



\_\_\_\_\_  
[DATE]

\_\_\_\_\_  
[PUBLISHER]

\_\_\_\_\_  
[ADDRESS]

\_\_\_\_\_  
[CITY, STATE ZIP]

RE: Digital Rights Withdrawal Addendum

Dear Sirs/Madams:

This addendum (“Addendum”) to the publisher affiliation agreement will confirm the understanding of BMI and \_\_\_\_\_ (“Publisher”) with respect to Publisher’s desire to withdraw the right to license certain digital transmissions (the “New Media Transmissions” as defined below) of musical works licensed to BMI (the “Publisher Works” as defined below).

1. Definitions.

(a) A “New Media Transmission” shall mean:

(i) a digital audio transmission that, in addition to requiring a public performance license, also requires the music user to comply with the license requirements of 17 U.S.C. §114, §115 and/or §106(1);

(ii) a digital transmission of a music video or user-uploaded video (i.e., a video uploaded to the service by the end-user) that, in addition to requiring a public performance license, also requires that the service, in order to offer the music video or user-uploaded video on or via the service, obtain a license directly from the owner or administrator of the rights in the musical composition(s) embodied therein for rights other than the right of public performance (e.g., synchronization or mechanical rights); and/or

(iii) a digital transmission made from a digital music file either (a) uploaded by an end-user to the server and/or (b) matched from a file on the end-user's computer or device to a digital music file on the Service's server (such server, in either case, often referred to as either the "cloud" or a "locker").

(b) "New Media Service" shall mean a standalone service by which New Media Transmissions of musical compositions are made available or accessible (i) primarily by means of the Internet, a wireless mobile telecommunications network, and/or a computer network and (ii) to the public, whether or not, in exchange for a subscription fee, other fee or charge; and whether or not such offering includes exposure to advertisements before, during and/or after the transmission of such compositions. The term "New Media Service" shall specifically exclude transmissions made by any "broadcaster" who is transmitting musical compositions in BMI's repertoire (including by any through-to-the-audience license) both (x) by means of the Internet, a wireless mobile telecommunications network, and/or a computer network, and (y) over the air, or via cable television or direct broadcast satellite, or via other existing or yet-to-be developed one-to-many transmission technologies to audiences using radios, television sets, computers, or other receiving or playing devices. For purposes hereof, a "broadcaster" is any person whose primary business is to transmit audio or audio-visual content over the air, via cable television or direct broadcast satellite, or via existing or yet-to-be-developed one-to-many transmission technologies (but not, for the avoidance of doubt, over the Internet, wireless mobile telecommunications networks, and/or other similar computer networks), to audiences using radios, television sets, computers, or other receiving or playing devices. For the avoidance of doubt, subject to any rights or obligations between BMI and its licensees under any existing licenses ("Licenses-in-Effect,") which will be set forth in a Schedule A to be provided to Publisher by BMI following the execution of this agreement (which Schedule A Publisher shall treat as highly confidential and proprietary to BMI, taking all reasonable steps necessary to prevent disclosure to anyone other than those of Publisher's employees who have a business need to know such information for purposes of ensuring that public performances of Publisher's musical works via New Media Services are licensed) and the limitations on licensing set forth in this subparagraph, any service that, at any time, makes New Media Transmissions with respect to only a portion of its offerings shall at such time be considered a New Media Service, and only with respect to such portion(s) of its offerings. The parties understand and agree that Schedule A may include Internet and/or mobile sites or services that are currently licensed by BMI but that may not be New Media Services and/or making New Media Transmissions as defined in this agreement.

(c) "Publisher Works" shall mean those musical works:

(i) licensed to BMI by Publisher under the publisher affiliation agreement dated [DATE], and any and all amendments and extensions thereto (such agreement, the "Publisher Agreement," and such works, the "Publisher Repertoire");

(ii) licensed to BMI by any of Publisher's fully-owned or affiliated publishing companies under any affiliation agreement between BMI and such publishing company (such agreements, the "Related Agreements," and such repertoire, the "Related Repertoire"); and

(iii) licensed to BMI by another third-party publishing company under any affiliation agreement between BMI and such third-party publishing company and that are the subject of a co-publishing and/or administration agreement between such third-party publishing company and Publisher (but not, for the avoidance of doubt, a sub-publishing agreement between such third party publishing company and Publisher, which would cover compositions written by foreign songwriters and composers who are not directly affiliated with BMI) authorizing Publisher, on behalf of such third-party publishing company, to withdraw the right to license New Media Transmissions in the musical works licensed by such third-party publishing company to BMI (such third-party publishing companies, the "Administered Publishers;" such agreements, the "Administered Agreements;" and such repertoire, the "Administered Repertoire").

(iv) For the avoidance of doubt, in those instances where all or any portion of Publisher Repertoire or Related Repertoire is the subject of an administration agreement with a third-party publishing company, it shall be presumed that such repertoire is licensed by such third-party publishing company and not by Publisher, and accordingly, such repertoire shall not be considered Publisher Repertoire or Related Repertoire for purposes of this Addendum.

## 2. Withdrawal.

(a) As of the Effective Date of Withdrawal and for the remainder of the Term, and subject to Section 6 ("New Media Services Licensed by BMI") below, Publisher hereby withdraws from the Publisher Agreement, and any Related Agreement(s) as well as any Administered Publisher Agreements identified to BMI by Publisher on Schedule B of this Addendum, the right to license New Media Services for New Media Transmissions, of Identified Interests and Corresponding Interests (defined below) in Publisher Repertoire, Related Repertoire, and Administered Repertoire. For purposes hereof, provided that BMI receives this Addendum, signed by Publisher, on or before September 15 of the then current calendar year (such date of receipt, the "Notice Date"), the Effective Date of Withdrawal shall be January 1 of the following calendar year. For the avoidance of doubt, as of the Effective Date of Withdrawal, Publisher shall have the exclusive right to license New Media Transmissions of Identified Interests and Corresponding Interests in Publisher Repertoire, Related Repertoire, and Administered Repertoire and BMI shall no longer have any right to license New Media Transmissions of Identified Interests and Corresponding Interests in such repertoire for the remainder of the Term.

(b) For purposes of this Addendum, any repertoire that is the subject of a post-Notice Date acquisition or administration agreement shall be deemed Publisher Repertoire, Related Repertoire, or Administered Repertoire, as the case may be, subject to the Licenses-In-Effect provisions contained in this Addendum.

3. Identification of Interests Subject to Withdrawal: BMI shall deliver to Publisher an electronic file (such file, the "Repertoire File") identifying Publisher's interest and/or the interest of any Related Publisher or Administered Publisher, as applicable, which interests have previously been registered and/or recorded with BMI pursuant to Publisher Agreement or Related Agreements (such interests, the "Identified Interests"), in each musical work that BMI believes to be subject to the withdrawal. The Repertoire File will also identify the Corresponding Interests to the extent that BMI maintains the link between the Publisher's Interest and the Corresponding Interest. BMI will endeavor to provide the "Repertoire File" within 45 days of the execution of this document (and within 30 days of being advised of a post-Notice Date acquisition or administration agreement with respect to any additional Related Repertoire or Administered Repertoire, as the case may be). Within ten (10) days of its receipt of a Repertoire File from BMI, Publisher shall advise BMI in writing of any errors or omissions with respect to the musical works and/or the Identified Interests in such musical works. Publisher will also assist BMI, as reasonably necessary, in linking Identified Interests to the Corresponding Interests to the extent any such information is missing from the Repertoire File. Publisher is solely responsible for any errors or omissions. The parties shall cooperate in good faith and as necessary to promptly resolve any disputes relating to the identified musical works and/or the Identified Interests and Corresponding Interests therein, but such interests shall not be deemed to have been withdrawn unless and until the parties resolve such disputes. Any musical works that are registered with BMI in the Publisher Repertoire, Related Repertoire, or Administered Repertoire after the Effective Date of Withdrawal shall be deemed subject to withdrawal unless Publisher expressly notifies BMI in writing to the contrary, or unless there is a dispute as to Publisher's right or interest in such work, in which case the work will not be deemed to be withdrawn until the dispute is resolved between the parties, and Publisher and BMI shall cooperate in good faith to resolve such dispute.

4. Scope of Withdrawal.

(a) Publisher's withdrawal of rights with respect to New Media Transmissions of Publisher Repertoire, Related Repertoire, and/or Administered Repertoire, as applicable, shall be effective solely for the Identified Interests, as well as interests of any songwriters and composers who are directly affiliated with BMI that correspond with Identified Interests (such interests of songwriters and composers, the "Corresponding Interests"), but such Corresponding Interests shall only be withdrawn if Publisher has been authorized by such songwriters and composers, or by Related Publishers or Administered Publishers who have been authorized by their songwriters and composers, to withdraw such Corresponding Interests. For the avoidance of doubt, Publisher's withdrawal of rights pursuant to this Addendum shall be effective only for, and to the extent of, Publisher's interest (and the Corresponding Interest(s), if applicable) in any co-published works. The Parties agree that in the event that either Party enters into a license agreement for New Media Transmissions where such license purports to include a co-publisher's interest, the Party issuing the license will ensure that it or the licensee will account to the co-publisher for its share in the royalties generated pursuant to such license.

(b) With respect to foreign performances of Publisher Works, and notwithstanding anything to the contrary in the Withdrawal Agreement, the parties understand and agree that BMI will continue to hold those rights in such works as are necessary to enable continued sub-licensing and administration as follows:

(i) For purposes of licensing and administering Identified Interests in Publisher Works in those territories outside of the U.S. where Publisher directly appoints a designee to license and administer certain rights in such works (e.g., Publisher's designee for pan-European licensing and administration of the mechanical rights in such works), BMI shall take those steps that are reasonably necessary to ensure that: (1) the performing right in Publisher Works can be licensed by such designee; (2) the publisher's share of performing right royalties will continue to be payable to Publisher by such designee in accordance with Publisher's direction; and (3) the BMI writer(s)'s share of the performing right royalties will continue to be payable to such writer(s) through BMI by such designee. Publisher shall identify any such designees, together with the territories in which they license and administer, on Schedule C attached hereto. Publisher may amend Schedule A from time to time during the term hereof to identify additional designees and/or territories on BMI's prior written consent, which shall not be unreasonably withheld.

(ii) In all territories outside of the U.S. other than those covered under paragraph 4.b.i above, the performing rights in Publisher Works shall be licensed and administered by BMI's designee, and the royalties payable in connection with such licensing shall be distributed with the publisher's share being payable by such designee in accordance with Publisher's direction, and the writer's share being payable to such writer(s) through BMI by such designee.

(c) With respect to domestic performance of U.S. Works by Internet and mobile-based services other than Music Services, the parties further agree as follows:

(i) Notwithstanding anything to the contrary in this Addendum, Publisher's withdrawal of the right to license New Media Transmissions of Publisher Works shall only apply to New Media Services that are considered commercially-significant Music Services, and BMI will continue to have the right to license Identified Interests for all services other than Music Services during the Term. For purposes hereof: (1) a Music Service is an Internet web site or service (including any so-called "app"), or a designated portion or section of an Internet web site or service, the central focus of which is the transmission of audio and/or audio-visual material comprising predominantly feature uses of music (e.g., music-formatted radio, on-demand transmissions of music recordings or music videos, live concerts), as opposed to programming with background or incidental and/or occasional feature uses of music (e.g., news/talk radio, situational comedies, feature films); and (2) commercially-significant shall mean a Music Service that would exceed the gross revenues or aggregate tuning hour limitations set forth in

the Webcasters Settlement Act of 2009 (i.e., more than \$1,250,000 in gross revenue, or average monthly aggregate tuning hours in excess of 10 million, in any calendar year during the Term).

(ii) BMI may license Identified Interests for all services other than commercially-significant Music Services for the initial term of any such license, and for any subsequent renewal term, unless or until Publisher notifies BMI no less than 90 days before the end of the then current term that any such license shall no longer include Identified Interests. Provided BMI receives such timely notice from Publisher, BMI will ensure that any such license agreement will no longer include the right to publicly perform Identified Interests as of January 1 of the renewal term of the license.

(iii) For the avoidance of doubt, nothing contained herein shall affect Publisher's right under its affiliation agreement with BMI to directly license the public performance of any or all of the musical works in its repertoire.

5. Royalties After Withdrawal: Publisher acknowledges and agrees that it shall look solely to the New Media Service(s) and not to BMI for any royalties generated in connection with New Media Transmissions of Publisher Repertoire, Related Repertoire, or Administered Repertoire as to which the rights to license are withdrawn hereunder. Publisher also acknowledges and agrees that Publisher is solely responsible and liable to its songwriters and composers, and any Related Publishers or Administered Publishers and their respective songwriters and composers, on whose behalf Publisher has withdrawn Publisher Repertoire, Related Repertoire, or Administered Repertoire, for any such royalties. If, after the Effective Date of Withdrawal, Publisher receives license fees and/or royalties from New Media Transmissions that are for the Corresponding Interests of Publisher Repertoire, Related Repertoire, or Administered Repertoire related to songwriters or composers that have an outstanding advance from BMI, Publisher shall promptly pay over such royalties to BMI until the advance has been fully recouped.

6. New Media Services Licensed by BMI: Notwithstanding anything to the contrary contained in this Addendum, Publisher Repertoire, Related Repertoire, and Administered Repertoire shall continue to be licensed by BMI under any Licenses-in-Effect, solely for the remaining term of such Licenses-in-Effect, and BMI will continue to distribute any royalties generated in connection with such Licenses-in-Effect, for the remainder of the term of such Licenses-in-Effect. BMI shall not hereafter renew, extend and/or amend any License-in-Effect to license rights in New Media Transmissions of Publisher Repertoire, Related Repertoire, or Administered Repertoire without Publisher's express written consent.

7. Term and Termination.

(a) This Addendum shall apply from the Effective Date of Withdrawal through the end of the term of the underlying Publisher Agreement or Related Agreement, as the case may be, (the "Initial Term") and shall automatically renew with such Publisher Agreement or Related

Agreement, for successive periods in accordance with the terms of such agreement(s) (each a "Renewal Term") unless this Addendum is terminated in accordance with the terms hereof (the Initial Term and each Renewal Term, the "Term"). Notwithstanding the foregoing, this Addendum is not assignable or transferable and shall automatically terminate with respect to any Publisher Repertoire or Related Repertoire upon the disposition of such repertoire, and with respect to any Administered Repertoire upon the termination of the administration agreement related to such repertoire, and Publisher shall not enter into any license agreement with any New Media Service for New Media Transmissions where such license purports to include any such repertoire beyond the Term of this Addendum.

(b) Publisher may terminate its withdrawal of the right to license New Media Transmissions of Publisher Repertoire, Related Repertoire, and/or Administered Repertoire effective as of the end of the day on December 31 of any calendar year of the Term by providing BMI with written notice of its desire to terminate its withdrawal on or before September 15 of that calendar year; *provided, however*, that in the event that BMI has concluded a license agreement with a customer during the Term of this Addendum where the license fees payable to BMI cannot be adjusted to reflect the coverage for Publisher Repertoire, Related Repertoire, and/or Administered Repertoire when this Addendum is terminated, then such termination will not be deemed effective with respect to such license until the end of the then current term of such license.

8. Experimental Nature of Agreement; Duty to Negotiate: BMI and Publisher expressly recognize the experimental nature of this Addendum, and the potential need to amend and/or modify the terms of this Addendum during the Term. BMI and publisher hereby agree to engage in good faith negotiations to resolve any issues that may arise with respect to the provisions of this Addendum; and neither party shall rely on any of the provisions of this Addendum for purposes of establishing an expectation or prior course of dealing with respect to the nature of this Addendum or the rights and obligations of the parties set forth herein.

9. Representations; Reservation of Rights; Indemnification: Publisher represents and warrants that it has the right to license the public performing rights in the Identified Interests and Corresponding Interests in Publisher Repertoire, Related Repertoire, and Administered Repertoire as identified in the Repertoire File (as reconciled in accordance with Paragraph 4); and that it has been expressly authorized by the owners of such interests to withdraw the right to license New Media Transmission for the applicable Term of Withdrawal. BMI reserves the right to request documentation from Publisher evidencing such authorization, and to consider any such interests in dispute under Paragraph 4 hereof until its receipt of such documentation. Publisher shall defend, indemnify, save and hold BMI free and harmless from and against any and all demands, loss, damage, suits, judgments, recoveries and costs, including reasonable outside counsel fees, resulting from any claim from: (a) a BMI-affiliated songwriter, composer or music publisher (a "Claimant"), which claim arises from or is in connection with Publisher's Digital Rights Withdrawal provided for herein as such withdrawal relates to such Claimant; and (b) a BMI Licensee, which claim arises from or is in connection with a representation made by Publisher to BMI with respect to Publisher's Digital Rights Withdrawal provided for herein.

10. Counterparts: This agreement may be executed in one or more counterparts, each of which when taken together, shall be deemed to constitute but one and the same instrument. The Parties agree that this agreement will be considered signed and executed when the signature of a Party is delivered by facsimile or email transmission to the other Party. Such facsimile or email signature shall be treated in all respects as having the same effect as an original signature.

Very truly yours,

BROADCAST MUSIC, INC.

By: \_\_\_\_\_  
Senior Vice President

ACCEPTED AND AGREED TO:

\_\_\_\_\_  
[PUBLISHER]

\_\_\_\_\_  
[NAME]

\_\_\_\_\_  
[TITLE]