Subject to any restrictions existing in the Local CBA, an EMG may be used to pay up-front payments and per-minute rate payments pursuant to this Agreement. An EMG in existence as of the effective date of this Agreement may be used to make audio buffet

option payments. No EMG may be used to make tier payments or revenue participation payments.

If the Employer has an EMG in existence as of the date of this Agreement and desires to select the audio buffet option, the amount of any EMG not already stated as salary shall be included as part of base annual wage for the purpose of calculating the audio buffet payment.

XXIV. DOUBLING

Musicians shall receive a payment for doubling whenever they provide such services covered by this Agreement. Doubling payment shall be in accordance with the following provisions:

A. If there is a doubling provision in the Local CBA or individual contract applicable to performances covered by that Agreement, then the musicians shall receive one (1) additional doubling payment (in the same amount) for each final new audio product.

B. If there is no doubling payment provision of any nature in CBA, then the musicians shall receive a doubling payment in the amount of 20% of the individual service scale.

C. *Audio Buffet Option:* Musicians shall receive a payment for doubling whenever they provide such services on a CD released under the buffet option.

XXV. CARTAGE

Cartage shall be paid under the terms of the Local CBA.

XXVI. SUBSTITUTE AND EXTRA MUSICIANS

Any Musician, whether or not a regular member of the orchestra, whose services are taped or used in the final product shall be entitled to the same payments and benefits as a regular Musician, and to revenue participation as set forth in Article XX (Revenue Participation). In the event that the Employer elects the audio buffet option, substitutes and extras shall be paid in accordance with the buffet option provisions regarding substitute and extra musicians.

XXVII. MUSICIANS TO BE PAID

A. In the case of audio and audio-visual recordings made pursuant to this Agreement and for archived audio recordings, all current members of the orchestra (or, in the case of

a “per service orchestra,” all musicians on the roster) shall be paid (except that members of the orchestra or musician on the roster who are on sabbatical or long-term disability, or who opt out of performing in the recorded concert after having received notice reasonably in advance of the recording project, shall not be paid). In the case of archived audio recordings, all musicians who performed on the recording (including subs and extras) who are not current members of the orchestra at the time of release also shall be paid. In the case of archived audio-visual recordings, all musicians who were on the roster at the time the archive was created, and any subs and extras who performed on the recording, shall be paid. In all circumstances, revenue participation payments shall be divided evenly among the same musicians as those paid pursuant to this provision. Payment will be made to a deceased musician’s estate or beneficiary under the applicable pension plan.

B. In the case of works scored for no more than 32 musicians, only the musicians who perform on the recording will receive payments, provided that the recording has Orchestra Committee approval. This provision shall not be used to allow a reduction in instrumentation of a work originally created for more than 32 musicians.

C. In the case of a salaried (not a per-service) symphony orchestra where members of the orchestra are performing subcontracted services for an opera or ballet company, only those musicians actually performing these services shall be paid under the terms of this Agreement. If a permanent member of a symphony orchestra is assigned to a split symphony orchestra which is sub-contracted as above, that permanent member shall be paid under the terms of this Agreement, even if that permanent member is not required to perform.

XXVIII. ORCHESTRAS WITH SALARIED AND PER-SERVICE MUSICIANS

If an orchestra includes both salaried and per-service Musicians, the per-service Musicians shall be paid the same amount as the salaried musicians wherever the applicable rate is based on a percentage of weekly scale. Rates based on a percentage of per-service performance scale apply only where the entire orchestra is paid on a per-service basis.

XXIX. FORBIDDEN USES OF RECORDINGS

A. Audio or audio-visual products created and/or released pursuant to this Agreement shall not be used in lieu of the employment of musicians as accompaniment in connection with live performances, or to replace musicians who are engaged in a strike or subject to a lockout.

B. Audio or audio-visual product created and/or released pursuant to this Agreement shall not be used by the Employer as evidence in any disciplinary proceeding that affects the employment status of any Musician covered by this Agreement.

XXX. MUSIC PREPARATION

In the event a Musician performs music preparation work (arranging, orchestrating, copying or librarian services) for media released under the terms of this Agreement, that Musician shall receive music preparation payment under the terms and conditions of the appropriate Federation agreement. However, if the project is a premiere performance of an original composition commissioned for a symphony, opera, or ballet institution that is exploited under the terms and conditions of this Agreement without any modifications to the original preparation, the music preparation payment to the Musician shall be identical to the payment to a Musician under the relevant terms of this Agreement.

XXXI. NOTICE TO MUSICIANS OF RECORDING

Prior to the first taping for a project, the Employer shall notify the Musicians of any taping pursuant to this Agreement in accordance with the notice provisions in the Local CBA, but in no case shall notice be less than one week before the first taping.

XXXII. STEP-UP CALCULATIONS

Step-up payments shall be calculated by subtracting the up-front payment received by each Musician from the current applicable rate for the step-up use.

XXXIII. GRIEVANCE AND ARBITRATION

A. Scope of Grievances

Any dispute or controversy of any kind that may arise between any Musician(s) or the Federation and the Employer arising out of or in connection with this Agreement (including but not limited to disputes concerning the meaning, interpretation, application or enforcement of the provisions set forth in this Agreement) shall be resolved exclusively through the procedure set forth herein.

B. Initiation of Grievances

Within sixty (60) calendar days after the occurrence of the event that gave rise to the grievance or after the date that the aggrieved party reasonably could have learned of that event (whichever occurs later), a grievance shall be submitted in writing to the Employer

by the Federation on its own or on behalf of the individual Musician(s) or to the Federation by the Employer.

C. Informal Meeting

Within fifteen (15) calendar days from receipt of the grievance, a representative designated by the Federation and a representative designated by the Employer shall meet to discuss the matter and attempt to resolve the dispute informally.

Written Answer: If the parties are unable to resolve the dispute at the informal meeting, the party against whom the grievance is filed shall submit a written answer to the grievance within fifteen (15) calendar days after such meeting.

D. Demand for Arbitration

If either party (the Federation or the Employer) is not satisfied with the answer, or if an answer is not submitted within the time set forth in (D) above, that party may elect to submit the dispute to arbitration by notifying both the American Arbitration Association (“AAA”) and the other party simultaneously in writing within thirty (30) calendar days after the date the answer was due). The written demand for arbitration shall include a copy of the grievance that was filed and the answer, if any.

E. Choice of Arbitrator

Upon receipt of the demand for arbitration, the AAA shall promptly provide the parties a list of eleven arbitrators experienced in labor cases and the parties then shall select an arbitrator using the alternate strike method.

F. Hearing

The hearing shall be held on thirty (30) working days notice. The hearing and pre-hearing proceedings shall be conducted pursuant to the AAA Labor Arbitration Rules. The hearing shall be conducted in the city where the dispute arose unless the parties mutually agree to another location. The arbitrator’s award shall be rendered within thirty (30) calendar days of the close of the hearing or thirty (30) calendar days after the submission of post-hearing briefs, where applicable. The award of the arbitrator shall constitute a final binding resolution of the dispute with respect to all parties – the individual Musician(s), the Federation and its Locals, and the Employer and its agents.

G. Arbitrator’s Authority

The Arbitrator shall have the power and authority to issue an award that he/she may deem appropriate, including but not limited to the authority to remedy any violations.

The arbitrator, however, shall not have the power or authority to amend, add to, or subtract from, or alter in any manner the provisions of this Agreement.

H. Costs

Fees and expenses of the arbitrator and the proceedings (e.g., witnesses, counsel, court reporter) shall be borne equally by the parties; provided, however, if the arbitrator concludes that the position of either party is frivolous, he/she may award fees and expenses to the prevailing party, including reasonable attorney's fees.

I. Extension of Time Limits:

Any of the time limits set forth may be extended by mutual agreement in writing.

XXXIV. RELATIONSHIP TO LOCAL CBA

Except as specifically grandfathered herein, the Local CBA may not include any provision that is less favorable to Musicians than any provision of this Agreement, and any such less favorable provision shall be deemed null and void.

XXXV. EFFECT OF NONRENEWAL OF AGREEMENT

Any contract in existence at the termination of this Agreement (whether such termination is caused by expiration, breach, or otherwise), made and entered into by the Employer with the Local Union, Musicians, licensed booking agents, personal managers, producers, or others, for the employment and rendition of services covered by this Agreement, shall not impose any obligation on the part of Musicians represented by the Federation to render further musical services for the Employer unless this Agreement is renewed or a new one entered into permitting the same. Any Revenue Participation Payments or other payments due as a result of any material produced during the term of this Agreement shall continue to be due and payable regardless of the termination or non-renewal of this Agreement. Any material produced during this term may be marketed in supplemental markets, regardless of the termination or non-renewal of this Agreement.

XXXVI. EXHIBITS

This Agreement is supplemented by Exhibit B (Non-Classical Featured Artists) attached hereto. Exhibit A is reserved.

XXXVII. TERM OF AGREEMENT

The term of this Agreement shall be from April 2, 2015 to June 30, 2017. The terms of the expired Integrated Media Agreement or other AFM Agreements applicable to the Employer are extended through the date of ratification of this Agreement.

AMERICAN FEDERATION OF
MUSICIANS OF THE UNITED
AND CANADA

Name of Orchestra Institution

Date: _____

Date: _____



AMERICAN FEDERATION OF MUSICIANS

OF THE UNITED STATES AND CANADA

AFFILIATED WITH THE A.F.L.-C.I.O.

OFFICE OF THE PRESIDENT
RAYMOND M. HAIR, JR.
1501 Broadway, Suite 600
New York, NY 10036

(212) 869-1330 • FAX (212) 764-6134

EXHIBIT B

Insert Date, 2015

Integrated Media Agreement Side Letter Regarding Audio and Audio-Visual Recording with Non-Classical Featured Artists

- A. *Incorporation of Integrated Media Agreement.* This Side Letter Agreement Regarding Audio and Audio-Visual Recording with Non-Classical Featured Artists is an Addendum to the Integrated Media Agreement and incorporates its terms except as modified below.
- B. *Statement of Purpose.* The terms of the Integrated Media Agreement are intended to facilitate the Employer's ability to produce and exploit covered media for the benefit of the orchestra institution and its musicians, and are not intended for the purpose of allowing the orchestra institution to provide content to third-party commercial and/or non-commercial entities.
- C. *Further Statement of Purpose.* The terms of the Integrated Media Agreement are intended primarily for the purpose of recording symphonic, opera and ballet repertoire, including "pops" and "crossover" repertoire where the orchestra is billed as a featured performer, with or without the additional appearance and contribution of a classical soloist.
- D. *Recording with Non-Classical Featured Artists.* Consistent with the understandings set forth in (B) and (C) above, the following rules shall apply to electronic media projects with featured artists who are "rock," "pop," or other non-classical artists, provided that the orchestra is also billed as a featured artist:

(1) Audio Recordings

- a. Once per IMA contract year, the terms of Article X or X-A (Audio Recordings) may be applied to cover a live audio recording with any non-classical featured artist provided that:
 - i. The ownership of the master recordings and all copyright rights in the recording are retained by the orchestra institution, and the orchestra institution warrants that it will not sell, lease, license or assign the rights to any third party.
 1. Notwithstanding (D)(1)(a)(i) above, the orchestra institution may enter into a pressing and distribution license with a third party distributor, at the then-current usual and customary rates and terms.
 - ii. All requirements of Article X and X-A are met, including but not limited to orchestra approval.
- b. No other live audio recording with a non-classical featured artist may be made or exploited, except pursuant to the applicable Federation agreement or advance written permission of the Federation.

(2) Audio-Visual Recordings

- a. Standard and Non-Standard Television:

Once per IMA contract year, the terms of Article XII may be applied to cover an orchestra performance in a standard or non-standard television program with any non-classical featured artist. All requirements of Article XII shall be met.

- b. DVDs, Theatrical Release, A-V Streaming:

Once per IMA contract year, the terms of Article XIV (Non-Television Audio-Visual) may be applied to cover an orchestra performance in a DVD, Theatrical Release or A-V Stream with any non-classical featured artist, provided that:

1. The ownership of the master recordings and all copyright rights in the recording are retained by the orchestra institution, and the orchestra institution warrants that it will not sell, lease, license or assign the rights to any third party.
2. Notwithstanding (D)(2)(b)(1) above, the orchestra institution may enter into a pressing and distribution license with a third

party distributor, at the then-current usual and customary rates and terms.

3. All requirements of Article XIV are met.

c. A television show, DVD, Theatrical Release or A-V Stream with a non-classical featured artist that does not meet the requirements of (D)(2)(a) or (b) above may only be made pursuant to the applicable Federation agreement or with advance written permission of the Federation.

(3) The one-per-contract-year project described in (D)(1) and (2) above may include releases in any audio and/or audio-visual electronic media formats paid at the applicable IMA rates, provided however that the right to a media project under these provisions will not apply if another, different media project has already been made under these provisions during the contract year. In addition, the one-per-contract year may not be carried over from one year to the next.

E. *Sports.* The provisions of this side letter do not apply to sports events, (which must be done under the appropriate AFM Agreement).

F. *Sunset.* This Side Letter Agreement will expire on June 29, 2017.

Agreed:

AMERICAN FEDERATION OF MUSICIANS
OF THE UNITED STATES
AND CANADA

Name of Orchestra Institution

Date: _____

Date: _____