

# PURCHASE AND SALE AGREEMENT

Seller:

EIN:

Email:

Agreement entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2018, between \_\_\_\_\_ (the "Seller") \_\_\_\_\_, [Street Address, City, State, Zipcode], and Open On Sunday, LLC, on behalf of itself, its affiliates, its subsidiaries and its managed companies, ("OOS" or "Buyer"), 300 Delaware Street, Suite 210, Wilmington, DE 19801.

WHEREAS, Seller is the owner of certain musical Works identified in this Agreement; and

WHEREAS, Buyer, wishes to irrevocably acquire the proportionate rights, title, and interest in the identified Works and exploit such property.

NOW, the parties intent to be legally bound and agree as follows:

## 1. DEFINITIONS

**"Intellectual Property Rights"** means all Trade Marks, Copyrights and other intellectual property rights, whether registered or not, owned by Seller and sold to the Buyer, relating to the "Work" or "Works" described in Schedule A.

**"Work" or "Works"** shall mean all musical Works (including the musical segments and individual Works written for a dramatic or dramatico-musical work) whether published or unpublished, now owned or copyrighted by Seller, or in which Seller owns or controls rights.

**"Documents"** includes all information fixed in any tangible medium of expression in whatever form or format, and copies thereof.

## 2. SALE AND ASSIGNMENT OF WORKS

Seller hereby irrevocably sells, assigns and transfers to Buyer all rights, title, and proportionate interest (including but not limited to, all registration rights, all rights to prepare derivative works, trademarks, copyrights), in and to the Work(s), whether known or hereafter discovered and Buyer shall have the right to use the Work(s) in perpetuity throughout the universe in any manner determined by Buyer in its sole discretion without any further payment to Seller. To the extent Seller has any rights in the Work(s) that cannot be assigned as described above, Seller unconditionally and irrevocably waives the enforcement of such rights. Notwithstanding, Buyer acknowledges that the Seller is due and owed all unpaid receivables earned and/or outstanding as of the date of this Agreement and regardless of third party payment schedules for Works.

Seller acknowledges and agrees that the Work(s), and all results and proceeds of its exploitation in connection with this sale and purchase, shall be the sole and absolute property of Buyer for any and all purposes whatsoever. Seller further agrees that the Buyer is due and owed its proportional interest in all unpaid receivables outstanding as of the date of this Agreement. Seller further agrees that Buyer shall be deemed the owner throughout the universe of any and all rights of every nature in the Work(s) purchased, whether such rights are known or hereafter defined or discovered.

## 3. ASSIGNMENT OF AUDIT AND OTHER RIGHTS

Seller hereby irrevocably assigns and transfers to the Buyer all royalty review, accounting and similar audit rights as they currently exists for the Seller or may exist in perpetuity. Seller hereby appoints Buyer as authorized agent of the Seller's assets for the purpose of conducting audits, accounting reviews and royalty reviews. Seller also assigns to Buyer an irrevocable right of approval, for which such approval will not be unreasonably withheld, for any new publishing administrative agreements and/or the extension of any and all existing publishing administrative agreements covering the Works contemplated in this transaction. Seller also assigns an irrevocable right of approval, for which such approval will not be unreasonably withheld, for any new distribution agreements and/or the extension of any and all existing distribution agreements covering the Works contemplated in this transaction. Seller further agrees that Buyer shall be deemed the owner, throughout the universe, of any and all rights of every nature in the Work(s) purchased, whether such rights are known or hereafter defined or discovered.

## 4. CONSIDERATION

In consideration for the sale of \_\_\_\_ % of the Work(s) set forth in Schedule A, Buyer shall pay Seller the sum of \_\_\_\_\_ payable no later than 5 days after this Agreement becomes effective.

## 5. REPRESENTATIONS AND WARRANTIES

Seller represents and warrants to Buyer:

- (a) Seller has the right, power and authority to enter into this Agreement;
- (b) Seller is the exclusive owner of all right, title and interest in the Works and that Seller controls the rights to the Works free of any security interest, charge or encumbrance unless expressly listed in Exhibit A;
- (c) The Works do not infringe the rights of any person or entity;

- (d) There are no claims, pending or threatened, with respect to Seller's rights in the Works;
- (e) This Agreement is valid, binding and enforceable in accordance with its terms;
- (f) Seller is not subject to any agreement, judgment or order inconsistent with the terms of this Agreement;
- (g) Seller shall promptly inform Buyer upon any change of the distributor and/or administrative agent for any of the Seller's Works contemplated in this transaction;
- (h) Seller agrees to inform Buyer, within 5 business days, of any directly negotiated sales revenues and income generated by the Works, regardless of source, and promptly pay, within 5 business days of this notice, the Buyer its proportional amounts owed; and,
- (i) Seller is 18 years of age or older.

## **6. INDEMNIFICATION**

Seller shall indemnify, defend and hold harmless Buyer, its parents, successors, assigns and licensees from and against any and all losses, damages, liabilities, reasonable attorneys' fees and costs, actions, suits, other claims arising out of Buyer's exercise of such rights, or Seller's breach or alleged breach, in whole or in part, of the foregoing representations and warranties. Seller shall reimburse Buyer upon demand for any payment made by Buyer at any time with respect to purchase consideration, losses, damages, liabilities, attorneys' fees and costs, actions, suits or other claims to which the foregoing indemnity applies.

## **7. ATTORNEY'S FEES**

Should either party hereto, or any heir, personal representative, successor or assign of either party hereto, resort to litigation to enforce this Agreement, the party prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to recover its or their reasonable attorneys' fees and costs in such litigation from the party against whom enforcement was sought.

## **8. TAX TREATMENT**

This transaction will be deemed, until the initial and any subsequent buyback option expires, as a financing transaction for federal, state and local tax reporting purposes.

## **9. ENTIRE AGREEMENT**

This Agreement, contains the entire understanding and agreement between the parties hereto with respect to its subject matter and supersedes any prior or contemporaneous written or oral agreements, representations or warranties between them respecting the subject matter hereof.

## **10. AMENDMENT**

This Agreement may be amended only in writing and signed by both parties.

## **11. SEVERABILITY**

If any term, provision, covenant or condition of this Agreement, or the application thereof to any person, place or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such term, provision, covenant or condition as applied to other persons, places and circumstances shall remain in full force and effect.

## **12. NO WAIVER**

No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

## **13. AGREEMENT TO PERFORM NECESSARY ACTS**

Buyer agrees to perform any further acts and execute and deliver any documents that may be reasonably necessary to carry out the provisions of this Agreement.

## **14. REPRESENTATION ON AUTHORITY OF PARTIES/SIGNATORIES**

Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

## **15. HEADINGS**

The headings in this Agreement are included for convenience only and shall neither affect the construction or interpretation of any provision in this Agreement nor affect any of the rights or obligations of the parties to this Agreement.

**16. SURVIVAL**

Except as otherwise expressly provided in this Agreement, representations, warranties, and covenants contained in this Agreement, or in any instrument, certificate, exhibit, or other writing intended by the parties to be a part of this Agreement, shall survive for 1 year after the date of this Agreement.

**17. AMBIGUITIES**

Each party and its counsel have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

**18. GOVERNING LAW**

This Agreement shall be construed in accordance with, and all actions arising hereunder shall be governed by, the laws of the Delaware.

IN WITNESS WHEREOF, the parties have executed this Agreement on \_\_\_\_\_, 2018 with full knowledge of its content and significance and intending to be legally bound by the terms hereof.

SELLER

BUYER

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature  
Open On Sunday, LLC

\_\_\_\_\_  
Print Name and Title

Commonwealth of Virginia  
City/County of \_\_\_\_\_

The foregoing instrument was acknowledged before me \_\_\_\_\_ a Notary Public,  
this \_\_\_\_\_ Day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_.

Witness my hand and official seal.

\_\_\_\_\_

**SCHEDULE A**

As part of an agreement between Open On Sunday, LLC and \_\_\_\_\_,  
dated \_\_\_\_\_, 2018

Title of Work	Work ID Number	PRO/Distributor/Label	% of Title Sold	% of Title Retained