

**ECCO COPYRIGHT AGREEMENT - AUDIO VISUAL**

ECCO Licence No \_\_\_\_\_ of 201X

**THIS AGREEMENT** is made the \_\_\_\_\_ day of \_\_\_\_\_ 201X **BETWEEN (1) Eastern Caribbean Collective Organisation for Music Rights (ECCO) Inc.** (“ECCO”) a non profit company limited by guarantee incorporated pursuant to the laws of St. Lucia and continued pursuant to the Companies Act 1995, and whose registered office is situated at Julian Charles Road, San Soucis, Castries, St. Lucia and **(2) Broadcasting/Cable Operator** (“the Licensee”) a company incorporated pursuant to Companies Act 1995, and whose registered address is situated at xxxxxxxxxxxxxxxxxxxxxxxxxa

**WHEREAS:**

- A. ECCO is an association of composers, authors & publishers of musical works and is a licensing body within the meaning of Section 109 of The St. Lucia Copyright Act for the Territory of St. Lucia or the appropriate section of the Copyright Act in other territories of the OECS.
- B. The Licensee does and authorizes, in relation to ECCO’s Repertoire, broadcasting on the television channel known as **XXXXXX**, communication to the public by means of transmissions via the internet, reproduction for the purposes of such broadcasting and communication to the public. ECCO has reached agreement with the Licensee on substantive terms for the licensing of ECCO’s Repertoire (as hereinafter defined)
- C. The parties wish to conclude an agreement incorporating such terms.

NOW IT IS HEREBY AGREED as follows:

- 1 In this Agreement:
  - (a) “ECCO’s Repertoire” shall mean all and any musical works and associated literary works in which the rights to broadcast, to communicate to the public, to perform in public or to reproduce and to authorize others to do any of the same are or may be at any time vested in or administered by ECCO

- (b) “Licensed Territory” shall mean ~~XXXXXXXX~~
  - (c) “Licence Period” shall mean the period from ~~XXXXXXXXXXXX~~ to date and  
“Licence Year” shall mean a calendar year within the Licence Period
  - (d) “Licensee’s Programmes” shall mean audio or audio-visual programmes broadcast by or with the authority of the Licensee whether or not the Licensee is responsible for the content of the programmes
- 2 (1) Subject to the exceptions and limitations set out in Schedule 1 and subject to all the other terms and conditions of this Agreement ECCO grants to the Licensee in the Licensed Territory and during the Licence Period a non-exclusive license to do the following acts in relation to ECCO’s Repertoire:
- (a) broadcasting
  - (b) communication to the public by the transmission via the internet from the uniform resource locator of the Licensee’s Programmes which are or have been simultaneously broadcast;
  - (c) reproduction prior to and for the purposes of broadcasting
- (2) The licence set out in clause 2(1)(c) is limited to the reproduction of works by means of audio recordings and audio visual recordings of works in ECCO’s Repertoire in respect of which ECCO controls the mechanical reproduction right and/or the synchronization right
- (3) In consideration of the licence granted in this clause the Licensee shall make payments to ECCO in accordance with Schedule 2 without prejudice to the right of ECCO to terminate this Agreement under clause 7
- 3 ECCO shall inform the Licensee in advance, if possible, and, if not, as soon as possible afterwards of any change in the extent of rights administered by ECCO and shall supply the Licensee as soon as possible with a revised version of Schedule 1
- 4 For the avoidance of doubt the licence granted in clause 2 shall not extend to:
- (a) public performance by the reception of any of the Licensee’s Programmes

- (b) the reproduction and distribution to the public of physical copies (with or without charge) of any of the Licensee's Programmes or of any musical works contained in them
- (c) the distribution of copies (with or without charge) of any of the Licensee's Programmes or of any musical works contained in them by enabling the downloading of such programmes or works via the internet or by any other means
- (d) any right not administered by ECCO (including but not limited to rights in sound recordings, audio-visual productions, films and performers' rights)

5 (1) The Licensee shall in each week during the Licence Period supply to ECCO lists (known as "Programme Returns") identifying, in such reasonable form as shall be acceptable to ECCO, all musical works and any associated literary works included in the Licensee's Programmes indicating:

- (a) the title of each work
- (b) the names of the composers, authors, arrangers and publishers of each work
- (c) where a commercial recording used, the name of the record company and the identification number of each recording and where a film is used the title of the film and the name of the production company
- (d) the time (in minutes and seconds) spent in broadcasting or communicating to the public each work
- (e) the date when each work was broadcast or communicated to the public
- (f) the starting time of the programme in which each work was broadcast or communicated to the public
- (g) the title of the programme
- (h) the name and number of the episode if the work was included in a series or serial

Each such list shall be supplied to ECCO, if practicable, within one week but in no case later than five weeks from when each such work was included in one of the Licensee's Programmes

(2) The Licensee shall give ECCO such further information as ECCO may request and which is available in the records for the time being kept by the Licensee to enable ECCO to identify any such work

6 (1) ECCO shall have the right to obtain, on request, verification of Gross Annual Revenue (as defined in Schedule 2) from the Licensee's accountants and auditors for each Licence Year

(2) ECCO shall also have the right to audit the Licensee's Gross Annual Revenue and individual elements of its Gross Annual Revenue once in each Licence Year should ECCO elect. Any audit shall take place during normal business hours by prior appointment at a time reasonably convenient to the Licensee to allow ECCO's representatives to inspect such relevant books and records howsoever stored (including all information stored electronically) necessary for the purpose of verifying the accuracy of the Licensee's certified statements (supplied under paragraph 5(4) of Schedule 2) provided that such an inspection shall not be in respect of:

- (a) a period more than three years earlier
- (b) a period previously audited by ECCO except where statutory accounts for that period have been subsequently restated by the Licensee
- (c) any financial year for which accounts at the time of the inspection are due for publication to the Licensee's shareholders under statute but have not yet been so published

ECCO acknowledges that the books and records made available for inspection contain confidential information and ECCO shall not and shall procure that its representatives do not disclose (other than to ECCO's professional advisers) or use for any purpose, other than the enforcement of its rights under this Agreement, any of the information obtained as a result of the audit. ECCO shall provide to the Licensee with a copy of all information reported to it pursuant to the audit.

- (4) The costs of any such inspection and/or audit shall be borne by ECCO except that such costs will be borne by the Licensee if the audit reveals an underpayment in any License Year between the monies due to ECCO under this Agreement and the monies ECCO actually received, of 5% or more
- (5) ECCO shall give notice in writing to the Licensee of the amount actually payable by the Licensee in respect of Gross Annual Revenue disclosed by the audit. If the audit reveals:
  - (a) a net underpayment by the Licensee, then the Licensee shall pay the balance due to ECCO together with interest (at the prevailing maximum lending rate of the Eastern Caribbean Central Bank (ECCB) calculated at an annual rate from the date or dates on which the payment should have been made) within 21 days of the date of the notice
  - (b) a net overpayment by the Licensee, then ECCO shall repay the balance due to the Licensee within 21 days of receipt by ECCO of the audit report
- (6) The right of audit and the provisions of clause 6(5) shall survive the termination (for any reason) of this Agreement for a period of three years

7 If:

- (a) either ECCO or the Licensee goes into receivership or any resolution is passed for its winding-up or liquidation
- (b) the Licensee fails to pay any sum due under this Agreement within 45 days of such payment becoming due
- (c) the Licensee commits any other breach of its obligations under this Agreement which is not remedied within 30 days of ECCO's written notice of the breach requiring its remedy

then, in the case of (a) above, the party which is not so affected and, in the case of (b) or (c) above, ECCO, may terminate this Agreement immediately by notice in writing without prejudice to any right of action accrued prior to the date of termination

- 8 This Agreement is personal to the Licensee. The Licensee shall not be entitled to assign any of its rights and obligations under this Agreement without the prior written consent of ECCO at the absolute discretion of ECCO
- 9 This Agreement constitutes the entire agreement between ECCO and the Licensee and supersedes any prior agreements, representations and understandings and may only be amended in writing signed by duly authorised representatives of both parties
- 10 Should any provision of this Agreement be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions of this Agreement shall not be affected or impaired thereby.
- 11 All notices and other communications required to be sent under this Agreement shall be sent by prepaid post to the address of the party first shown above or to such other address as that party shall have given notice to the other party and shall be deemed to have been delivered two working days after posting
- 12 This Agreement shall be construed and governed by the laws of Saint Lucia the courts of which shall be courts of competent jurisdiction

## **SCHEDULE 1**

The licence granted in clause 2 of this Agreement shall not extend to nor authorize the broadcast or communication to the public or the reproduction of:

- (1) an opera, operetta, musical play, or similar work in its entirety insofar as it consists of words and music that were written expressly for it and when performed with the dramatic action, costumes or scenery of that work, except in cases where the performance is delivered as part of a pre-recorded audio-visual work (including but not limited to film and video)
- (2) the performance of a choreographic work in its entirety insofar as it consists of words and music or music alone written expressly for it and when performed with the live visual representation of that same choreographic work, except in cases where the performance is delivered as part of a pre-recorded audio-visual work (including but not limited to film and video)
- (3) musical works where the acquisition of the works involved an action that would constitute an infringement of copyright of any right holder.

## **SCHEDULE 2**

### **Definitions**

- 1 (1) “Gross Annual Revenue” shall mean the aggregate of the gross valuable consideration whether in money or money’s worth accruing in St. Lucia and due to the Licensee or its agents from any source in a Licence Year including, but not limited to Subscription Revenue, Advertising Revenue, Sponsorship Revenue and donations. “Subscription Revenue” shall include but shall not be limited to pay-per-view revenue, “Advertising Revenue” shall include but shall not be limited to revenue in money or money’s worth from barter deals (the provision of programme material in return for advertising air time or any other form of on-air promotion), contra deals (the provision of goods or services in return for advertising air time or any other form of on-air promotion), and product or service placement (the showing of or reference to products or services in the Licensee’s Programmes), and “Sponsorship Revenue” shall mean any financial benefit (whether direct or indirect) derived by the Licensee from payments made by any person for the purposes of defraying or contributing towards the costs incurred or to be incurred in relation to any of the Licensee’s Programmes
- (2) “Net Advertising Revenue” shall mean the gross advertising revenue after deduction of actual agency or sales commission, if any, subject to the proviso that the maximum deduction permitted under this clause to calculate net advertising revenue from gross advertising revenue shall be 15%
- (3) “Programme Return” shall mean one of the lists defined in Clause 5 of this Agreement

### **Royalty**

- 2 Subject to the remainder of this paragraph the Licensee shall pay ECCO in each Licence Year in respect of the licences granted in clauses 2(1)(a) and 2(1)(b) of this Agreement a royalty of 1.625% of Gross Annual Revenue.



3 The Licensee shall pay ECCO in each Licence Year in respect of the Licence granted in clause 2(1) (c) of this Agreement for reproduction a lump sum royalty of \$6,000

### **Lump Sum Royalties**

- 4 ECCO may, on the 1st January in each year, subject to one months' prior notice to the Licensee adjust any lump sum royalties payable under this Agreement by the percentage (to the nearest tenth of a percentage point) by which the Retail Prices Index published by the Central Statistical Office for the preceding September has increased or decreased compared to the figure for September in the previous year.

### **Mode of Payment**

- 5 (1) The Licensee shall pay the royalty set out in paragraph 2 for each Licence Year based on its reasonable estimate of the Gross Annual Revenue for that Licence Year. Such estimate shall not be less than 90% of the Gross Advertising Revenue for the previous calendar year unless ECCO consents to a lower estimate. The estimate shall be provided in good faith by the Licensee to ECCO not less than 21 days before the first day of the Licence Year in question. If the Licensee does not provide such an estimate by the due date ECCO shall itself be entitled to make an estimate of the Gross Annual Revenue by a notional increase of 10% over the Gross Annual Revenue for the previous calendar year
- (2) The Licensee shall make on account monthly payments to ECCO of the royalty estimated under paragraph 6(1) in twelve equal installments on the first day of each month of each Licence Year or, at the Licensee's option, in four equal installments on the first day of each quarter of each Licence Year
- (3) In the event that the Licensee shall be in arrears by more than 30 days in respect of the payments due under paragraph 6(2) it shall pay ECCO interest on the amount overdue at the prevailing maximum lending rate of the Eastern Caribbean Central Bank (ECCB) calculated at an annual rate from the due date until the date of actual payment
- (4) Within 60 days after the end of the Licence Year in question the Licensee shall supply a certified statement by the Licensee's accountant confirming the actual audited Gross Annual Revenue to enable ECCO to determine the actual royalty payable in

respect of that Licence Year. Where Gross Annual Revenue includes revenue in a form other than money the certified statement shall provide an adequate description thereof and shall report and quantify its reasonable equivalent monetary value

(5) If the actual royalty payable is greater than that estimated under paragraph 6(1) the Licensee will pay the balance due to ECCO within 21 days from the date of receipt of ECCO's invoice for such balance. If the actual royalty is less than that estimated under paragraph 6(1) ECCO will refund the balance within 21 days

(6) If any payment due to ECCO or the Licensee under paragraph 6(5) is not received on the due date the defaulting party shall pay the other party interest on the amount overdue at the prevailing maximum lending rate of the ECCB calculated at an annual rate from the due date until the date of actual payment

(7) The Licensee shall for a period of three years after the Licence Year in question (including any period after termination of this Agreement for any reason) preserve such records of its Gross Annual Revenue as shall enable ECCO's auditors to verify the royalty payable to ECCO under this Agreement

6 (1) The Licensee shall pay to ECCO the lump sum of due under paragraph 3 on or before January 31 in each Licence Year

(2) If the payment due to ECCO under paragraph 7(1) is not received on the due date the Licensee shall pay ECCO interest on the amount overdue at the prevailing maximum lending rate of the ECCB calculated at an annual rate from the due date until the date of actual payment without prejudice to ECCO's right of termination under clause 7 of this Agreement

7 The Licensee shall pay to ECCO any royalty due under paragraph 4 in accordance with ECCO's relevant tariff in respect of such public performance

## **Provisions Relating to Returns and Payment**

- 8 (1) In this paragraph:-
- (a) "late Programme Return" shall mean a Programme Return submitted to ECCO more than 35 days after the works to be identified in the Programme Return were broadcast by the Licensee
  - (b) "inaccurate Programme Return" shall mean a Programme Return for any period, which on the basis of monitoring carried out by ECCO, gives incorrect details of works broadcast in excess of 10% of the total number of works identified by ECCO as having been broadcast or understates or overstates the aggregate time occupied in broadcasting the works identified by more than 10%
  - (c) "incomplete Programme Return" shall mean a Programme Return for any period, which on the basis of monitoring carried out by ECCO, omits more than 10% of the works actually broadcast by the Licensee
- (2) Where the Licensee is unable to provide ECCO with Programme Return in a manner as stipulated in clause 5 of Schedule 2 of this agreement ECCO may use a third party to produce its own Programme Return, the cost of which will be charged to the licensee and added to the Lump Sum fee as stipulated in clause 4 of this schedule. ECCO will use every effort to obtain the best available price for digitally monitoring the Licensees output.
- (3) The rights of ECCO under this paragraph are without prejudice to ECCO's right of termination under clause 7 of this Agreement

**IN WITNESS WHEREOF** the duly authorised representatives of the parties have set their hands the day and year first written above.

Signed by \_\_\_\_\_ for and behalf of the **Eastern Caribbean Collective Organisation for Music Rights (ECCO) Inc**

in the presence of: \_\_\_\_\_

Signed by \_\_\_\_\_ for and behalf of **XXXXXX**

in the presence of: \_\_\_\_\_