Agreement between the Boston Public Library and the Internet Archive for the transfer and digitization of materials from the BPL collection of sound recordings

Effective Date: July 19, 2017

Transfer of Collection

Collection: The Boston Public Library (the “Library”) hereby transfers to the Internet Archive all rights, title, and interest in and to all 33 1/3 and 78rpm records from the Library’s Sound Archives collection of sound recordings (the “Collection”). Additional materials (CDs, wax cylinders, player piano rolls) may be transferred to the Internet Archive at a later date to be agreed to in an addendum to this contract. We are engaging in this agreement for the specific intent of ensuring item preservation and content accessibility.

Packing; Transportation The Internet Archive will pack the records so as to ensure safe transit without damage to 300 Funston Avenue, San Francisco, California or another Internet Archive location designated by Internet Archive (the “Storage Location”). The Internet Archive will also provide the Library with a precise count of the number of records that have been packed and transferred from the Library. The Library will provide access to the records for Internet Archive staff during the period in which materials are being packed, counted, and transferred from the building. The parties will mutually agree to a reasonable means of transportation and logistics handling of the records from the Library to the Storage Location.

Costs: Internet Archive will pay the costs and expenses for the following: (i) packing materials and pallets; (ii) transportation from the Library’s facilities to the Storage Location; (iii) staff provided by Internet Archive under this agreement; and (iv) storage, maintenance and digitization of the Collection at Internet Archive’s facilities. The Library will be responsible for all costs and expenses of its staff.

Schedule: The parties will endeavor to complete the packing and transportation of the records to the Storage Location within forty-five (45) days after the Effective Date of this agreement or as agreed by the parties.

Title; Attribution: Title to the Collection shall pass to Internet Archive upon Internet Archive’s receipt of the Collection at the Storage Location. Internet Archive will provide attribution and acknowledgement of the Library’s donation and provenance when displaying the Collection or any portions thereof to the public, in a manner similar to how the Internet Archive provides attribution and acknowledgement for other collections from the Library.

Right of First Refusal: Ownership of the Collection shall be offered back to the Library at no cost to the Library if any of the following occurs: (a) Internet Archive files a voluntary petition under any bankruptcy law; (b) a receiver is appointed to take possession of all of Internet Archive’s assets and is not dismissed within sixty (60) days after appointment; (c) Internet Archive makes a general assignment for the benefit of creditors; (d) Internet Archive ceases to do business in the ordinary course; or (e) Internet Archive desires to deaccession all or part of this collection to any other entity than the Open Library of Richmond, Open Library of Canada, Stichting Internet Archive, or the Internet Archive Canada. Upon the occurrence of any of the foregoing events, Internet Archive shall notify the Library of such event in writing, and the Library will have ninety (90) days from the date of such notice during which to exercise its right to acquire the Collection.
Right of Return: If, as a result of inventory, cataloging and digitization efforts, the Library deems certain items in the Collection to be material to its special collections holdings in general, the Library will have the right to have such items returned, and will pay a fee to cover the costs of transit, Internet Archive staff time, and itemized digitization costs consistent with the Library/Internet Archive operative fee structure. This right will expire five (5) years from the Effective Date.

Storage: The Internet Archive will store the Collection in its facilities that it currently uses for similar materials or in similar-type facilities.

Digital Copies

Digitization: Internet Archive will begin digitizing the records from the Collection within 120 days after the date of departure of the materials from the Library, including cover images, liner notes, and so forth. The Internet Archive will provide the Library a digital copy of each item in the Collection that Internet Archive digitizes (each, a “Digital Copy”). This Digital Copy shall include access via URL to an uncompressed, or losslessly compressed master file as well as an XML or JSON file containing descriptive metadata for the original item. The master file shall be produced as closely as possible to industry-accepted best practices or consistent with other mass digitization activities of the Internet Archive in order to assure an appropriate level of access to the material by a typical user. Internet Archive has the sole discretion to determine which items in the Collection to digitize. Digital Copies will be made available to the Library at a rate averaging at least 2,000 records per month for a duration in which predictable, dedicated funding is available to the Internet Archive and is clearly communicated to the Library. If production falls significantly short of this benchmark for 6 months, the Library reserves the right to reacquire the undigitized materials from the Internet Archive.

Use of Digital Copies: To the extent permitted under applicable copyright law, both Library and Internet Archive may freely use their Digital Copies in any manner, including reproducing, displaying, storing, modifying, making derivative works of, and distributing the Digital Copies.

General Provisions

Limitation of Liability: In no event will either party be liable to the other party for any consequential, indirect, exemplary, special, or incidental damages or any lost profits arising from or relating to this letter agreement, whether in contract or tort or otherwise, even if such party knew or should have known of the possibility of such damages. Each party’s cumulative liability relating to this agreement will not exceed $500 USD.

Warranty: The Library represents and warrants that it has all rights necessary to provide the Collection to Internet Archive, free of any liens or other encumbrances.

Warranty Disclaimer: EXCEPT FOR THE WARRANTY MADE ABOVE, EACH PARTY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, REGARDING ITS PERFORMANCE UNDER THIS AGREEMENT, THE DIGITAL COPIES, AND THE COLLECTION, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

Entire Agreement: This agreement states the entire agreement of the parties with respect to the subject matter hereof, and may be modified only in a writing that is signed by both parties. Each party agrees that the terms and conditions of this agreement and any actions related thereto will
be governed and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to conflicts of law principles that would require the application of the laws of any other jurisdiction.

Notices: All notices given under this agreement shall be in writing and sent to Internet Archive or the Library at its address specified below. Any notice shall be considered given upon receipt or refusal when delivered personally or mailed by registered mail, return receipt requested, or sent by overnight courier service. Either party may from time to time change its address specified in this section by notice to the other party.

Force Majeure: Neither party will be deemed in default or otherwise liable under this Agreement due to its inability to perform its obligations by reason of any act of God, war, government intervention, riot, earthquake, fire, flood, power outage, failure of the Internet or any similar cause beyond such party’s control.

Survival: The “General Provisions” section of this Agreement will survive the termination of this Agreement.

Agreed and accepted:

Internet Archive
By: [Signature]
Name: Brewster Kahle
Title: Founder and Digital Librarian
Date: 7/19/17
Address: 300 Funston Ave.
San Francisco, CA 94118

Boston Public Library
By: [Signature]
Name: David Leonard
Title: President
Date: 9/7/17
Address: 700 Boylston St
Boston, MA 02116