

Agreement made this 16th day of October, 1981, between MR. NEIL DIAMOND, c/o Ziffren, Brittenham, Gullen & Ingber, Esq., 2049 Century Park East, Suite 2350, Los Angeles, California 90067 (hereinafter "you") and CBS RECORDS, A Division of CBS, Inc., 51 West 52nd Street, New York, New York 10019 (hereinafter "CBS").

W I T N E S S E T H:

WHEREAS, you are, and during the term of this agreement shall be, entitled to such rights in and to the recording services throughout the world of MR. NEIL DIAMOND (hereinafter the "Artist") as is necessary to enter into this agreement, to fully perform hereunder, and to grant the rights herein granted (It is understood that references to "Artist" and "you" hereunder both serve to designate Neil Diamond, and it is acknowledged that the sole purpose of such separate identities is in anticipation of a potential assignment under Paragraph 19.04 in which event such references may refer to different entities.); and

WHEREAS, you desire to grant to CBS certain rights in and to Master Recordings embodying the performances of the Artist as hereinafter more fully described, and CBS desires to acquire such rights:

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, it is hereby agreed as follows:

1. TERM

1.01 (a) The term of this agreement will begin on October 16, 1981 and shall end on October 15, 1988; provided, however, that in the event you shall not have fulfilled the entire Recording Commitment prior thereto, then the term hereof shall automatically be extended until the earlier to occur of the following: (i) You shall have completed the Delivery of the last Album to be recorded under paragraph 3.01 below; and (ii) CBS shall have notified you in writing of its election to terminate its exclusive rights under this agreement, which written notice shall be effective as of the close of business sixty (60) days following receipt thereof by you, provided that under no circumstances shall CBS be entitled to elect to terminate this agreement sooner than October 15, 1991. Said date on which CBS may elect to terminate the term of this agreement shall be automatically extended for an additional one (1) year period to October 15, 1992 if you shall have Delivered a Christmas Album as provided in paragraph 3.06 below at least one (1) year prior to the end of the Term. Said date (or extended date, as the case may be) shall be further automatically extended for additional consecutive periods of six (6) months each for each of the two (2) Soundtrack Albums, if any, actually performed for and delivered to Persons other than CBS pursuant to paragraph 13.02.2 hereof prior to the expiration of the term hereof. Unless and until CBS shall have exercised its right to terminate the term of this agreement by written notice as

provided in subpart (ii) of the foregoing sentence, the term of this agreement will continue in force until the date when you complete the Delivery of the Master Recordings constituting the last Album to be recorded under paragraph 3.01 below. The term of this agreement, as same may be extended pursuant to the provisions of this paragraph 1.01(a), is hereinafter referred to as the "Term".

(b) Notwithstanding the termination of the Term of this agreement upon Delivery of the last Album of the Recording Commitment hereunder, you specifically agree that any recordings made by you after the Term hereof will not be released on Phonograph Records by you or any other Person until the earlier of: (i) seven (7) months after the release by CBS of said last Album hereunder, and (ii) nine (9) months after Delivery by you of such last Album hereunder.

1.02 This agreement shall not constitute nor be deemed a modification, extension or amendment of the prior agreement (the "Prior Agreement") between you and CBS dated December 31, 1976 (CRU 76-862) as such agreement may have been modified, amended and/or extended (which Prior Agreement has heretofore been terminated), as this agreement is a new one and shall have the full force and effect of a new agreement executed on the date hereof. References to such Prior Agreement have been made herein solely as a matter of convenience or to transfer for your benefit provisions of this agreement to Recordings under the Prior Agreement. You acknowledge the foregoing and you further acknowledge, understand and agree, after consulting with counsel, that this agreement is a new promise by you to grant to CBS the exclusive rights to manufacture, advertise, sell, lease, license or otherwise dispose of Records derived from Master Recordings throughout the world for the Term hereof and to Deliver Master Recordings as provided herein, which promise is supported by new consideration from CBS. It is not intended that this agreement be deemed to create an employment relationship which is subject to the provisions of the California Labor Code Section 2855. However, if and to the extent said Code Section is applicable to this agreement, the seven (7) year period imposed by that statute shall not commence to run prior to the date hereof.

2. FURNISHING OF SERVICES.

2.01 During the Term of this agreement you will deliver to CBS the Master Recordings as provided in Article 3 hereof embodying the performances of Artist. (You are sometimes called "the Artist" below; all references in this agreement to "you and the Artist", and the like, will be understood to refer to you alone; provided, however, that should you at any time sell, transfer, assign or otherwise convey all or any portion of your rights hereunder to any other Persons as permitted pursuant to paragraph 19.04 (which conveyance shall not relieve you of your obligation to Deliver or cause to be Delivered to CBS Master Recordings embodying the performances of NEIL DIAMOND

sufficient to satisfy the Recording Commitment hereunder) or should any other Persons succeed to all or any portion of your rights hereunder by the laws of inheritance or succession (whether testate or intestate), then the term "you" shall refer to you and/or such other Persons as shall own the rights hereunder, but the term "Artist" shall nevertheless continue to refer solely to NEIL DIAMOND.

2.02 (a) You will furnish the services of the producers of all Master Recordings to be Delivered hereunder, and you will be solely responsible for engaging and paying them. (Producers who you engage under this subparagraph are referred to in this agreement by the capitalized term "Producers.")

(b) If, at your request and on your behalf, CBS engages Producers for any of those Master Recordings, pursuant to this agreement, or if the Producers of any such Recordings are regularly employed on CBS' staff or render their services under contract with CBS, the following terms will apply:

(i) Your royalty account and the production budget for the recording project concerned will be charged with a Recording Cost item of \$10,000. (If CBS is obligated to pay those Producers a higher fixed amount attributable to that project, the charge under this subpart (i) will be that amount instead.)

(ii) Your royalty on those Recordings under Article 9 will be reduced by the amount of a royalty of 6% under paragraph 9.01 hereof, adjusted in proportion to the adjustments provided for in the other provisions of Articles 9 and 10. (If a higher royalty is payable to the Producers, the reduction under this subpart (ii) will be the amount of that royalty instead.)

3. RECORDING AND DELIVERY COMMITMENT; CBS' RELEASE OBLIGATIONS

3.01 During the Term hereof you will cause Artist to perform for the recording of Master Recordings sufficient to constitute ten (10) Albums, or if you elect to Deliver the Christmas Album referred to in paragraph 3.06 hereof, eleven (11) Albums, cause the production of those Master Recordings to be completed, and Deliver them to CBS. Said ten (10) or eleven (11) Albums, as the case may be, shall constitute the minimum Recording Commitment hereunder. There shall be included among such Albums the two Best Of Albums described in paragraph 3.05 hereof, the "live" Recordings described in paragraph 4.07 hereof, and the Soundtrack Album described in paragraph 13.02.3 hereof. In the event you elect to Deliver, in lieu of the Christmas Album described in paragraph 3.06 hereof, the Christmas Album described in paragraph 3.06.1 hereof, such Christmas Album shall not be in reduction of the Recording Commitment, but in addition thereto. The third Best Of Album, if any, referred to in paragraph

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13.02.2(b) (iv) hereof shall also not be in reduction of the Recording Commitment, but shall be in addition thereto.

3.02 The first Album of the Recording Commitment shall be Delivered hereunder by October 16, 1981. Timely receipt and Deliver of said first Album, which Album is a newly recorded studio Album entitled "On The Way To The Sky", is hereby acknowledged.

3.03 The second Album of the Recording Commitment shall be Delivered hereunder by March 31, 1982. Said second Album shall be a Best Of Album. However, said second Album may not be released sooner than six (6) months following release of the first Album hereunder without your prior written consent, which may be withheld for any reason.

3.04 With respect to the third and succeeding Albums of the Recording Commitment, you shall Deliver each no earlier than six (6) months nor later than twelve (12) months following Delivery of the immediately preceding such Album, provided, however, that in the event such an Album is Delivered up to one (1) or two (2) months earlier than twelve (12) months from Delivery of the prior Album, then you shall have the right to an extension of the otherwise applicable Delivery date of the next succeeding Album by an amount equal to the number of months by which the prior Album was Delivered early, but in no event shall such extension applicable to such next succeeding Album be for more than two (2) months. Solely with respect to the seventh (7th) and succeeding Albums of the Recording Commitment, in the event such an Album is Delivered up to one (1) or two (2) months earlier than twelve (12) months from Delivery of a prior Album, then the one (1) or two (2) month extension referred to above would apply to any Album thereafter Delivered and not just the next Album Delivered thereafter. Notwithstanding anything to the contrary contained herein, CBS' sole remedies for late Delivery of any Album or Master Recording hereunder shall be as provided in sub-paragraph 6.02(e) hereof; provided, however, that the foregoing shall not be deemed to preclude CBS from exercising its right to terminate the term of this agreement pursuant to the provisions of paragraph 1.01(a) (ii) even though all Albums comprising the Recording Commitment have not then been Delivered.

3.05 Up to two (2) of the Albums comprising the Recording Commitment may be Greatest Hits or Best Of type albums compiled by CBS from Master Recordings rendered hereunder and/or recorded previously, specifically including, without limitation, under the Prior Agreement ("Best Of Albums"). The first such Best Of Album shall be the Album described in paragraph 3.03 hereof. You warrant and represent that your agreement with Capitol Records permits you to rerecord or utilize in connection with a Best Of Album fifty percent (50%) of the Recordings contained on the album released by Capitol Records titled "The Jazz Singer". You hereby agree that CBS shall have the right to so select and cause you to utilize any of the Master

Recordings Delivered hereunder or to require the rerecording by Artist of any such Recordings (provided you may use the original Recordings, if available) contained on "The Jazz Singer" album for such purpose in connection with one or more of the Best Of Albums to be Delivered by you hereunder (but in no event shall you be required to include more than two (2) Jazz Singer selections on any one Best Of Album without your consent) and that you shall designate to Capitol Records the Recordings selected by CBS; provided, however, Artist shall have reasonable approval of the Master Recordings (including "The Jazz Singer" selections) to be used on any such one Best Of Album and of the sequencing and artwork in connection therewith. However, CBS may insist over Artist's objection on including any Master Recording which was contained on a "Top 40" single on any of the Billboard, Record World or Cashbox Magazine "Top-100" singles charts, provided that in such event Artist shall have the right to substitute any Master Recording Delivered hereunder which was a "Top-20" single on any of the Billboard, Record World or Cashbox Magazine "Top-100" singles charts, and one "Top-40" single, for any "Top-20" Master Recording which CBS insists on including over Artist's objection, and the right to substitute any Master Recording which was a "Top-40" single for any other Master Recording which was not a "Top-20" single proposed by CBS for inclusion on such Best Of Album. You shall be responsible to physically put together and Deliver to CBS such Best Of Albums, including all artwork in connection therewith. No Best Of Album delivered by you hereunder shall be released by CBS within six (6) months of CBS' release of your immediately preceding Album Delivered and released hereunder, without your consent, which may be withheld for any reason.

3.06 One Album Delivered hereunder shall, at your option, be a Christmas album, containing solely compositions relating to Christmas or the Christmas season (the "Christmas Album"). You shall, subject to full prior consultation with CBS, have the right to determine when such Christmas Album is to be Delivered; provided that unless the Delivery of the Christmas Album is made no later than October 15th of the calendar year during which it is being delivered and the artwork therefor is Delivered no later than September 15th of such calendar year, CBS shall have the option of accepting Delivery of such Album the following year in reduction of your Recording Commitment. In the event CBS elects to delay release of such late-Delivered Christmas Album until the following year, CBS shall have the right to delay payment of the applicable Recording Fund until September 15th of the following year. Notwithstanding the foregoing, a substantial portion of the material on the Christmas Album will be performed by you on a United States network television broadcast (i.e., CBS, NBC, or ABC) or pay cable network television broadcast which has at least seventy-five percent (75%) as large a viewing audience as any of said networks has as of the date hereof which is first aired during the period commencing November 1st of the year in which such Christmas Album is to be released and ending December 31st of such year. Your Delivery of such Christmas Album shall be deemed

your representation that such network has agreed to telecast or televise such program. You acknowledge your understanding that although CBS is affiliated with one of said television networks such operations are separately run and nothing contained herein is intended to imply that CBS will arrange or is able to arrange any such broadcast on your behalf or assist you in the negotiation of same. You specifically acknowledge that any such negotiation you wish to undertake shall be your own responsibility and that you have not relied upon any encouraging statements to the contrary in reaching the understandings contained in this Paragraph 3.06.

Notwithstanding anything to the contrary contained in paragraph 4.01(b) or elsewhere herein (except as provided in paragraph 3.06.1 below), unless CBS shall agree otherwise, not less than one-half (1/2) of all the Compositions contained on the Christmas Album referred to in this paragraph 3.06 shall be written or co-written by Artist and shall never before have been recorded and released by anyone; an additional one-quarter (1/4) of such Compositions shall be written by other Persons and shall never before have been recorded, or if previously recorded, shall not have been released prior thereto nor be scheduled to be released during the scheduled period of release of your Christmas Album, by anyone and not more than the remaining one-quarter (1/4) of such Compositions shall have been written by other Persons previously recorded and released by others.

3.06.1 If you cannot Deliver a Christmas Album pursuant to the provisions of paragraph 3.06 hereof, you shall have the option (which option shall be separate from and in addition to the option granted pursuant to paragraph 3.06 hereof) to Deliver, in lieu of the Christmas Album described in paragraph 3.06 hereof, a Christmas Album containing solely Compositions relating to Christmas or the Christmas season which does not meet any or all of the other requirements set forth in paragraph 3.06 above, which Christmas Album shall not apply in reduction of the Recording Commitment. CBS shall be required to release any Christmas Album Delivered pursuant to this paragraph 3.06.1 in the same manner as the Christmas Album referred to in paragraph 3.06 above, except that CBS shall release such Album pursuant to Paragraph 3.08 prior to the end of the first Christmas season following delivery of such Christmas Album and shall not be subject to any late Delivery Advance reductions hereunder. The applicable Recording Fund payable by CBS to you for any Christmas Album Delivered pursuant to this paragraph 3.06.1 shall be Two Hundred Fifty Thousand Dollars (\$250,000) in lieu of the amount set forth in subparagraph 6.02(d) hereof. The foregoing sums shall include all Recording Costs of such Album and CBS shall not be responsible for any such additional costs. The provisions of Paragraphs 3.08, 5.04 and 6.02(d) shall not be applicable to such Christmas Album. Except for the foregoing, any Christmas Album Delivered pursuant to this paragraph 3.06.1 shall be treated for all purposes as an Album Delivered in reduction of the Recording Commitment hereunder. Notwithstanding the foregoing, failure on the part of CBS to timely meet its release commitment pursuant this paragraph 3.06.1 or pursuant to paragraph 3.06 above shall not be deemed a material breach of

this agreement unless you shall have Delivered the Christmas Album referred to in this paragraph 3.06.1 or paragraph 3.06 above on or before August 15th. If either of said Christmas Album was Delivered thereafter but before October 15, 1981 (provided the artwork is Delivered by September 15th), and CBS shall be unable to meet its release schedule for Christmas release prior to the end of the first Christmas following Delivery, then CBS shall be entitled to release said Christmas Album the following Christmas season and shall not be deemed in breach of its obligations hereunder by reason thereof.

3.07 CBS will not re-package any Albums Delivered and released hereunder or under the Prior Agreement without your consent, which may be withheld for any reason.

3.08 CBS shall release in the United States and Canada each Album Delivered hereunder within forty-five (45) days after you have Delivered to CBS sufficient Master Recordings [and materials and artwork] to enable CBS to meet such release commitment and you have granted all necessary approvals and within three (3) months after such release in the United States and Canada, CBS shall release the Album concerned in each country outside of the United States and Canada.

3.08.1(a) In the event CBS fails to so release any such Album in any specific country [outside of the United States,] you shall have the right to notify CBS of such failure. For the purposes of this paragraph "release" shall be defined as the general commercial distribution of each specific Album in each country pursuant to CBS' general pattern of distribution in each such specific country. If CBS does not, within forty-five (45) days after CBS receives such notice from you, release such Album in such specific country, then you shall have the right to enter into an exclusive agreement with a Person other than CBS in such specific country for the sole purpose of releasing such Album in such specific country. If CBS fails to release two (2) consecutive Albums in such specific country after CBS has received the specific notices required, you shall have the right to enter into an exclusive agreement with a Person other than CBS in such specific country for the sole purpose of releasing in any such specific country any subsequent Albums hereunder. You agree that CBS shall receive in respect of the manufacture and sale of any Album hereunder released in such specific country by a Person other than CBS, whichever of the following amounts shall be less:

(i) Fifty percent (50%) of all monies received by you (excluding AFM or other union payments based upon sales of Phonograph Records which you must pay from such monies and copyright royalties) pursuant to any such agreement by way of royalties and/or any other payments from the other Person releasing any such Album; or

(ii) The amount arrived at by multiplying the amount you receive by a fraction, the numerator of which shall be ten

(10) and the denominator of which shall be the number equal to the wholesale royalty rate (or two times the retail royalty rate) paid to you by the other Person releasing any such Album.

With respect to any such Album, all Advances in respect of which have been recouped by CBS, the percentage specified in (i) above shall be twenty percent (20%) rather than fifty percent (50%) and the numerator specified in (ii) above shall be two (2) rather than ten (10). In computing recoupment, CBS shall include the share of monies paid to it by you hereunder. The wholesale royalty rate (or retail rate) referred to hereunder shall be subject to adjustment to reflect any distribution of such Album made under a "free goods" policy. You agree to pay to CBS any such amounts promptly after your receipt thereof. You further agree to furnish to CBS copies of any such agreements and statements in connection therewith. If you exercise your rights hereunder to license manufacturing and/or distribution rights to a Person other than CBS, CBS shall make available at its cost to such other Person, the Master Recordings, artwork, liner notes and other necessary elements to enable such other Person to manufacture and/or distribute the Phonograph Records hereunder.

(b) CBS will instruct its Licensees in said release territory not to manufacture Records derived from such Master Recordings for sale there. If your licensee notifies CBS of such manufacture, CBS will instruct the CBS Licensee concerned to discontinue such manufacture, but neither CBS nor any such CBS Licensee shall have any liability by reason of such manufacture occurring prior to such notice, and CBS shall have no liability by reason of such manufacture occurring after such notice.

(c) Your licensee will affix sound recording copyright notices (or cause them to be affixed) to all Phonograph Records made from such Master Recordings by your licensee or any Person deriving rights from your licensee. In each instance, such copyright notice will be identical to the sound recording copyright notice used by CBS in connection with its initial United States release of the Recording concerned, or will contain such other matter as CBS shall require. Otherwise, the licensee will not identify or allow others to identify such Phonograph records with CBS' name or any of its trademarks, or otherwise directly or indirectly with CBS or its Licensees.

(d) CBS shall have the right to examine your licensee's books and records for the purpose of verifying the accountings rendered to CBS by your licensee.

(e) You shall be responsible for payments and obligations to third parties in connection with sales and distributions of such Album in such country, in the same manner as prescribed in Paragraph 7.08(b) hereof.

3.08.2 CBS shall consult with Artist and solicit his recommendations and views with respect to each Single designated by CBS for release in the United States and Canada from each Album Delivered hereunder in satisfaction of the Recording Commitment, and CBS will use all reasonable efforts to accommodate your views and follow your recommendations. However, the final decision as to the designation of any Single to be released hereunder shall be made by CBS.

? 3.09 (a) Notwithstanding anything to the contrary contained herein, CBS shall have the right to reject, and shall not have the obligation to pay for or to release any Master Recording hereunder in the event outside legal counsel of CBS gives his written opinion to CBS and you that the release of such Master Recording in the United States of America would likely result in penal or civil liability under the laws of the United States or a violation of a national code adhered to by the phonograph record or broadcast industry in the United States.

(b) In the event such outside legal counsel advises that release of such Master Recording would likely result in penal or civil liability not in the United States but in a country other than the United States, then the provisions of subparagraph 3.09(c) below shall only be applicable to such country.

(c) With respect to each Master Recording rejected by CBS pursuant to subparagraphs 3.09(a) or (b) hereof for release in a particular country, you shall promptly Deliver to CBS a replacement Master Recording for release in such country, or, at your election, a replacement Album for the Album in which such Master Recording is contained; it being understood that such replacement Master Recording or Album shall be subject to all of the terms and provisions hereof, but shall be released by CBS only in such country for which the replacement Master Recording or Album is Delivered. CBS shall be required to pay the Advances otherwise due upon the Delivery of any such replacement Master Recording or Album to the extent not previously paid.

4. RECORDING AND DELIVERY PROCEDURE

4.01 You will be responsible and have authority for the following in connection with the Master Recordings made hereunder:

(a) Selection of the Producer;

4.2 (b) Selection of the material to be recorded (subject to paragraph 3.09) provided, however, that in the event that as of the end of the month preceding the month in which you Deliver the Album, your account is in an unearned position, computed without regard to any net unrecouped Advances in respect of Albums released hereunder within the preceding twelve (12) month period (the term "earned position" being more fully defined in paragraph 6.05 hereof), then at least five (5) Compositions contained on such Album, comprising fifty

percent (50%) of the playing time contained on such Album, shall be written or co-written by Artist, unless otherwise approved by CBS in writing, which approval may be withheld for any reason. CBS may also reject any request to record an Album consisting of more than one twelve-inch 33 1/3 rpm Record. Notwithstanding the foregoing, you shall have the right, at your election, to Deliver "live" Albums pursuant to paragraph 4.07 hereof, the first of which may consist of two (2) twelve-inch 33 1/3 rpm Records whether or not you are in an earned position, and the second of which may consist of two (2) twelve-inch 33 1/3 rpm Records if you are in an earned position (computed without regard to any net unrecouped Advances in respect of Albums released hereunder within the preceding twelve (12) month period). Except as provided in the preceding sentence, neither CBS nor you shall have the right to release or Deliver or require the other to release or deliver, any Album consisting of more than one twelve-inch 33 1/3 rpm Record without the prior written consent of the other, which may be withheld for any reason.

(c) Specification of accompaniment, arrangement and copying services;

(d) Subject to Article 3, selection of dates of recording and studios where recording is to take place, including the cost of recording herein. To the extent of CBS' union and other requirements, CBS' facilities and the services of its engineers will be used in all recordings made hereunder.

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4.02 You shall fill out and submit to CBS, promptly after each recording session, a fully detailed written list of all recording expenses to be paid by CBS, including, without limitation, a specific breakdown of all accompaniment, arrangement and copying costs, studio and engineering charges, union contributions and payments to be made, applicable copyright royalty rates and all other costs, charges and payments specifically delineated in paragraphs 5.01 and 5.03 hereof.

4.03 You shall notify the appropriate Local of the American Federation of Musicians in advance of each recording session.

4.04 You shall timely supply CBS with all of the information it needs in order: (i) to make payments due in connection with such Recordings; (ii) to comply with any other obligations CBS may have in connection with the making of such Master Recordings; and (iii) to prepare to release Phonograph Records derived from such Master Recordings. Without limiting the generality of clause (ii) of the preceding sentence, you shall furnish CBS with all information it requires to comply with its obligations under its union agreements, including, without limitation, the following:

(a) If a session is held to record new tracks intended to be mixed with existing tracks (and if such information is requested by the American Federation of Musicians), the dates and places of the

prior sessions at which such existing tracks were made, and the AFM Phonograph Recording Contract (Form "B") number(s) covering such sessions.

(b) Each change of title of any composition listed in an AFM Phonograph Recording Contract (Form "B").

(c) A listing of all the musical selections contained in recordings made at location sessions and Delivered to CBS hereunder.

Your failure to timely supply CBS with all of the aforesaid information shall not be deemed a material breach of this agreement, although you will be responsible for any expenses incurred by reason of your failure to so timely supply such information.

4.05 You shall submit to CBS fully edited Master Recordings, technically satisfactory for its manufacture and sale of Phonograph Records, and Deliver to CBS all original Master Recordings of the material recorded, together with all necessary artwork (all of which shall be owned by you), licenses and appropriate permissions. As used herein, the terms "Deliver" and "Delivery" shall mean submission to CBS of Master Recordings and Albums in accordance with the provisions of this paragraph 4.05 and paragraph 14.20 hereof.

4.06 No "live" Recording or Recording not made in full compliance with the provisions of this agreement will apply in fulfillment of your Recording Commitment, nor will CBS be required to make any payment in connection with any such Recording, unless CBS so agrees in writing or such Recording is actually released by CBS. No Joint Recording will apply in fulfillment of your Recording Commitment, nor will CBS be required to make any payments in connection with any such Joint Recording other than royalties due you hereunder, even if such Joint Recording is actually released by CBS. No Recordings shall be made by unauthorized dubbing.

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4.06.1 Except for the "live" Recordings described in Paragraph 4.07 hereof, only Master Recordings consisting of Compositions not previously recorded by the Artist shall apply in reduction of the Recording Commitment. The Compositions contained on such "live" Recording may consist of Compositions previously recorded by the Artist for CBS and/or a Person other than CBS. Notwithstanding the foregoing, Master Recordings consisting of Compositions previously recorded by the Artist for a person other than CBS may apply in reduction of the Recording Commitment but only if (i) no more than one (1) such Composition is recorded by Artist for inclusion on any Album Delivered by you hereunder in reduction of the Recording Commitment and (ii) any such Composition does not comprise more than ten percent (10%) of the total musical content of any such Album.

4.07 A "live" Recording shall mean a recording of performances by Artist in concert or before an audience, other than in a recording studio, which contains more than one Composition previously recorded by Artist for CBS or any other Person. Notwithstanding the provisions of paragraph 4.06, it is agreed that two (2) Albums Delivered hereunder may be "live" recordings; provided, however, that the second "live" recording, if any, shall contain at least three (3) Compositions previously unrecorded and unreleased by Artist. The first "live" recording, if any, shall apply in reduction of the Recording Commitment. CBS shall have the option, exercisable within thirty (30) days following Delivery of the second "live" recording, if any, hereunder to accept such Album in lieu of the second or third (if CBS is then entitled thereto) Best Of Album to be Delivered hereunder or to accept such second "live" recording as an additional Album hereunder which is not in reduction of the Recording Commitment. Unless CBS shall so elect, the second "live" recording, if any, shall apply in reduction of the Recording Commitment and be accepted in lieu of a newly recorded studio Album of the Recording Commitment. In all other respects, however, such second "live" recording, if any, shall be treated for all purposes hereunder in the same manner as if such Album was a newly recorded studio Album of the Recording Commitment Delivered hereunder. You shall, subject to full prior consultation with CBS, have the right to determine when such "live" Albums are to be Delivered hereunder, provided that the first "live" recording shall not be Delivered sooner than as the fourth Album of the Recording Commitment and the second "live" recording, if any, shall be one of the last five (5) Albums of the Recording Commitment and that neither of the two (2) immediately preceding Albums shall be a Best Of Album or a "live" recording.

4.08 The Artist will not be required to perform together with any other royalty artist without the Artist's consent. CBS shall not be deemed to be unreasonable in rejecting any request for the Artist to record with another royalty artist.

5. RECORDING COSTS

5.01 CBS will pay all union scale payments required to be made to Artist in connection with Recordings made hereunder, all costs of instrumental, vocal and other personnel and arrangements and copying specifically approved by CBS in respect of the recording of such Master Recordings, and all other amounts required to be paid by CBS pursuant to any applicable law or any collective bargaining agreement between CBS and any union representing persons who render services in connection with such Master Recordings.

5.02 All amounts described in paragraph 5.01 above plus all other amounts representing direct expenses paid by CBS, or incurred in connection with the recording of Master Recordings hereunder (including, without limitation, advances to Producers and all studio and engineering charges, in connection with CBS' facilities and per-

sonnel or otherwise) are herein sometimes called "Recording Costs" and shall constitute Advances. Such Recording Costs per Album, not to exceed Two Hundred Thousand Dollars (\$200,000) shall be paid by CBS with respect to each Album other than a Best Of Album or the Christmas Album referred to in paragraph 3.06.1 hereof. Payment by CBS of such amounts shall be in addition to the amount of the Recording Fund payable to you pursuant to paragraph 6.02 hereof, but shall not result in CBS paying more for an Album than the maximum amount of Four Million Dollars (\$4,000,000) described in paragraph 6.02(c). With respect to a Best-Of Album, if CBS and you agree to re-record Compositions for inclusion in such Best Of Album, rather than use the original recording, or, in the case of Compositions originally recorded on "The Jazz Singer" Album, either to re-record or use the original master recordings contained thereon, CBS shall pay actual Recording Costs or costs of acquiring the original recordings, not to exceed Twenty-Five Thousand Dollars (\$25,000) per such Composition. Payment by CBS of such amounts shall not result in CBS paying more for an Album than the maximum amount of Four Million Dollars (\$4,000,000) described in paragraph 6.02(c). The cost of metal parts, and payments to the AFM Special Payments Fund and the Music Performance Trust Fund based upon record sales (so-called "per-record royalties"), the payment of which shall be the responsibility of CBS, shall not constitute Advances and shall not be recoupable by CBS from any monies payable to you hereunder. Any Recording Costs in excess of amounts payable under this paragraph 5.02 hereof will be your sole responsibility and will be promptly paid by you (or reimbursed by you if paid by CBS).

5.03 In determining the portion of the Recording Costs (other than payments to the Artist) applicable to any Joint Recording which shall be charged against your royalties, such portion shall be computed by multiplying the aggregate amount of such Recording Costs by the same fraction used in determining the royalties payable to you in respect of such Joint Recording.

5.04 Fifty percent (50%) or \$100,000.00, whichever is less, of the Recording Costs incurred with respect to the Master Recordings constituting any Album (except for Best Of Albums and the Christmas Album referred to in paragraph 3.06.1 hereof) consisting entirely of the Artist's performances recorded hereunder, and those of no other royalty artist, shall not constitute Advances and shall not be recoupable by CBS from any monies payable to you hereunder.

6. ADDITIONAL ADVANCES

6.01 Except as expressly provided otherwise in paragraphs 5.02 and 5.04 hereof, all monies paid to or on your behalf or at your request during the Term of this agreement other than royalties paid pursuant to Articles 9, 10 and 12 hereof, shall constitute Advances unless otherwise expressly agreed in writing by an authorized officer of CBS.

6.02 Promptly after your Delivery to CBS of the Master Recordings constituting an Album recorded hereunder pursuant to your Recording Commitment, CBS will make an Advance to you in the amount by which the applicable amount set forth below ("Recording Fund") exceeds the Recording Costs of such Album paid directly by CBS (excluding, however, the Two Hundred Thousand Dollars (\$200,000) or Twenty-Five Thousand Dollars (\$25,000) referred to in paragraph 5.02 hereof). If the Recording Costs for any Album exceed the Recording Fund and CBS elects to pay any of such excess, then, without limiting CBS' rights, CBS shall have the right to apply such payment in reduction of any sums payable or becoming payable to you under this agreement or the Prior Agreement.

(a) The Recording Fund for the first Album will be One Million Five Hundred Thousand Dollars (\$1,500,000), payable on Delivery of the Album. In addition, CBS shall loan to you the additional amount of One Million Five Hundred Thousand Dollars (\$1,500,000) on delivery of such Album (solely for purposes of this paragraph 6.02(a) referred to as the "Loan"). Such Loan shall convert to an Advance upon Delivery of the second Album hereunder, unless CBS agrees to convert such Loan (or any portion thereof) to an Advance at an earlier date. If the second Album hereunder is delivered prior to September 30, 1982, there shall be no interest payable on the Loan. If such second Album is Delivered later than September 30, 1982, interest will accrue on such Loan from that date onward at the per annum rate of two percent (2%) above the prime rate charged from time to time by Chemical Bank of New York City for loans to its preferred customers (but in no event shall such rate exceed the then highest lawful rate permitted); any royalties earned hereunder may be applied by CBS in repayment at any time of any portion of the Loan outstanding and interest thereon, as CBS elects. Receipt of the Recording Fund and Loan referred to in this subparagraph (a) is hereby acknowledged.

(b) The Recording Fund for the second Album will be an amount equal to seventy-five percent (75%) of the royalties payable to you in connection with Sales Through Normal Retail Channels in the United States and Canada and thirty-seven and one-half percent (37½%) of the royalties payable to you in connection with such sales outside of the United States and Canada, with respect to the first Album Delivered hereunder in satisfaction of the Recording Commitment, but such Recording Funds shall not (except as provided below) be less than Two Million Five Hundred Thousand Dollars (\$2,500,000) nor more than Four Million Dollars (\$4,000,000); subject, however, to the provisions set forth below.

(c) For Albums other than (i) the first and second Albums and (ii) the Christmas Album, the Recording Funds will be computed as the lesser of the following calculations (i) or (ii) at the time of Delivery of such Album but such Recording Funds shall not (except as provided in subparagraphs 6.02(d), (e) and (f) below) be

less than Two Million Five Hundred Thousand Dollars (\$2,500,000) nor more than Four Million Dollars (\$4,000,000):

(i) The average of the amounts computed with respect to the two (2) immediately preceding Albums of the Recording Commitment, as follows: seventy-five percent (75%) of the royalties payable to you in connection with Sales Through Normal Retail Channels in the United States and Canada and thirty-seven and one-half percent (37½%) of the royalties payable to you in connection with such sales outside of the United States and Canada, with respect to each such Album; or

(ii) The amount computed under the above subparagraph 6.02(c)(i) with respect to only the immediately preceding Album of the Recording Commitment, if sales of that Album were lower than the sales of the other of the two (2) Albums described in such subparagraph 6.02(c)(i).

(iii) For the purposes of making the calculations provided for in paragraph 6.02(b) and in this paragraph 6.02(c), there shall be included royalties on sales for a period of not less than nine (9) months from release of each Album for which the calculation is made, and in the event the Delivery of the Album in connection with which such Recording Fund is payable is made prior to the end of such nine (9) month period, then at the end of such nine (9) month period CBS shall recalculate the amount, if higher, that would have been payable at such date if such nine (9) months had ended on the date of Delivery and pay to you an Advance equal to the difference; provided, however, that if royalties were paid to you prior thereto which would have been used in recoupment of such additional Advance, then such additional Advance shall be reduced by the amount of such royalties paid. With respect to the royalties calculated for sales outside the United States which have been made in a territory outside the United States, but which have not yet been credited to your royalty account, CBS shall make a good faith effort to include such of those sales which have been reported to CBS' New York offices during the foregoing periods through its internal thirty (30) day trial balances as provided in paragraph 6.05 hereof, which trial balances for the purposes of this paragraph shall be deemed conclusive.

(iv) On commencement of recording of an Album with respect to which Recording Funds are calculated under this paragraph 6.02, CBS will prepay an amount equal to Two Hundred Fifty Thousand Dollars (\$250,000) of such Recording Fund. In addition, at your request CBS shall pay directly as and when incurred (as Advances applicable against the

Recording Fund) all Recording Costs which you incur to the same extent such Recording Costs exceed the amount prescribed in Paragraph 5.2 hereof; provided that in no event shall CBS be required to advance to you or on your behalf, pursuant to paragraph 5.2 and this subparagraph 6.02(c)(iv) Advances in excess of Five Hundred Thousand Dollars (\$500,000) prior to the Delivery of any such Album.

(d) The Recording Fund for the Christmas Album referred to in paragraph 3.06 hereof shall be Two Million Dollars (\$2,000,000), if at the time of Delivery of such Christmas Album your royalty account hereunder is in an earned position (computed without regard to any net unrecouped Advances in respect of any Album released hereunder within the preceding twelve (12) months) and shall be One Million Five Hundred Thousand Dollars (\$1,500,000) if such account is not then in such an earned position.

(e) Notwithstanding anything to the contrary contained in this subparagraph 6.02, the Recording Fund payable with respect to any Album the Delivery of which is late pursuant to the specific provisions of Article 3 hereof shall be reduced as follows:

(i) With respect to the second Album comprising the Recording Commitment, such Recording Funds shall be reduced to One Million Dollars (\$1,000,000) in lieu of the otherwise applicable amounts.

(ii) With respect to each of the third through sixth Albums hereunder, the Recording Fund will be reduced by an amount equal to Two Hundred Thousand Dollars (\$200,000) for every month or any part thereof after the twelfth month following Delivery of the immediately preceding Album, except that if such Album is Delivered by the end of the fifteenth month following Delivery of such preceding Album then such lateness shall be deemed cured in connection with such Album and the reductions computed for the thirteenth, fourteenth and fifteenth months shall not be applicable. Such reductions shall not reduce the Recording Fund for an Album to below One Million Five Hundred Thousand Dollars (\$1,500,000) except as provided in subparagraph 6.02(e)(v) below.

(iii) With respect to each Album following the first six Albums hereunder, the Recording Fund will be reduced by

an amount equal to Two Hundred Fifty Thousand Dollars (\$250,000) for every month or any part thereof after such twelfth month following Delivery of the immediately preceding Album. Notwithstanding the foregoing provisions of this item (iii) or item (ii) above, if any Album following the first Album Delivered hereunder is Delivered earlier than twelve (12) months from Delivery of the prior Album, then you shall have the right to an extension of the otherwise applicable Delivery date of the next succeeding Album by an amount equal to the number of months by which the prior Album was Delivered early, but in no event shall such extension applicable to such next Album be for more than two (2) months. For purposes of the preceding sentence, the date "March 31, 1982" shall be substituted for the words "twelve (12) months from the Delivery of the prior Album" in respect of the second Album of the Recording Commitment to be Delivered hereunder. Commencing with the sixth Album, any "unused" months of early delivery may be "carried forward" and applied to any succeeding Albums, commencing with the seventh Album, Delivered in reduction of the Recording Commitment hereunder, not to exceed two (2) months per Album. The one (1) or two (2) month extension of the Delivery date described in the foregoing two sentences shall apply in reduction of, and be deemed to cure, such lateness and the reductions in the otherwise applicable Recording Fund computed for the one (1) or two (2) month, as the case may be, period of such extension shall not be applicable. Such reductions shall not reduce the Recording Fund for an Album below One Million Five Hundred Thousand Dollars (\$1,500,000) except as provided below.

(iv) If as a result of the late Delivery of an Album the Recording Fund is reduced ("Reduced Recording Fund") pursuant to subparagraphs 6.02(e)(ii) and/or (iii) above to an amount less than Two Million Dollars (\$2,000,000) then such Reduced Recording Fund shall nevertheless be increased to an aggregate amount up to Two Million Dollars (\$2,000,000) by adding thereto one-half (1/2) of the amount, if any, by which (i) the amount computed by multiplying such Reduced Recording Fund by a fraction the numerator of which is the Royalty Base Price of such Album and the denominator of which is Four Dollars (\$4.00) exceeds (ii) such Reduced Recording Fund. To the extent such Royalty Base Price does not exceed Four Dollars (\$4.00) no such calculation or adjustment will be made. If different configurations of the Album (e.g., disc as opposed to tape) result in different Royalty Base Price figures for the foregoing calculation, then a weighted average figure shall be used based upon the ratio of two-thirds (2/3rds) discs and one third (1/3) tape. To the extent that the Album is a Multiple Record Set, the fraction in the foregoing equation shall have as its numerator the

Royalty Base Price of such Multiple Record Set and as its denominator the sum of Six Dollars and Fifty Cents (\$6.50).

(v) In the event that any Album hereunder is Delivered more than three (3) months after the date as of which the applicable Advance reductions assessed pursuant to the provisions of subparagraphs 6.02(e)(ii) or (iii) above shall have reduced the applicable Recording Fund to the minimum of One Million Five Hundred Thousand Dollars (\$1,500,000) as provided therein, then such applicable Advance reductions shall be made retroactive to such date the Recording Fund was reduced to One Million Five Hundred Thousand Dollars (\$1,500,000) pursuant to subparagraph 6.02(e)(ii) or (iii) and shall thereafter continue to be assessed until such Album is Delivered, provided, however, that in no event shall such continuing reductions reduce the Recording Fund for any Album below whichever of the following is applicable: (i) if you are in an earned position (computed without regard to any net unrecouped Advances in respect of any Album released hereunder within the preceding twelve (12) months) at the time of Delivery of such Album, Five Hundred and Fifty Thousand Dollars (\$550,000); and (ii) if you are not in an earned position, Two Hundred Thousand Dollars (\$200,000) (it being understood that the foregoing sums include those payable pursuant to paragraph 5.02 hereof).

(f) Notwithstanding anything to the contrary contained in this paragraph 6.02, the Recording Funds for each Album following the first six Albums hereunder (whether or not timely Delivered) shall be reduced by an amount equal to the unearned position of your royalty account hereunder computed at the time of Delivery of each such Album, but disregarding any net unrecouped Advances outstanding in respect of any Album released hereunder within the preceding twelve (12) month period. However (except for the third (3rd) Best of Album if any, to which CBS may become entitled hereunder), such reduction shall not exceed Five Hundred Thousand Dollars (\$500,000) for each such Album. The reduction with respect to the third (3rd) Best Of Album may exceed Five Hundred Thousand Dollars (\$500,000) but such reductions shall not reduce the Recording Funds for such third (3rd) Best Of Album below the actual Recording Costs of such third (3rd) Best of Album as provided in paragraphs 5.02 hereof.

(g) Solely in the event that you elect to Deliver the first "live" recording referred to in paragraph 4.07 hereof as the fourth (4th) Album of the Recording Commitment (as distinguished from Delivering such "live" recording as the fifth (5th) or succeeding Album of the Recording Commitment), then the otherwise applicable Recording Fund payable to you pursuant to subparagraphs 6.02(c) and (e) hereof in respect of the next succeeding Album Delivered in reduction of the Recording Commitment (i.e., the fifth (5th) Album) shall be reduced by the amount of your unearned position, if any, as of the

date of Delivery of such Fifth (5th) Album hereunder, provided that in no event shall such otherwise applicable Recording Fund for the fifth (5th) Album be reduced by reason of the foregoing below the sum of One Million Five Hundred Thousand Dollars (\$1,500,000), (or Five Hundred Thousand Dollars (\$500,000) if it is a Christmas Album under paragraph 3.06). For purposes of the foregoing, the net unrecouped Advances, if any, outstanding in respect of such "live" recording shall, notwithstanding the provisions of paragraph 6.05 hereof, be included in determining whether you are in an unearned position as of the date of Delivery of the next succeeding Album. To the extent your unearned position at the time of Delivery of the next Album of the Recording Commitment following Delivery of such "live" recording as the fourth (4th) Album would have reduced the otherwise applicable Recording Fund for the fifth (5th) Album below the sum of One Million Five Hundred Thousand Dollars (\$1,500,000), the excess thereof shall, to the extent it shall not thereafter have been recouped, reduce the otherwise applicable Recording Fund payable in respect of the sixth (6th) Album of the Recording Commitment, but not below the sum of One Million Five Hundred Thousand Dollars (\$1,500,000), (or Five Hundred Thousand Dollars (\$500,000) if it is a Christmas Album under paragraph 3.06).

6.03 Promptly upon Delivery to CBS of the Bang Masters described in paragraph 7.09 and Exhibit A hereto, CBS shall pay you an advance of Two Hundred Thousand Dollars (\$200,000) which shall only be chargeable against royalties earned in connection with such Bang Masters.

6.04 (a) You will compensate Artist for his services under this agreement at the rate of not less than \$6,000 per Fiscal Year as provided in subparagraph 6.04(b) below.

(b) "Fiscal Year", as used in this paragraph means the annual period beginning on the date of the commencement of this agreement and ending each subsequent annual period during the continuation of the Term hereof beginning on the anniversary of that commencement date. In the event you shall not have compensated Artist for Artist's services, or Artist shall not have received compensation for his services directly from CBS, at a rate not less than \$6,000 for a Fiscal Year, you or Artist shall notify CBS of such fact within 40 days of the expiration of the Fiscal Year concerned and CBS will pay to Artist directly prior to the expiration of the Fiscal Year concerned the amount by which \$6,000 exceeds the aggregate of all the payments made to Artist by you pursuant to this agreement during the Fiscal Year. Each such payment will constitute an Advance and will be applied in reduction of any payment subsequently becoming due under Article 6 hereof. If the Term of this agreement ends before the last day of a Fiscal Year the sum of \$6,000 referred to above will be reduced proportionately for the purpose of computing payments to be made under the paragraph 6.04 for that Fiscal Year. If California Law is hereafter amended to provide for a different minimum compensation requirement than \$6,000 per annum as a requisite for injunctive relief

the aforesaid references to \$6,000 shall automatically be amended to such new figure as of the effective date of such law. Nothing contained herein or in paragraph 1.02 above shall be deemed CBS' acceptance or acknowledgement of the applicability of California law to any provision hereof but reflects only CBS' concern with any potential claim which would prejudice, hinder or delay its rights to injunctive relief or its rights to Artist's full services and Recordings hereunder.

6.05 The term "earned position", as used herein with respect to your royalty account, shall mean that all Advances have been recouped from your royalties hereunder (whether payable under this Agreement or the Prior Agreement) according to CBS' last monthly artist trial balance prepared by CBS for its own internal purposes (including "estimated" foreign royalties payable to you pursuant to this Agreement or the Prior Agreement which were earned by CBS but which were not yet credited to your royalty account), relating to your accounts prior to the Delivery date in question, which trial balance shall be conclusive for purposes hereof. Any reserves withheld at that moment shall be deemed reinstated solely for purposes of computing whether you are in an earned position hereunder. With respect to the royalties calculated for sales outside the United States which have been made in a territory outside of the United States, but which have not yet been credited to your royalty account, CBS shall make a good faith effort to include such of those sales which have been reported to CBS' New York offices during the foregoing periods through its internal thirty (30) days trial balances, which trial balances for the purposes of this paragraph shall be deemed conclusive. Unless specifically provided to the contrary herein, in determining whether you are in an earned or unearned position, there shall be disregarded any net unrecouped Advances outstanding in respect of any Album released hereunder within the preceding twelve (12) month period.

7. RIGHTS IN RECORDINGS

7.01 You hereby grant to CBS an exclusive right to manufacture, advertise, sell, lease, license or otherwise dispose of Records derived from Master Recordings Delivered hereunder throughout the world, subject to the terms, conditions and provisions of this Agreement. The term of the exclusive rights granted to CBS hereunder shall be as follows:

(i) With respect to each Master Recording comprising the Recording Commitment hereunder embodying your performances (and which is not a Joint Recording), other than the Master Recordings referred to in item (ii) below, the term of CBS' exclusive rights shall be for a period commencing on the Delivery of such Master Recording and ending on the later of (A) four (4) years from Delivery of such Master Recording hereunder, and (B) the end of the Term hereof;

(ii) With respect to any Master Recording contained on a Best Of Album hereunder embodying your performances (and which is not a Joint Recording), the term of CBS' exclusive rights for the purpose of exploiting such Master Recordings in "Best Of" or "Greatest Hits" configurations shall be for a period commencing on Delivery of such Master Recording and ending on the later of (A) seven (7) years from Delivery of the Best Of Album on which it is contained, and (B) the end of the Term hereof; provided, however, that for the purpose of exploiting such Master Recordings on Albums in the original configuration on which they were initially released by CBS hereunder, or coupled with other recordings in configurations which are not "Best Of" or "Greatest Hits" type configurations, CBS' exclusive rights shall be for the period set forth in item (i) above of this paragraph 7.01.

(iii) With respect to all other Master Recordings Delivered and assigned to CBS hereunder, the term of CBS' exclusive rights shall be for a period commencing on Delivery of such Master Recording and ending on the expiration of the Term of this agreement as provided in paragraph 1.01(a) hereof.

(iv) Joint Recordings shall not revert hereunder.

Upon the expiration of the term of the exclusive rights granted to CBS in respect of any Master Recording Delivered hereunder (other than Joint Recordings), all of CBS' rights in and to such Master Recording shall automatically terminate and CBS shall have no further rights whatsoever therein and thereto; provided, however, that CBS shall have the nonexclusive right for a period of six (6) months following the expiration of the term of such exclusive rights to sell off its inventory as provided in subparagraph 7.04(b) hereof, subject, however, to the provisions of subparagraphs 7.04(c) and (d) hereof. In the event CBS violates your rights hereunder, CBS shall not be deemed an infringer unless CBS continues to do so after forty-five (45) days prior written notice of such infringement from you.

7.02 Subject to your retention of a one-half (1/2) ownership interest in and to the copyrights thereof as hereafter provided, all Master Recordings Delivered by you to CBS hereunder shall and are hereby assigned by you to CBS for the applicable term set forth in paragraph 7.01 above for the purposes of manufacturing and selling throughout the world Phonograph Records derived therefrom. Without limiting the generality of the foregoing, you grant to CBS: (i) The exclusive right during the respective periods referred to in paragraph 7.01 hereof; and (ii) The non-exclusive right after the expiration of the exclusive rights referred to in paragraph 7.01 hereof for as long as CBS has the non-exclusive right to distribute and sell Phonograph Records embodying Master Recordings Delivered hereunder; to use and publish and to permit others to use and publish the Artist's present

and future names, professional names, and likenesses of and biographical material concerning the Artist (provided, however, that should you at any time sell, transfer or assign all or any portion of your rights hereunder to another Person pursuant to paragraph 19.04 hereof, then the term "Artist", as used in this paragraph 7.02, shall be deemed to include such other Person as well).

7.03 Title to all Master Recordings delivered hereunder (other than Joint Recordings), including prior Master Recordings assigned to CBS hereunder following reversion to you pursuant to paragraph 7.08 hereof, and all artwork used in connection therewith to the extent owned by you or CBS, shall be initially (or with respect to Prior Master Recordings, upon the reversion date shall be) registered and duly recorded in all appropriate copyright offices in your name. Notwithstanding the foregoing, you hereby grant and assign to CBS a one-half (1/2) ownership interest in and to the copyright of each such Master Recording (or Prior Master Recording which shall hereafter revert to you hereunder) for the term of its exclusive rights hereunder. CBS is hereby instructed to file, and agrees to file with all appropriate copyright offices the registration and recordation of your ownership in the copyright to each such Master Recording (or prior Master Recording ownership of which shall hereafter revert to you hereunder), and thereafter, of your assignment to CBS of a one-half (1/2) interest in such copyrights. You shall duly execute and deliver to CBS such assignment of one-half (1/2) of the copyright in such form as shall be reasonably required to convey, register and record such assignment with the appropriate copyright offices. Said assignment of one-half (1/2) of the copyright shall, in pertinent part, provide that you:

"...hereby sell, assign, transfer and convey to CBS a one-half (1/2) ownership in and to said Master Sound Recording pursuant to that certain Agreement dated October 16, 1981 between Neil Diamond and CBS Records, a Division of CBS, Inc."

During the term of CBS' exclusive rights in and to each such Master Recording, all copyright notices, throughout the world, shall reflect both your and CBS' ownership therein and shall be in the form "copyright 19__ by Neil Diamond and CBS Records, a Division of CBS, Inc." or such similar form as shall be necessary and appropriate. Upon expiration of CBS' exclusive rights to each such Master Recording, CBS shall immediately upon demand reassign and reconvey to you or your heirs, representatives, administrators, successors or assigns, as the case may be, all of its right, title and interest in and to such copyright and, in this regard, shall duly execute and deliver to you a reassignment and reconveyance of all of its right, title and interest in and to such copyright, in such form as shall be reasonably required to convey, register and record such reassignment and reconveyance of copyright with the appropriate copyright offices. In the event you shall, for any reason whatsoever, fail or refuse to

execute any assignment to CBS of its interest in the copyrights hereunder, then CBS shall have the right, as your attorney-in-fact, to execute and deliver such assignment on your behalf and register and record same in all appropriate copyright offices. In the event that CBS shall, for any reason whatsoever, fail or refuse to execute any reassignment and reconveyance of its interest in the copyright upon expiration of CBS' exclusive rights in and to any such Master Recording, after receiving twenty (20) days' prior written demand therefor, then you shall have the right, as CBS' attorney-in-fact, to execute and deliver said reassignment and reconveyance on CBS' behalf, and register and record same in all appropriate copyright offices without further demand therefor. You and CBS shall each indemnify the other and hold the other harmless from and against any losses, damages, claims or liabilities, together with all reasonable legal fees incurred in connection therewith, by reason of any failure on the part of such party for any reason whatsoever to assign and convey or reassign and reconvey its interest in the copyrights of Master Recordings Delivered hereunder within twenty (20) days following written demand therefor, or to execute any documents reasonably necessary to effectuate such reassignment and reconveyance in any country.

7.04(a) Upon the termination of CBS' exclusive rights in and to each Master Recording hereunder, all pressing and manufacturing of Records embodying such Master Recording shall cease. All Master Recordings and all duplicates and derivatives thereof and any other materials in CBS' possession or control used in the manufacture of Records embodying any such Master Recording Delivered hereunder and the packaging therefor (including, but not limited to, tapes, mothers, stampers, and artwork) shall promptly, within thirty (30) days following notice from you, at CBS' option, either:

(i) Be offered by CBS to you or your designees at CBS' actual cost, plus shipment charges; or

(ii) Be destroyed by CBS in which event CBS shall furnish you with an affidavit of such fact, sworn to by a duly authorized officer of CBS.

(b) Upon the expiration of the period of CBS' exclusive rights hereunder in and to any Master Recording subject hereto, and provided further that CBS submits the written inventory referred to in subparagraph (c) below to you within the sixty (60) day period referred to therein, CBS shall continue to have the right to sell the then remaining copies of said Records, on a non-exclusive basis only, for a period of six (6) months after the expiration of CBS' exclusive rights hereunder in and to the Master Recordings embodied therein.

(c) If requested, CBS shall submit to you within sixty (60) days after the expiration of the period of CBS' non-exclusive rights in and to any Master Recordings hereunder, or within sixty (60) days after such request, whichever is later, a written inventory of all

then remaining copies of the Records manufactured hereunder therefrom. You or your designee shall have the option, upon giving CBS written notice of your election to do so not later than sixty (60) days after receipt of such written inventory, to purchase, on a country by country basis, all such remaining copies which are unsold at the expiration of the six (6) month period referred to in subparagraph 7.04(b) above, for an amount equal to whichever of the following is applicable: (i) if CBS has totally recouped all of its Advances hereunder, One Hundred Twenty-Five percent (125%) of CBS' direct cost of manufacturing such records (as reflected on CBS' books and records); or (ii) if CBS is not so recouped, the Wholesale Price of such Records. No royalties shall be payable by CBS in connection with the sale to you of such inventory pursuant to item (i) of the preceding sentence. If you or your designee elects to purchase all such remaining copies, CBS shall promptly ship them, at your expense, to you or your designee, or shall make them available at CBS' places of business throughout the world for you or your designee to take possession of. Nothing contained in this subparagraph (c) shall require CBS to refrain from destroying such inventory, subject, however, to the provisions of subparagraph 7.04(d) below.

(d) All sales of records by CBS subsequent to the expiration of the Term of this Agreement shall be in accordance with the terms and provisions hereof applicable to the sale of Records during the Term hereof. Such sales shall be subject to the payment of royalties by CBS under the terms of this Agreement. Upon the expiration of the six (6) month period referred to in subparagraph 7.04(b) above, unless CBS shall offer to you the right to purchase the then remaining inventory of Records as provided in subparagraph 7.04(c) above, CBS shall destroy all then remaining Records, provided CBS furnishes you with an affidavit of such fact, sworn to by a duly authorized officer of CBS.

7.04.1 Notwithstanding anything to the contrary herein contained, CBS shall not exercise its manufacturing rights hereunder in a manner which will create unnecessary and unreasonable amounts of unsold inventory of any Master Recordings at the end of the term of its exclusive rights hereunder, or unnecessary and unreasonable amounts of cut-outs at the end of such term. In this regard, CBS shall not be deemed to have created unnecessary or unreasonable amounts of such inventory or cut-outs if its policies with respect thereto shall have remained consistent with those theretofore prevailing during the three (3) year period immediately preceding the expiration of CBS' exclusive rights therein.

7.04.2 All Records released hereunder by CBS in the United States and Canada shall, in addition to being released under the appropriate CBS trademarks and logos, also include such trademarks or servicemarks and logos, if any, as shall be designated by you. CBS and you shall also receive appropriate label, liner, insert and jacket credit in accordance with the terms hereof. CBS shall determine the placement and size of all such trademarks, servicemarks and logos, if

any, but they shall be of equal prominence with CBS' trademarks, servicemarks and logos. You agree to advise CBS in writing of the nature and design of any such trademarks, servicemarks or logos to be used by you and to submit, in connection therewith, all necessary licenses and consents to enable CBS to use same on the Albums distributed hereunder and make all necessary representations and warranties in connection therewith. CBS shall use reasonable efforts to obtain the compliance of its foreign Licensees to the provisions of this paragraph with respect to Records distributed in their territories, but shall not be liable for any failure of such foreign Licensees to comply herewith.

7.05 Each Master Recording Delivered under this agreement, from the Inception of Recording, will be considered a "work made for hire" by Artist for you. All such Master Recordings and all Matrices manufactured therefrom, together with the performances embodied thereon, shall be jointly owned by you and CBS during the term of CBS' exclusive rights therein, free from any claims whatsoever by any third Person. You shall have the exclusive right to copyright such Master Recordings in your own name as the owner and author thereof and to secure any and all renewals and extensions of such copyright throughout the world, subject, however, to the assignment herein to CBS of a one-half (1/2) interest therein and CBS' right thereafter to be a joint copyright owner with you of such Master Recordings during the term of its exclusive rights in and to such Master Recording hereunder. You and CBS will each execute and deliver to the other such instruments and other documents regarding the rights of the other in the Master Recordings subject to this agreement as may reasonably be necessary to enforce CBS' and your rights in the Master Recordings on your and its behalf and otherwise protect and defend your respective rights hereunder and to carry out the purposes of this agreement, and each may sign such documents in the name of the other or the name of the Artist and make appropriate disposition of them to accomplish the foregoing. In this regard, CBS shall incorporate such copyright notices as you shall request (subject to any legal requirements) on the Album cover and such other locations as may be appropriate and shall cooperate fully in this regard. CBS shall have the right to undertake all such actions on your and its behalf, and the decision as to whether any such action shall be brought or the method of undertaking of such action shall be made solely by CBS. CBS shall be solely responsible for all costs incurred in connection therewith and the recovery or award of any amounts deriving from such actions shall be entirely the property of CBS. You shall have the right, within thirty (30) days following your receipt from CBS of written notice of commencement of an action, to elect to pay one-half of all costs of such action, or be actively represented in such proceedings by counsel of your own choosing and at your own expense, (provided CBS shall retain control of such action) in which event you shall be entitled to have one-half of all such amounts awarded to CBS applied to your account hereunder.

7.06 Without limiting, and notwithstanding, the generality of the foregoing, CBS and any person authorized by CBS shall have the unlimited and exclusive rights to manufacture Phonograph Records by any method now or hereafter known, derived from the Master Recordings made hereunder, and, subject to the specific limitations set forth herein, to sell, transfer or otherwise deal in the same under any trademarks, trade names and labels throughout the world.

7.07 It is agreed that, notwithstanding anything to the contrary contained in the Prior Agreement, all Master Recordings Delivered under the Prior Agreement (hereinafter sometimes referred to as "Prior Master Recordings") shall continue to be the property of CBS until ownership thereof reverts to you pursuant to the provisions of paragraph 7.08 below, upon which event such Prior Master Recordings shall immediately and automatically be assigned to you and the copyright thereof assigned to you and registered and recorded in your name. You hereby assign CBS a one-half (1/2) interest in the copyright therein on all of the terms and conditions hereunder applicable to Master Recordings Delivered in reduction of the Recording Commitment and such prior Master Recordings shall be hereafter treated for all purposes as Master Recordings hereunder; provided, however, that no additional Advances shall be payable by CBS to you in connection therewith and the Prior Master Recordings shall not reduce any of the Albums of the Recording Commitment except to the extent included in a Best Of Album.

7.07.1 Notwithstanding anything to the contrary set forth in subparagraph 7.07 above or otherwise herein, or in the Prior Agreement, the royalty rates payable hereunder shall apply to all sales of Phonograph Records derived from such Prior Master Recordings subsequent to December 31, 1981. Sales prior to December 31, 1981 shall be governed by the royalty rates of the Prior Agreement.

7.08(a) Title to each Prior Master Recording embodying Artist's performances delivered pursuant to the Prior Agreement (and which is not a Joint Recording) and all rights therein, and Album cover artwork (to the extent of your and CBS' rights) are hereby assigned by CBS to you (and CBS shall promptly upon demand execute all documents necessary to effect such assignment) immediately upon the earlier of (i) the seventh (7th) anniversary date of CBS' initial release in the United States of an Album embodying the performances contained on such Prior Master Recording, and (ii) seven (7) years and six (6) months from the date on which such Album embodying such Prior Master Recording was originally Delivered to CBS (the "Reversion Date"). If, with respect to any Prior Master Recordings, the Reversion Date thereof was prior to the date hereof, then such Prior Master Recordings shall immediately be deemed to have reverted to you and be licensed by you to CBS hereunder. The applicable release dates of all Prior Master Recordings are set forth on Exhibit "A" attached hereto and made a part hereof.

(b) Upon the expiration of CBS' exclusive rights in any Master Recordings (including Prior Master Recordings) Delivered hereunder, CBS shall immediately reassign and reconvey all right, title and interest it may have in and to the Master Recordings, and Album cover artwork (to the extent of your and CBS' rights) and any copyrights therein and thereto, as hereinabove provided, and thereafter you alone shall be responsible to make all payments to all Persons entitled thereto in connection with the exercise of any and all rights in such Master Recordings subsequent to such expiration, except that CBS shall remain liable to make royalty and any other payments to you, and to pay all other payments required hereunder to be made by CBS in respect of such Master Recordings (e.g., payments to the AFM Special Payments Fund, Music Performance Trust Fund, Mechanical Royalties, etc.), for and with respect to all sales and uses of such Master Recordings prior to such expiration, and subsequent thereto during the period of CBS' non-exclusive rights in and to such Master Recordings (i.e., the sell-off period specified in subparagraph 7.04(b) hereof). You agree to obtain on your own behalf valid and then currently effective mechanical copyright licenses for all Compositions embodied on such Master Recordings. You agree to acquire from the applicable unions and from any Producers and artists who rendered their services in connection with such Master Recordings any consents or permissions required in connection with your manufacture, sale and/or distribution of Phonograph Records derived from such Master Recordings. You agree to deliver to CBS a document signed by an authorized officer of the AFM Music Performance Trust Fund and Phonograph Record Manufacturers' Special Payments Fund accepting you in CBS' place and stead as owner of the aforesaid Master Recordings, and relieving CBS from any obligations in connection therewith. You will at all times indemnify and hold harmless CBS and any Licensee of CBS from and against any and all claims, damages, liabilities, costs and expenses, including legal expenses and reasonable counsel fees, arising out of any obligations of CBS to the copyright proprietors, applicable unions, Producers, artists and the AFM Music Performance Trust Fund and Phonograph Records Manufacturers' Special Payments Fund in connection with such Master Recordings after the expiration of CBS' rights as provided in the first sentence of this subparagraph (b). You will reimburse CBS and/or its Licensees on demand for any payments made by CBS and/or its Licensees in respect of such Master Recordings after CBS' exclusive and non-exclusive rights in such Master Recordings have expired (except to the extent relating to Phonograph Records sold prior thereto).

(c) You shall not allow Master Recordings (including Prior Master Recordings which have reverted to you hereunder) which are contained on a Best Of Album, to be released in the form of a "Best Of" or "Greatest Hits" type album until such time as CBS' exclusive rights to such Best Of Album have ended hereunder; nor shall you title or advertise any new compilation (i.e., other than a Best Of Album, with respect to which CBS' exclusive rights shall have terminated hereunder) containing any Master Recordings recorded under