

## REPAYMENT UNDERTAKING

Repayment Undertaking Agreement (**Agreement**) dated as of February 2, 2015, between \_\_\_\_\_ (**Publisher**), a corporation formed under the laws of \_\_\_\_\_, and the Canadian Musical Reproduction Rights Agency Ltd, a corporation formed under the laws of Canada (**CMRRA**).

**WHEREAS** Publisher is the owner or administrator of copyright in musical works comprised in CMRRA's repertoire;

**WHEREAS** CMRRA is a music licensing agency which represents the Publisher for the purpose of issuing licenses to users of the right to reproduce works in the Publisher's catalogue by virtue of an agreement between the parties to that effect (the **Publisher Affiliation Agreement**) and which includes broadcast mechanical licensing and the collection of broadcast mechanical royalties, as defined in the Publisher Affiliation Agreement (the **Broadcast Mechanical Royalties**);

**AND WHEREAS** CMRRA's entitlement to the collection and distribution of such Broadcast Mechanical Royalties is being challenged (the **Challenge**) by users at the Copyright Board of Canada with respect to the period starting November 7, 2012 when *Copyright Act* amendments entered into force (the **Challenged Period**);

**AND WHEREAS** in accordance with the Publisher Affiliation Agreement CMRRA has collected Broadcast Mechanical Royalties on behalf of the Publisher for the period starting November 1, 2012 to December 31, 2013 (the **Distribution Period I**), which have not yet been distributed;

**AND WHEREAS** should the Challenge be successful, in whole or in part, CMRRA may have to return, in whole or in part, any Broadcast Mechanical Royalties collected in relation to broadcast mechanical reproductions having taken place during the Challenged Period;

**AND WHEREAS** CMRRA has agreed to effect the distribution of a portion of the Broadcast Mechanical Royalties to Publisher related to the Distribution Period I, which forms part of the Challenged Period, subject to the Publisher's undertaking to repay to CMRRA any Broadcast Mechanical Royalties attributable to the Challenged Period, upon CMRRA's request, should the Challenge be successful in whole or in part, and to fully indemnify CMRRA thereof in the event of default;

**NOW THEREFORE**, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

### ARTICLE 1 – REPAYMENT

- 1.1 **Repayment.** Publisher hereby agrees and undertakes, should the Challenge be successful, to repay CMRRA, upon CMRRA's request, any Broadcast Mechanical Royalties distributed by CMRRA to Publisher from time to time and applicable to the Challenged Period, up to Publisher's share of the total amount of Broadcast Mechanical Royalties to be reimbursed to the users in relation to the Challenged Period, plus Publisher's share of applicable interests as established by the Copyright Board of Canada as part of the relevant decision, and a \$25.00 processing fee (the **Repayment**). For greater certainty, Broadcast Mechanical Royalties applicable to the Challenged Period include any and all Broadcast Mechanical Royalties distributed to Publisher for the period, whether or not any or all of those royalties are associated with musical works that are owned or administered by Publisher at the time Publisher is required to repay such royalties to CMRRA.
- 1.2 **Delay.** Publisher shall effect the Repayment within thirty (30) days of the receipt of a written notice by CMRRA indicating the amounts owed to CMRRA pursuant to the terms hereof, and such notice shall be deemed evidence of the amount actually owed by Publisher, absent manifest effort. All payments in arrears shall bear interest at the Interest Rate from the date on which the

same became due until the date of payment. Interest Rate means interest at a rate equivalent to five (5%) per cent per annum in excess of the prime lending rate of a Canadian Bank designated by CMRRA, now more commonly known as that bank's "prime rate".

- 1.3 **Right of Set-Off.** CMRRA has the right to satisfy any amount from time to time owing by it to the Publisher, including royalties payable to Publisher from sources other than Broadcast Mechanical Royalties, by way of set-off against any amount from time to time owing by the Publisher to CMRRA, including any amounts owing to CMRRA pursuant to the obligations of Publisher hereunder.

## ARTICLE 2 – MISCELLANEOUS

- 2.1 **Indemnity.** Publisher hereby irrevocably and unconditionally agrees to indemnify CMRRA from time to time upon request by CMRRA, from and against any loss whatsoever, whether direct or indirect, including expenses, costs, damages, judgments, penalties, fines, charges, claims, demands, liabilities and any and all reasonable legal fees and disbursements related thereto (collectively, **Loss**), incurred by CMRRA as a result of: (i) any of the obligations of Publisher under or pursuant to this Agreement being or becoming void, voidable, unenforceable or ineffective, or (ii) any legal proceedings (whether successful or unsuccessful) arising out of a claim, demand or allegation in respect of any of the foregoing or the enforcement of this Agreement.
- 2.2 **Successors and Assigns.** This repayment agreement shall be binding upon and enure to benefit of Publisher and CMRRA and their respective successors and permitted assigns.
- 2.3 **Governing Law.** This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- 2.4 **Counterparts.** This Agreement may be executed in any number of counterparts (including by way of facsimile) and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

**IN WITNESS WHEREOF** the parties have caused this Agreement to be executed by their respective authorized officers as of the date first written above. Please sign and return one copy of this Agreement and keep a signed copy for your records.

**Name of Publisher:** \_\_\_\_\_

Name & Title of Authorized Signing Officer: \_\_\_\_\_

\_\_\_\_\_

Signature: \_\_\_\_\_

**Canadian Musical Reproduction Rights Agency Ltd.**

Caroline Rioux  
President

