



PERFORMER AFFILIATE AGREEMENT

THIS AGREEMENT is made the day of2017

BY AND BETWEEN

JAMAICA MUSIC SOCIETY (JAMMS) a non-profit company incorporated under the Laws of Jamaica and carrying on collective management activities pursuant to the Copyright Act and having its Registered Office at 7 Stanton Terrace, Kingston 6 in the parish of St. Andrew, Jamaica (hereinafter referred to as “JAMMS”) of the one part

- and –

.....

of

.....

(hereinafter referred to as “you”, or “your”) of the other part.

RECITALS

WHEREAS JAMMS is a Collective Management Organization (CMO) established under the Laws of Jamaica to carry on collective management activities pursuant to the Copyright Act of Jamaica

AND WHEREAS you are a performer entitled to performers’ rights under copyright and equivalent laws around the world and are desirous of mandating JAMMS to administer your performers’ rights

IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS

Copyright Act means the Copyright Act No. 4 of 1993 and the Copyright Amendment Act of 2015, of the Laws of Jamaica as from time to time amended;

Exempted Territory means any country in which you are, at the time of entering into this Agreement, already a member of a Collecting Society or CMO that manages your Performers’ Rights;

Performances means a performance of a musical work, a literary work which is combined with music or sung, a musical performance and any recording by means of which such works or performances may be reproduced or made audible;

Performer means any singer, musician or other person who sings, depicts, delivers, declaims, plays in, interprets or otherwise performs a literary or musical work or an expression of folklore embodying music;

Performers' Rights means and includes rights in performances, performance rights, artists' rights, neighbouring rights and related rights in Jamaica as from time to time provided for under the Copyright Act, and in foreign countries as provided for under the respective applicable national laws of those countries and by virtue of international conventions concerned with rights for performers, in particular, the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention) and the World Intellectual Property Organization Performances and Phonograms Treaty (WPPT);

Territory means Jamaica and foreign countries which recognize and grant Performers' Rights under their respective copyright and equivalent laws, excluding any Exempted Territory.

2. APPOINTMENT

- 2.1 You hereby exclusively appoint JAMMS as your Agent to manage your Performers' Rights by carrying out all or any of the activities outlined hereunder as "JAMMS Mandate" in accordance with the terms and conditions herein specified throughout the Territory for the term of this agreement.
- 2.2 You further authorize JAMMS to delegate to such person or persons as it may choose, to exercise of any or all of JAMMS Mandate.
- 2.3 You understand and agree that by virtue of your exclusively appointing JAMMS only JAMMS can exercise the Mandate on your behalf or delegate a third party in respect of the Mandate.

3. WARRANTY & INDEMNITY

- 3.1 You hereby represent and warrant that you have the full right, power and authority to enter into and fully perform this agreement, and that you have not entered into any prior agreement or undertaking that would prevent you from granting JAMMS the Mandate under this agreement or that would otherwise reduce or compromise the agreement's effect.
- 3.2 You understand and agree that you are solely responsible for the accuracy and completeness of the performance information you register with JAMMS and you warrant that any right in relation to any live or recorded performance that you register with JAMMS does not infringe upon the copyright, performers' rights or other right of any person.
- 3.3 You agree to hold JAMMS harmless and indemnify JAMMS for any damages or costs JAMMS may be required to pay due to a breach of your warranty in respect of any claim made by a third party arising from the valid exercise of the Mandate under this agreement.
- 3.4 You understand and agree that JAMMS shall not have no obligation to you in the event of any act or omission on JAMMS part, if JAMMS acted reasonably and in good faith, or where such act or omission is caused by matters outside the reasonable control of JAMMS.

4. JAMMS MANDATE

JAMMS shall have the authority, and will use its best efforts, to:

- (i) represent you with respect to the administration of your Performers' Rights
- (ii) demand and collect payments owed to you for Performers' Rights administered collectively in the Territory through:
 - a. collective management systems in respect of the public performance (including broadcast) of live and/or recorded performances of performers, and/or
 - b. equitable remuneration schemes for performers in respect of the use and or adaptation of performances
 - c. compulsory licensing schemes for performers in respect of the use and or adaptation of performances
 - d. the collection of levies on blank cassettes or on other media and/or equipment to the benefit of performers and/or
 - e. any other benefits or rights in respect of uses of performances, including but not limited to any digital rights and royalties for the streaming musical content or digital recordings of performances
- (iii) collect directly or indirectly through reciprocal/bilateral or unilateral agreements with foreign agencies, Collecting Societies or CMOs the money due and payable to you as performers' rights royalties arising under the applicable national statutes.
- (iv) represent you in connection with proceedings before the Copyright Tribunal of Jamaica or other similar bodies anywhere in the world in respect any matter relating to your Performers' Rights as may from time to time fall to the jurisdiction of the Copyright Tribunal or other bodies.
- (v) make claims against local or foreign agencies, Collecting Societies or CMOs to obtain money due and payable to you in connection with your Performers' Rights.
- (vi) institute and prosecute legal proceedings at JAMMS cost where, in JAMMS sole discretion, it is necessary to do so to carry out the Mandate; compound, negotiate, compromise, refer to arbitration or submit to judgment in any such proceedings, and generally to represent you in all matters concerning the said rights;
- (vii) collect fees, subscriptions or monies by way of damages or compensation in respect of the use of your Performances;
- (viii) establish the mechanisms and operating procedures necessary to acquire accurate and efficient data for purposes of calculating any royalty distributions that may be due to me in respect of the above-mentioned.
- (ix) distribute to you royalties collected on your behalf, pursuant to the above-mentioned activities, provided that you are the holder of the rights

5. PAYMENT AND DEDUCTIONS

- 5.1 You agree that JAMMS shall be chargeable with only such money as it shall actually receive on your behalf.
- 5.2 You agree that all the costs and expenses including collection costs, administrative costs, reasonable legal fees and court costs to be borne or incurred by JAMMS or whomever JAMMS may delegate to carry out the JAMMS Mandate, will be considered General Administrative Costs that will be deducted by JAMMS from any money payable to you.
- 5.3 JAMMS agrees to pay you from the monies collected on your behalf, your share of Performers' Rights royalties after the deduction of General Administrative Costs and any tax JAMMS is required by law to hold or deduct and subject to JAMMS statutes, bylaws, distribution rules and JAMMS Board's decisions. Distribution rules will comply with international standards and general regulations concerning transparency and good administration practices.

6. YOUR OBLIGATIONS

- 6.1 You will collaborate with JAMMS so as to ensure that JAMMS is able to carry out JAMMS Mandate under this agreement as rapidly and efficiently as possible. You will therefore:
1. immediately send written notification to JAMMS of any change of address, telephone number and similar contact information;
 2. periodically update your Performer Information and immediately notify and send JAMMS details on the appropriate form of any additions or changes to the Performer Information or your interest in the Performances outlined therein;
 3. refrain from making any agreement that would conflict with JAMMS Mandate granted under this agreement;
 4. provide JAMMS with copies of any agreements, legal or other documents or evidence JAMMS may require from time to time to manage your Performers' Rights or validate your title or interest in the Performances.
 5. execute any legal documents, including but not limited to Powers of Attorney, Assignments and Licences which JAMMS may require to claim or defend your Performers' Rights covered by this Agreement;
 6. generally refrain from any action that may be detrimental to JAMMS activities in carrying out its Mandate.

7. CONFLICTING CLAIMS

In the event JAMMS is notified of a competing claim or conflict between you and a third party with respect to your title to or interest in any rights or performances or to any royalties, JAMMS will advise you of the details of the conflict or claim and may, in JAMMS sole discretion, withhold payment of royalties due on the performances or rights in dispute until the conflict is resolved.

8. AGREEMENT TERM

The term of this agreement shall be for two (2) years from the date of signing. The term is automatically renewed each year unless it is terminated by you or by JAMMS. You may terminate the agreement at the end of the first two-year period or at the end of any one-year renewal period by giving JAMMS written notice at least ninety (90) days before the end of the period. The termination will take effect at the end of the ninety days. JAMMS may terminate this agreement upon a decision of JAMMS Board at any time during any period by giving you fourteen (14) days notice. The termination will take effect at the end of the fourteen days.

9. APPLICABLE LAW

This agreement is subject to and shall be governed by the laws of Jamaica in every particular including formation and interpretation and shall be deemed to have been made in Jamaica.

10. AMENDMENTS TO AGREEMENT

No amendment to the principal part of this agreement will take effect unless it is in writing and signed by the parties, **SAVE THAT** where JAMMS notifies you in writing of any amendment, you will be deemed to have accepted same and such amendment will take effect, if you do not respond in writing to JAMMS within the period specified in the notification, indicating that you have objections to the amendment.

11. DISPUTE RESOLUTION

If a dispute arises out of this agreement, and if the parties cannot settle this dispute through negotiation, the parties will try in good faith to settle the dispute through mediation administered by the Alternative Dispute Resolution Centre. If the parties fail to resolve the dispute within sixty (60) days after starting mediation, then upon notice by either of the parties the dispute shall be referred to a panel of three arbitrators, one appointed by the Board of JAMMS, one appointed by you and the third shall be the Chairman, appointed by the two previously appointed and the arbitration shall be binding and conducted in accordance with the Arbitration Act of Jamaica.

12. NOTICES

All notices, requests, consents and amended Schedules permitted or required under this Agreement must be in writing and sent by mail, electronic mail or facsimile to JAMMS at its office or, in your case, to your last address as recorded on the books of JAMMS.

13. ASSIGNMENT OF AGREEMENT

This agreement is personal to you and may not be assigned or otherwise transferred in whole or in part by you to any other person without JAMMS prior written consent. JAMMS may assign its benefits and obligations under this agreement to a third party and will notify you of the assignment. This agreement will enure to the benefit of JAMMS, its successors and assignees.

14. AUTHORITY OF SIGNATORIES

The persons whose signatures appear below confirm that they have the authority to sign this Agreement and to appoint JAMMS to carry out the Mandate outlined in clause 4 hereof.

IN WITNESS WHEREOF the **PARTIES** have duly executed this Agreement the day and year first hereinbefore written.

**SIGNED for and on behalf of
JAMAICA MUSIC SOCIETY:**

SIGNED by PERFORMER:

DIRECTOR

DIRECTOR/SECRETARY

Witness to the above signatures:

Witness to the above signature(s):

(Print name & address of witness here)

(Print name & address of witness here)