

## **Entertainment Industry Flex Plan (the "Plan") Policy on Collection of Delinquent Contributions**

### SUMMARY OF COLLECTION PROCEDURES FOR LATE CONTRIBUTIONS

#### 1 Required Employer Contributions:

##### 1.1 Due Date

1.1.1 Generally, required Employer contributions must be received by the Plan by the 15th day of the calendar month following the payroll month in which the Employee worked. Required Employer contributions are considered delinquent as of the 16th day of the calendar month.

1.1.2 There is a grace period from the 16th day of the calendar month through the end of the month.

##### 1.2 If any Employer contributions are delinquent:

1.2.1 For delinquent required Employer contributions not received by the last day of the month in which contributions are due (i.e. the month following the payroll month in which the Employee worked), the Employer will be charged interest. Interest on the unpaid amount begins to accrue from the 16th day of the month in which the Employer Contributions are due.

1.2.1.1 **Example:** In 2016, an Employee works during the month of March. The required Employer contribution is due by April 15th. On April 16th, the unpaid contributions are delinquent. However, the Employer has a grace period from April 16th through the end of the month to submit contributions before interest is assessed. If contributions are not received by the last day of the month of April, the Employer is charged interest on the unpaid amount which accrues from April 16th.

#### 2 Salary Reduction Contributions:

##### 2.1 Due Date

2.1.1 All salary reduction contributions must be remitted as soon as possible. However, they must be received by the Plan no later than 15 business days after the day the funds are withheld from the Employee's wages. If not, they are delinquent.

- 2.2 If any salary reduction contributions are delinquent:
- 2.2.1 Interest will be assessed on delinquent contributions which will begin to accrue on the 1st day after they are delinquent.
- 2.2.1.1 **Example:** In 2016, the Employer withholds salary reduction contributions from the Employee's paycheck. If the Employee's contributions are deducted on April 1st, the salary reduction contributions must be received by the Plan no later than April 22nd. Contributions not received by April 22nd begin to accrue interest as of April 23rd.
- 3 If the Trust bills for a delinquency, and any part of the delinquency is not paid within 21 calendar days of the date of the Trust's demand letter, liquidated damages will be assessed at \$25 per participant, per pay period, or 10% of the late contribution, whichever is greater.
- 4 Interest is payable at the rate of 6% per annum, compounded monthly, on the amount of delinquent unpaid contributions. However, the Trustees may adjust the interest rate to reflect current economic conditions as set forth below.
- 4.1 If a delinquent Employer has not remitted any part of the delinquent contributions within 60 days from the Trust's initial billing notice, legal counsel will be retained to assist the Plan with collection and the Employer will be charged for reasonable attorneys' fees incurred by the Plan to assist with the collection.
- 5 An Employer must make contribution payments to the Trust Fund for any working months in which they have Employees on their payroll. If an Employer does not make a payment of Employer contributions for any given month, the Employer must provide a report to the Trust Fund stating that they did not have any Employees for that working month.
- 6 Examples
- 6.1 **Required Employer Contribution Example:** In 2016, an Employee works during the month of March. The required Employer contribution is due on April 15th. On April 16th, the unpaid contributions are delinquent. However, the Employer has a grace period from April 16th through the end of the month to submit contributions before interest is assessed. If contributions are not received by the Plan by the last day of the month of April, the Employer is charged interest on the unpaid amount which accrues from April 16th requiring payment of the total amount of unpaid contributions plus 6% interest per annum, compounded monthly, on the unpaid amount beginning April 16th. If the Plan sends its first bill on May 2nd for any unpaid contributions and accrued interest, the contributions

must be received by the Plan by May 23rd (within 21 calendar days). If payment is still not received by May 23rd, liquidated damages will be assessed against the Employer, and a second bill for any unpaid contributions, accrued interest (6% interest rate per annum, compounded monthly), and liquidated damages (in the amount of \$25 per participant, per pay period, or 10%, whichever is greater) will be sent to the Employer. If the Plan sends the second bill on May 24th, the bill must be paid in full by June 14th (within 21 calendar days). If the bill is not paid in full by this date, interest and liquidated damages will continue to accrue. The Employer has until July 1st before legal counsel will be retained to assist the Plan with collection and the Employer will be charged for reasonable attorneys' fees incurred by the Plan to assist with collection.

- 6.2 **Salary Reduction Contribution Example:** In 2016, the Employer withholds salary reduction contributions from the Employee's paycheck. If the Employee's contributions are deducted on April 1st, the salary reduction contributions must be received by the Plan no later than April 22nd (15 business days). Contributions not received by April 22nd begin to accrue interest at a rate of 6% per annum, compounded monthly, on the total unpaid contributions as of April 23rd. If the Plan sends the first bill on May 9th, all outstanding amounts must be received by the Plan by May 30th (within 21 calendar days). If outstanding contributions are not paid in full by May 30th, the Employer will be charged interest at 6% per annum, compounded monthly, on the amount due, from the date the contributions should have been transmitted to the Fund. The Employer will also be charged liquidated damages in the amount of \$25.00 per participant, per pay period, or 10% of unpaid contributions, whichever is greater, beginning May 31st. A second bill for any unpaid contributions, accrued interest and liquidated damages will be sent to the Employer. If the Plan sends the second bill on June 6th, the bill must be paid by June 27th (within 21 calendar days). If the second bill is not paid by this date, interest and liquidated damages will continue to accrue on the unpaid amount. The Employer has until July 8th (within 60 calendar days of the first bill) to pay all amounts due in full before legal counsel will be retained to assist with collection and the Employer will be charged reasonable attorneys' fees incurred by the Plan.

## **Policy on Collection of Delinquent Contributions**

### GENERAL OVERVIEW

This policy statement sets forth the procedures to be followed for the collection of contributions from Participating Employers (hereafter "Employers"), as authorized by the Trust. This program is managed by the Trustees and is administered by the Administrative Office.

Required Employer contributions are those Employer contributions consisting solely of employer money which do not reduce an employee's compensation. Salary reduction contributions are voluntary employee contributions which reduce an Employee's compensation. Reference merely to "Employer contributions" in this policy statement includes both required Employer contributions and salary reduction contributions.

The term "collection of contributions" refers to the payment of all Employer contributions to the Trust as required by provisions of the collective bargaining agreements and any participation agreements. Included in that phrase are all such contributions, both those voluntarily paid by the Employers and those that must be pursued for collection by the Trust.

The following policies, procedures and rules are to be carried out and interpreted in light of the provisions in the Trust governing collection of Employer contributions. Those Trust provisions in effect at the time this Policy is adopted are set forth at the end of this document.

### EMPLOYER COMPLIANCE AUDIT PROGRAM

The Trustees have a fiduciary obligation and authority to audit records of Employers in order to determine whether contributions are being paid in compliance with the collective bargaining agreements, any participation agreements, and this policy. Both Required Employer Contributions and Salary Reduction Contributions are subject to audit. The Trust's auditors will select a sample of employers and test a sample of months for the selected employers. The auditors will review employer contribution reports, bank statements and related records in order to ensure contributions are being made properly. The Trust's auditors will also audit a sample of individual participants listed in the employer report to ensure contributions are being properly allocated to the participant account.

### EMPLOYER CONTRIBUTIONS PAYMENT PROGRAM

- 1 Determining Delinquent Employer Contributions
  - 1.1 Required Employer Contributions

- 1.1.1 The Trust provides that required Employer contributions shall be received by the Plan by the 15th day of the calendar month following the payroll month in which the Employee worked unless more frequent payments are required by the collective bargaining agreement. Required Employer contributions are deemed to be delinquent if they are not received by the Plan by the last day of the calendar month of the "due" date.
  - 1.1.2 The Trustees recognize that some collective bargaining agreements may not be executed prior to Covered Employees commencing work. In cases where covered work commences prior to the execution of the collective bargaining agreement because of a retroactive effective date, contributions will be deemed to be delinquent if they are not received by the Plan by the last day of the month following the month the collective bargaining agreement was executed.
  - 1.1.3 The collective bargaining agreements or participation agreements define the covered services for which required Employer contributions are due and the basis for the computation of those contributions. The parties to the collective bargaining agreements and participation agreements establish the terms of those agreements and are responsible for their interpretation. The Trustees are responsible for the collection of required Employer contributions in accordance with those agreements.
- 1.2 Salary Reduction Contributions
- 1.2.1 In accordance with ERISA and Department of Labor rules, the Trustees adopted the following policy on when salary reduction contributions are considered late.
  - 1.2.2 All salary reduction contributions must be received by the Plan as soon as possible, but no later than 15 business days after the day the funds are withheld from the Employee's wages (the "required date").
  - 1.2.3 Once salary reduction contributions are deposited into the Trust, the Administrative Office will determine, based on the information presented by the Employer, if the payment was received by the required date. It may also be determined on audit under the Employer Compliance Audit Program that an Employer has failed to deposit salary reduction contributions by the required date.

1.2.4 Each Employee's election for salary reduction contributions sets forth the amount by which the Employee's compensation shall be reduced and transmitted to the Trust by the Employer.

## 2 Consequences of Delinquency

### 2.1 Notice and Demand for Payment

2.1.1 If it is determined that required Employer contributions are deemed delinquent:

2.1.1.1 the Employer will be billed for the delinquent required Employer contributions;

2.1.1.2 the Employer will be assessed interest as provided below on the amount due from

2.1.1.2.1 on salary reduction contributions, 16 days from the date the contributions were (or should have been) deducted; and

2.1.1.2.2 on required Employer contributions, the end of the month following the payroll month;

2.1.1.3 liquidated damages may be assessed against the Employer as provided below; and

2.1.1.4 collection efforts will be handled in accordance with Trust Sections 4.2, as modified by this Policy.

2.1.2 The Administrative Office will send a notice by email, if the Employer elects, or certified mail and standard mail. The notice will contain a letter:

2.1.2.1 informing the Employer that its contributions were not timely deposited and the amount of interest that is due the Trust on account of the delinquency(ies) as set forth above, and

2.1.2.2 demanding payment of

2.1.2.2.1 any delinquent required Employer contributions,

2.1.2.2.2 any delinquent salary reduction contributions,

2.1.2.2.3 the interest due and

2.1.2.2.4 any liquidated damages owed as provided below.

2.1.2.3 including a copy of this Policy on Collection of Delinquent Contributions.

2.1.3 Having followed these mailing procedures, it will be conclusively presumed that notice was properly given.

2.1.4 The Employer must remit all payments, including accrued interest, due to the Trust within 21 calendar days from the date the notice of delinquency and demand for payment is provided. If payment is not received within 21 calendar days, the Employer will be assessed liquidated damages on the amount due if not already assessed as provided below.

2.1.5 If the Employer fails to remit all payments due, then collection efforts will be handled in accordance with the Trust, as modified by this Policy, and participation in the Trust Fund may be revoked as described below.

### 3 Interest

3.1 Federal law [ERISA Section 515] requires that Employer contributions must be made in accordance with the terms of the Plan, and [ERISA Section 502(g)(2)] provides for mandatory interest on unpaid Employer contributions at the rate established by the Plan.

3.2 Per the Trust, interest is payable at the rate of 6% per annum, compounded monthly, on the amount of delinquent unpaid contributions. However, the Trustees retain the authority to periodically adjust the interest rate to reflect current economic conditions. The Trustees shall provide Employers with notice of any change in interest before the change in interest rate goes into effect.

### 4 Liquidated Damages

4.1 If the Trust bills for a delinquency and the delinquent contributions and accrued interest are not paid within 21 days of the date of the Trust's demand letter referenced above, then an additional sum may be charged as liquidated damages. Liquidated Damages will be assessed at \$25 per participant, per pay period, or ten percent (10%) of the late Employer contribution, whichever is greater.

### 5 Notice to the Union

- 5.1 The Trustees will notify the appropriate Union in writing of delinquencies within 30 days after the Employer contributions are determined to be due but unpaid to the Trust.
- 6 Referral to Collection Attorney
- 6.1 The Trust has retained an attorney to pursue the collection of delinquent Employer contributions, interest, liquidated damages and audit costs. The Administrative Office will notify a delinquent Employer of the date on which the delinquency will be referred to the attorney. If a delinquent Employer has not remitted the delinquent contributions, interest, liquidated damages (if any) and any other amounts that may be due the Trust within 60 days of the Trust's initial billing notice, legal counsel will be engaged to assist the Plan with collection.
  - 6.2 In addition to the delinquent Employer contributions, interest, and liquidated damages, audit costs and attorneys' fees incurred in actions against delinquent employers will be assessed against the Employer.
- 7 Discretion of Board of Trustees
- 7.1 The Board of Trustees, any collections committee established by the Trustees, or any individuals designated by the Trustees to administer this collections policy, shall have the authority to take whatever steps are necessary to secure compliance with the contribution payments and collections procedures provided herein. This includes taking actions that, the Board, committee or such individuals, in their sole discretion, determine to be in the best interests of the Trust Fund, including but not limited to the following:
    - 7.1.1 Demand, collect, sue to collect, institute legal and/or administrative proceedings to receive Employer payments and all other money and property to which the Trust Fund may be entitled.
    - 7.1.2 Revoke an Employer's participation in the Trust Fund and suspend benefits to employees of any delinquent Employer.
    - 7.1.3 Compromise any claim or enter into written settlement agreements with delinquent Employers on terms deemed appropriate under the circumstances.
    - 7.1.4 Waive liquidated damages and/or costs of collection in the event that the Trustees determine the Employer's failure to make contributions is due to a legitimate business necessity, as determined based upon whatever evidence the Trustees deem appropriate, including information presented by the Employer.



7.1.5 The Board of Trustees' determinations, as allowed pursuant to their authority under the Trust and this policy, shall be final and binding on all parties and shall not be subject to further appeal.

## **Plan provisions governing contributions**

3.1 When and Where Due and Payable. Contributions made by Employers shall be due and payable in Los Angeles, California and shall be received by the 15th day of the calendar month following the month in which the Employee worked, unless a more frequent payment schedule is required by the Collective Bargaining Agreement. Employer Contributions may be made by Employers pursuant to a salary reduction feature in the case of Employers that allow this option for Employees to make a withholding request (within the period prescribed by the Plan), and such Contributions shall be due and payable as soon as the monies can be reasonably segregated from the Employer's general assets, but no later than 15 business days after the day the funds are withheld from the Employee's wages. Contributions to the Fund shall be forwarded to a central depository to be designated by the Trustees. Said payments are to continue from month to month subject to the provisions of the Collective Bargaining Agreement between the Employer and the Union.

3.2 Records Required. The Trustees may require the Employer, any covered Employee or any other Beneficiary under the Program to submit any information, data, report or other documents reasonably relevant to and suitable for the purposes of administering this Trust Fund. Employer agrees that it will use its best efforts to secure compliance with any reasonable request of the Trustees for any information, data, report or document required by this Section.

3.3 Audit. In order to bring about the highest possible standard of compliance by the Employer in paying the proper amounts due to the Fund, an audit of the Employer payroll records supporting that Employer's Contributions to the Fund may be made by the Trustees. In performing such an audit, the Trustees shall be entitled to examine the Employer's State and Federal tax returns, and any and all payroll and other records pertinent to determining whether Contributions have properly been remitted to the Fund. Upon audit by the Trustees, if the Employer has made the correct Contribution in total to the Fund, the costs of said audit shall be paid by the Trust. If upon audit by the Trustees, it is shown that the Employer has failed to make the correct Contribution due the Fund, the Employer will be responsible for the cost of the audit by the Trustees. In no event, however, shall the Employer be charged with the payment of audit fees in the event the delinquency represents the lesser of (a) five percent (5%) of the total Employer contribution due and owing in the period covered by the audit, or (b) five hundred dollars (\$500). In lieu of the above procedure, the Employer may furnish the Trustees with a statement by that Employer's public accountant or a certified public accountant certifying that such Employer has fully complied and paid the proper Contributions due the Trust Fund.

4.1 Damages for Delinquency. Each monthly contribution to the Fund shall be made promptly as required by Section 3.1. Subject to such policies and procedures as are adopted by the Trustees, any Contributions received later than the date

required under Section 3.1 shall be considered delinquent. The Parties recognize and acknowledge that the regular and prompt payment of Employer Contributions to the Fund is essential to the maintenance of the Fund, and that it would be extremely difficult, if not impracticable, to fix the actual expense and damage to the Fund which would result from the delinquency of the Employer to pay its Contributions in full within the time above provided. Therefore, the amount of damage to the Fund resulting from any such failure shall be presumed to be the sum of \$25 per participant, per pay period, or 10% of the indebtedness, whichever is greater, which is an approximation of the cost of processing a delinquency. This amount shall, in the Trustees' discretion, become due and payable to the Fund by the Employer as liquidated damages and not as a penalty, on the date specified by the Trustees, or in default of that, immediately following the date the Contribution became delinquent.

4.2 Timely Payments. Should the Employer fail to make timely contributions to the Plan interest is calculated and is compounded monthly payable at the rate of 6% per annum, compounded monthly, on the amount of delinquent unpaid contributions. However, the Trustees retain the authority to periodically adjust the interest rate to reflect current economic conditions. Trustees shall provide Employers with notice of any change in interest before the change in interest rate goes into effect. Further, the Trustees shall have the right to take whatever steps are necessary to secure compliance with this Trust Agreement, any provision of the Collective Bargaining Agreement to the contrary notwithstanding. This includes but is not limited to the Trustees, a committee of them, or individuals designated by them, having the power to demand, collect, sue to collect, and receive Employer payments and all other money and property to which the Trust Fund may be entitled, and shall hold the same until applied to the purposes provided in this Trust. They shall take such steps, including the institution and prosecution of, or the intervention in, such legal or administrative proceedings for the purpose of collecting such payments, money and property as the Trustees in their sole discretion determine to be in the best interests of the Trust Fund, without prejudice to the rights of the Unions to take whatever steps, if any, they deem necessary to undertake for such purposes. If the required contributions of an Employer become delinquent as provided above, in addition to interest and liquidated damages, there shall be added to the obligation of the delinquent Employer all reasonable expenses incurred by the Trust involved in the collection of the delinquency, including but not limited to reasonable attorney's fees, cost of attachment and execution, bond, receivers and court costs.

4.2.1 The rights and remedies against a delinquent Employer as set forth above are not exclusive, but are cumulative, and nothing herein shall prevent the Union or the Trustees from taking other legal action against a delinquent Employer.

4.2.2 The Trustees will notify the appropriate Union in writing of delinquencies, once the Plan is aware of the delinquency, within 30 days after the contributions remain due but unpaid to the Trust Fund.

4.3 Employer Responsibility. In the event an Employer is delinquent in making the Contributions to the Fund as required by the Collective Bargaining Agreement and any Covered Employee or his Dependent is denied benefits because of such delinquency, then, if and to the extent liability is imposed because of such denial of benefits, it shall be borne solely by such delinquent Employer and not by any other Employer or Union which participates in the Fund, or by the Fund or its Trustees. The Trustees shall have no duty to provide any benefits to any Employee where the Participating Employer has failed to provide the Trustees with the funds for such Employee's Account.

18.1 Obligations of Contributing Employers. By executing or complying with the terms of a Collective Bargaining Agreement, each Employer shall be deemed (without any further action) to have, inter alia:

18.1.1 Reviewed, understood, adopted and agreed to all provisions of this Agreement and the Plan (and any amendments to such Agreement or Plan), which documents specifically shall be deemed to have been incorporated by reference into such Collective Bargaining Agreement;


18.1.2 Authorized the Employer Trustees to act as its agent and execute this Agreement and the Plan on its behalf;


18.1.3 Agreed to comply with and be bound unconditionally to said Plan and Trust, any amendments thereto, as well as all of the decisions of the Board; and

18.1.4 Agreed to pay the costs of the Plan by means of periodic contributions to the Fund on behalf of its Covered Employees as set forth in a Collective Bargaining Agreement, as well as any additional payments to the Fund required pursuant to the terms of this Agreement, the Plan or a Collective Bargaining Agreement.

Dated:

**EMPLOYER TRUSTEES:**


By:   
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Steven Berkowitz

By:   
\_\_\_\_\_  
Rob Brandwene

By:   
\_\_\_\_\_  
Marc Sandman

**UNION TRUSTEES:**

By:   
\_\_\_\_\_  
Charlie Braico

By:   
\_\_\_\_\_  
Martha Pultar

By:   
\_\_\_\_\_  
Bill Thomas