

LICENCE

THIS LICENCE is made the 27th day of January, 2009

BETWEEN

1. **EMI MUSIC PUBLISHING LIMITED**
of 27 Wrights Lane, London W8 5SW ("EMI");
and
2. **NINA PALEY PRODUCTIONS, LLC**
of 81 Bedford St. #4D, New York, NY 10014 ("Licensee").

WHEREAS:-

1. EMI owns and/or controls the Composition.
2. Licensee wishes to obtain and EMI wishes to grant a licence for use of the Composition in the Product.

IT IS AGREED as follows:-

1. In consideration of, and subject to, Licensee's payment of the Consideration and Licensee's compliance with the terms of the Licence EMI agrees to non-exclusively license to Licensee the Rights in the Composition in the Media in the Territory during the Period subject to the terms and conditions of this Licence.
2. In consideration of EMI's agreements in paragraph 1 Licensee agrees to pay the Consideration and undertakes to abide by the terms, conditions and restrictions of this Licence.
3. This Licence includes the Schedule and the Standard Terms and together these documents constitute a full and binding legal agreement between the parties. In the case of any express conflict between the Schedule and the Standard Terms the provisions of the Schedule shall prevail. All capitalised terms shall have the meaning given to them in the Schedule or the Standard Terms as applicable.

Signed by 

and

.....

For and on behalf of EMI MUSIC PUBLISHING LIMITED

Signed by 

For and on behalf of NINA PALEY PRODUCTIONS, LLC

EMI Reference: SITA SINGS THE BLUES

SCHEDULE - FILM**Composition details:**

For the avoidance of doubt (i) this Licence is limited to the % of the Composition controlled by EMI (ii) reference to Composition shall mean any compositions detailed in this schedule or the rider to the schedule (if applicable).

Title : HERE WE ARE
 ISWC Number :
 EMI Tunecode : 0058530
 % controlled by EMI : 50%
 Writer(s) : GUS KAHN and HARRY WARREN
 Publisher(s) of EMI's percentage : FRANCIS DAY & HUNTER LTD and EMI MUSIC PUBLISHING LTD

Product details:

Product : FILM PRODUCTION ENTITLED
 "SITA SINGS THE BLUES"

Initial

Type of Use : VISUAL VOCAL
 Duration of Use :
 Period : PERPETUITY
 Consideration : \$350.00 (THREE HUNDRED FIFTY DOLLARS)
 PAYABLE ON EXECUTION OF THIS LICENCE.
 Territory : BRITISH REVERSIONARY TERRITORIES
 Media : ALL MEDIA
 See clause 21 of the Standard Terms for Media definitions.

Rights : SYNCHRONISATION RIGHT
 BROADCAST RIGHT
 REPRODUCTION RIGHT
 ARRANGEMENT RIGHT
 IN CONTEXT TRAILER RIGHT
 See clause 20 of the Standard Terms for Rights definitions.

Credit Notices : In customary form no less prominent than any other credit for other musical works or sound recordings embodied in the Product crediting the title of each Composition, the Writer(s) name(s) and the Publisher of EMI's percentage. No inadvertent failure to comply with this requirement nor any failure by third parties to comply with this requirement shall constitute a breach of this Licence provided that upon receipt of written notice of a failure Licensee shall use best endeavours to prospectively cure the failure.

Cue Sheets Required

: Licensee agrees to furnish EMI with a cue sheet of the Production on execution of this Licence, but in no event later than 60 (sixty) days after the first public exhibition of the Product at which admission is charged (except so-called "sneak" previews.). Notwithstanding the foregoing any inadvertent failure on the part of Licensee will not be a breach of this Licence provided that Licensee supplies EMI with the same within 14 (fourteen) days of receipt by Licensee of a written request therefore from EMI.

Special Conditions:

Standard Terms
(Film)

1. All rights not expressly included in the Rights are expressly reserved to EMI. By way of example and without limitation, unless expressly included in the Rights the following rights are not granted to Licensee:
 - 1.1 to use the Composition otherwise than as originally fixed in the original version of the Product as first released. The rights exclude for the avoidance of doubt different versions, updates, enhancements, sequels, associated products or incorporating the Composition on DVD (or other format) menu screens
 - 1.2 to use the Composition in any device which is programmed to permit the viewer to manipulate the material included in a non-linear (ie non-sequential) progression. For these purposes, the inclusion of "chapter stops" or other addressable locator codes on the applicable device and/or the inclusion of explanatory material, interviews with directors, film makers and/or other third parties shall not constitute non-linear manipulation;
 - 1.3 to alter, adapt, edit, translate or parody the whole or any part of the Composition;
 - 1.4 to use or reproduce the title or subtitle of the Composition, the name of the Writer(s), musical notation and/or lyrics or any part of them by any means except for the use of the title or the name of the Writer(s) in relation to providing the required credit specified in clause 9;
 - 1.5 to use the story of the Composition or to dramatically depict the Composition;
 - 1.6 to make, sell or distribute (including without limitation by means of downloading or streaming) the Composition in any form separately or independently of the Product;
 - 1.7 to use the Composition in any obscene, defamatory or derogatory manner or context;
 - 1.8 subject always to clause 2 to perform publicly or communicate to the public the Composition in any manner except as referred to in the Rights.
 - 1.9 to use the Composition and/or the Product in such a way that the Composition and/or the Product is associated with any other products, services, product tie-ins, brands, marketing campaigns, games or contests without EMI's prior written approval for which further payment may be due.
2. Notwithstanding any provision of this Licence, the rights to perform in public or to broadcast, stream, download or to otherwise communicate to the public the Composition or such other rights as vest in the collection societies (including by way of example but without limitation the Performing Rights Society) and similar bodies throughout the world are excluded from this Licence and are subject to clearance with and to the payment of relevant fees or royalties to such society or such body as controls such rights (as the case may be). Notwithstanding any provision of this Licence in the event that in respect of any of the Media or any part thereof valid licences in respect of the rights referred to in this clause 2 have not been obtained or have been breached or infringed the rights expressed to be licensed hereunder shall not extend to such Media.
3. Licensee acknowledges that this Licence does not include any rights in copyrights or related rights detailed in this clause and that Licensee must obtain separate licences from the relevant parties that control such rights:
 - 3.1 Any musical or literary work which is not a Composition including any share of the composition not controlled by EMI;
 - 3.2 Any sound recording(s) of the Composition and any performances embodied in those sound recordings.
4. This Licence shall not come into force until any amounts payable on signature have been received by EMI. Where there is further Consideration payable then the continuation of this Licence in respect of the Period following the date such amounts are due is conditional on EMI having received in full all amounts payable when due. Where the Consideration includes amounts payable in respect of the manufacture of additional copies of the Product as referred to in the Schedule this Licence shall not apply to such additional copies until EMI has received from Licensee payment in full of such Consideration.
5. All sums payable to EMI under this Licence are exclusive of Value Added Tax ("VAT") or equivalent, if applicable. VAT on all such sums shall be immediately payable by Licensee to EMI following the receipt by Licensee of a VAT invoice from EMI in respect thereof.
6. If the Consideration includes a royalty or other amount payable in respect of the manufacture or distribution of units then:
 - 6.1 Licensee shall account on a quarterly basis for each 3 month period ending on 31 March, 30 June, 30 September and 31 December;
 - 6.2 for each quarterly period Licensee shall within 30 days of the end of the period provide EMI with a statement in electronic and paper form showing in detail on a country by country and composition by composition basis the information necessary for the calculation of the applicable Consideration if applicable in respect of exploitation taking place during the relevant period including without limitation:
 - 6.2.1 the title, Writer(s) name(s), and EMI song code for each Composition;
 - 6.2.2 the number of copies of the Product manufactured, shipped, sold or otherwise distributed in the Territory;
 - 6.2.3 the base price for the calculation of the applicable Consideration;
 - 6.2.4 the applicable Consideration payable;
 - 6.3 at the same time as each statement is sent to EMI Licensee shall also pay the Consideration due;

- 6.4 in the event that the applicable Consideration is delayed then EMI shall be entitled to recover from Licensee:
 - 6.4.1 interest (which shall accrue at the rate of 3% (three per cent) per annum over the prevailing base rate of the National Westminster Bank PLC from the date that the payment is due to the date of actual payment); and
 - 6.4.2 any costs incurred by EMI in securing payment from Licensee;
 - 6.5 Licensee shall keep true and correct books of account and records including without limitation but where applicable purchase invoices, purchase orders, goods received notes, sales order notes, sales invoices, manufacturing, shipment, return and stock records and other documentation which may be relevant to determining any of the matters involved in the calculation of the Consideration. The books and records shall be open to inspection by EMI subject only to EMI giving notice of an inspection;
 - 6.6 Without limiting or affecting any rights or remedies which EMI may have under this Licence or otherwise at law or equity in relation to late payments, where any inspection reveals an underpayment to EMI, Licensee shall pay EMI the amount of the underpayment with interest calculated on the same basis as in clause 6.4.1 within 7 (seven) days of receipt of EMI's invoice. In the event that an underpayment is 5% (five per cent) or more of the Consideration paid for the relevant periods then Licensee shall also reimburse EMI with the costs of the inspection.
7. EMI warrants that it has the right to grant this Licence and this Licence is given and accepted without any other representation warranty or recourse express or implied. If a court of competent jurisdiction renders a final, adverse and non-appealable judgment that this warranty has been breached in whole or in part, EMI shall hold Licensee harmless in respect of Licensee's actual loss but only to the extent of the consideration already paid to EMI in respect of the relevant Composition under this Licence. Licensee shall give EMI prompt notice of any claim and EMI shall have the right at its own expense to assume the defence of the claim.
 8. Licensee represents and warrants that:
 - 8.1 there are no impediments, actual or threatened, which would prevent it from performing all of its duties and obligations (in whole or in part) under this Licence;
 - 8.2 it is fully empowered to enter into this Licence and to perform its duties and obligations and that it is and shall at all times remain able to do so;
 - 8.3 its entering into this Licence and fulfilling its obligations does not and shall not infringe upon the rights of any third party.
 9. Licensee agrees that on each copy of the Product the Credit Notices shall be displayed as described in the Schedule. The Credit Notices shall be no less prominent than any credit or notice relating to any other musical compositions or sound recordings.
 10. All rights granted terminate immediately and automatically on termination of this Licence or expiry of the Period.
 11. Without limiting or affecting EMI's rights or remedies under this Licence or at law or equity, in the event that Licensee is in breach of this Licence and (i) fails to remedy the breach within 30 days of receipt of notice of the breach from EMI or (ii) the breach is material and is not capable of remedy then EMI shall be entitled to terminate this Licence by service of notice on the Licensee. A waiver by EMI of any breach shall not constitute a waiver of any subsequent breach.
 12. EMI shall have the right to terminate this Licence by giving written notice to Licensee in the event that Licensee (or its parent company if Licensee is a subsidiary) ceases to trade or has a winding-up petition presented against it which is not dismissed or withdrawn within 21 (twenty one) days or goes into voluntary liquidation (other than for the purpose of reconstruction, re-organisation or amalgamation) or makes any composition with its creditors or if a trustee or administrator or receiver or administrative receiver is appointed to take over all or a substantial part of its assets and undertaking and such appointment is not discharged within 21 (twenty one) days.
 13. EMI may assign this Licence or any of its rights under it to any third party. Licensee shall not be entitled to assign or sub licence its rights to any third party without the prior written consent of EMI and a direct undertaking from the relevant assignee or licensee acceptable to EMI.
 14. All notices, claim forms, legal process or any other documents served under or in respect of this Licence shall be addressed to the party to be served at the address appearing in this Licence (or such other address as may be notified by each party to the other in writing). Notices to EMI shall be marked for the attention of the Director of Business Affairs. Notices within the UK shall only be delivered by hand or sent by registered letter or recorded delivery letter and shall be deemed received on delivery or within 2 days of posting (as applicable). Notices outside the UK shall only be delivered by hand or sent by registered airmail letter (including international recorded delivery) and shall be deemed received when delivered or 5 working days after posting (as applicable).
 15. EMI and Licensee agree that the terms of this Licence are confidential and neither party shall disclose such terms or any part of them to any third party except their professional advisors (if and as necessary) or as required by law except that EMI may at its election disclose any matter relating to this Licence to Writer(s).
 16. Save as may be set out in these Standard Terms all initially capitalised words shall have the meaning set out in the Schedule.
 17. This Licence constitutes the entire agreement between EMI and Licensee on the date of this Licence and with respect to the subject matter of this Licence. No amendment shall be made to this Licence except in writing and signed by both parties.

18. It is acknowledged and agreed that nothing in this Licence provides expressly for any third party to have any right to enforce any of its terms and for the avoidance of doubt, the parties do not intend any term to be enforced by or to confer any benefit on any third party.

19. This Licence shall be construed according to the laws of England and the parties agree to submit exclusively to the jurisdiction of the English Courts.

20. In this Licence the following terms shall where the context so requires or admits have the following meaning:-

"Synchronisation Right" shall mean subject to clause 2 the right to reproduce the Composition in timed relation with the visual images and soundtrack of the Product solely for the purposes of exploitation of the Product in the manner set out in the Rights provided that the Composition as embodied in the Product cannot be altered or manipulated or combined with or reproduced together with any visual or audio material (except for the visual image and soundtrack of the Product with which it was originally reproduced) in any manner.

"Broadcast Right" shall mean subject to clause 2 the right to exhibit or communicate to the public (as applicable) the Product in the Territory during the Period for the Type of Use in the Media.

"Reproduction Right" shall mean subject to clause 2 the right (i) to mechanically reproduce copies of the Product consisting solely of the Product in the formats detailed in the Media; and (ii) to distribute such copies for sale to the public for the purpose of "home use" only in the Territory for the Period.

"Arrangement Right" shall mean the right to make arrangements and orchestrations of the Composition for the purposes of creating recordings for use in the Product only, not to exceed Duration of Use as set out in the Schedule per Composition and as a background vocal/instrumental; provided, that Licensee's right to create any new arrangement of a Composition shall be subject to EMI's prior written approval. All arrangements shall be the property of EMI.

"In Context Trailer Right" shall mean subject to clause 2 the right to exhibit or communicate to the public trailers embodying the Composition in timed relation with the same visual images and soundtrack as originally fixed in the Product solely for the purpose of promoting the exhibition or communication to the public (as applicable) of the Product as detailed above in the Territory during the Period in the Media.

21. In this Licence the following terms shall where the context so requires or admits have the following meaning:-

"All Media" shall mean all media now known or to be invented in the future.

"All TV" shall mean all forms of television including free to air, pay TV, terrestrial, satellite, cable and linear playback digital television but excluding Mobile TV, Internet Simulcast and IPTV

"DVD" shall mean video cassettes, videodiscs and DVD designed for home use by the consumer.

"All Home Use Formats" shall mean any and all kinds of videograms including without limitation videocassettes, videodiscs and DVDs designed for home use by the consumer, manufactured primarily for distribution for the purposes of "home use" only.

"Radio and All TV" shall mean transmission by authorised radio and all television broadcasting including terrestrial, cable and satellite television, linear playback digital television and whether 'free' or 'pay' and whether 'standard' or 'non-standard' television.

"Theatrical Exhibition" shall mean exhibition to audiences in motion picture theatres and other places of public entertainment where motion pictures are customarily exhibited and for which admission is charged.

"Non-Theatrical" shall mean exhibition to non-paying audiences at unsponsored events in places of public entertainment other than motion picture theatres.

"Sponsored Non-Theatrical" shall mean exhibition to non-paying audiences at sponsored events in places of public entertainment other than motion picture theatres.

"Any Other Devices" shall mean any other present or future storage delivery and/or retrieval devices or systems.

"Internet Streaming" shall mean secure internet transmission which is simultaneous with its display on the end user's computer but which does not result in a file being retained permanently or temporarily by the end user (except as may be temporarily required as a data buffer to facilitate the streaming).

"Downloading (in context only)" shall mean the dissemination other than by means of "streaming" technology in non-material form by means of a secure and encrypted digital transmission of the Product in its entirety in a linear, reactive fashion (i.e. the recipient is unable to interact with the Product) by means of a computer network by which the recipient is enabled to see and hear the Product without delivery of a physical carrier but is unable to reproduce or copy the Product subsequent to the original download;

"Terrestrial" shall mean all free to air broadcast channels.

"Satellite" shall mean direct to home television via satellite transmission only.

"All TV" shall mean all forms of television including free to air, pay TV, terrestrial, satellite, cable and linear playback digital television.

"Film Festivals" shall mean Film Festivals.

"Art House Theatrical" shall mean Art House Theatrical.