

23 February 2009

Greg Sepesi
Eduneer[®], LLC
1800D Weeping Willow Drive
Lynchburg, VA 24501-3965

Greg:

The Ohio State University (OSU) would like for you to consider including the bird recordings of the OSU Borror Laboratory of Bioacoustics (BLB) in **the universal field guide birds of North America multimedia**, (the "Work") published by **Eduneer[®]** ("Eduneer"). The purpose of this letter agreement, whose most recent revision is available at www.eduneer.com/ufg/ufg_recording_agreement_BLB.pdf, is to grant written permission to

- use all or some of the above referenced recordings, copies and/or descriptions of which are attached to this letter as Exhibit A ("Recordings"), which may change from time to time, and
- publish all or some of them as part of the Work

and to define

- contact information, and
- choice of the acknowledgement/credit option for these Recordings.

Should we submit subsequent Recordings for inclusion in the Work, such subsequent submissions shall constitute amendments to Exhibit A, and shall be subject to all provisions of this agreement upon acknowledgment by Eduneer in the form of written or email communication.

As further definition, the Work consists of two components:

- 1) The universal field guide application is a no-charge application that integrates several sources of bird reference information, but not photographs or recordings. The universal field guide application is relatively small, consisting of executable and database files, and is available via Internet download.
- 2) The universal field guide multimedia is a low-priced compilation of audio and image files for storage on a memory expansion card (e.g., a Secure Digital) and is presented by the universal field guide application. The universal field guide multimedia may be distributed on SD (Secure Digital) card, or by download.

By signing below, The Ohio State University grants to Eduneer the non-exclusive right and license to use, display, reproduce, publish, transmit, and distribute these Recordings in the Work in all languages throughout the world. The grant and license shall also apply to any reprintings, new or revised editions, or derivative works of the Work in any media or formats, whether now or hereafter known.

The signatures below also grant Eduneer permission to use the name of the Ohio State University Borror Laboratory of Bioacoustics in the Work should Eduneer determine to do so. It is understood, however, that the inclusion of recordings in the Work is determined monthly from submissions of recordings in a competitive setting. Therefore, nothing in this letter agreement implies any guarantee of inclusion in the Work, and this letter is meant to grant permission to use the Recordings subject to the terms contained herein only if Eduneer selects all or some of the Recordings for inclusion in the Work.

If some or all of the Recordings are selected for inclusion in the Work, The Ohio State University will be paid royalties by Eduneer according to the following schedule:

	Low resolution ($f_s=22.050$ KHz)	High resolution ($f_s=44.100$ KHz)
New distribution nation-wide coverage	\$2.00 * (<u># of BLB recordings included in Work</u>) (total # of recordings included in Work)	\$4.00 * (<u># of BLB recordings included in Work</u>) (total # of recordings included in Work)
Update distribution nation-wide coverage	\$0.20 * (<u># of BLB recordings included in Work</u>) (total # of recordings included in Work)	\$0.40 * (<u># of BLB recordings included in Work</u>) (total # of recordings included in Work)
New distribution state-wide coverage	\$1.00 * (<u># of BLB recordings included in Work</u>) (total # of recordings included in Work)	\$2.00 * (<u># of BLB recordings included in Work</u>) (total # of recordings included in Work)
Update distribution state-wide coverage	\$0.10 * (<u># of BLB recordings included in Work</u>) (total # of recordings included in Work)	\$0.20 * (<u># of BLB recordings included in Work</u>) (total # of recordings included in Work)

where the “total # of recordings included in Work” does not include public domain recordings and where the “Update distribution” refers to the update option available to only those who have received a new distribution.

If a customer purchases the low resolution version of the Work and later updates to the high resolution version of the Work, the royalties associated with that update will be as if the customer had purchased a second new distribution of the low resolution version of the Work. Payment owed, if any, will be mailed to us within thirty days following the end of each calendar quarter for the amount of our royalty balance if it is at least \$20. If our royalty balance is less than \$20, the balance will be carried forward to subsequent quarters until it reaches at least \$20. Royalty checks will be made out to The Ohio State University and mailed to the Borror Laboratory of Bioacoustics.

In the event that OSU decides to withdraw the BLB Recordings from the Work, or from consideration for the Work, as applicable, we will provide written notice (“Notice”) to Eduneer. Eduneer will confirm receipt of Notice in the form of written or email communication addressed to the contact information provided below. Upon written confirmation by Eduneer, BLB Recordings will be withdrawn from the Work as of the next update of the Work, but in no event shall Eduneer be required to withdraw these Recordings from the Work in less than thirty days from receipt of Notice. Within thirty days following the quarter in which OSU withdraws the BLB Recordings, Eduneer will pay royalties then owing if the amount is at least \$20.

BY SIGNING BELOW WE REPRESENT AND WARRANT THAT (I) THE UNDERSIGNED'S OR EDUNEER'S PUBLICATION OF OUR RECORDINGS AS AUTHORIZED HEREIN WILL NOT VIOLATE OR INFRINGE ANY COPYRIGHT, TRADEMARK, OR OTHER INTELLECTUAL PROPERTY OR PROPRIETARY RIGHT OF ANY PERSON OR ENTITY, AND (II) WE ARE NOT A PARTY TO AND THE BLB RECORDINGS ARE NOT SUBJECT TO ANY CONTRACT OR ARRANGEMENT WHICH WOULD CONFLICT WITH PERMISSION HEREIN. WE ALSO AGREE TO INDEMNIFY THE UNDERSIGNED AND EDUNEER FROM ANY COSTS, DAMAGES, EXPENSES AND CLAIMS OF ANY TYPES ARISING FROM A BREACH OF THE REPRESENTATIONS AND WARRANTIES MADE IN THIS LETTER AGREEMENT.

This letter agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, excluding its principles of conflict of laws and may not be amended except as otherwise herein provided or in a written document signed by you and the undersigned. Any cause of action arising under this letter agreement shall be deemed to have arisen in Virginia, and the exclusive venue for any matters arising out of this letter agreement or the breach thereof shall be the Circuit Court for the City of Lynchburg or the Federal District Court for the Western District of Virginia, Lynchburg Division. This letter agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. In the event that any one or more of the provisions of this letter agreement is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this letter agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

ACKNOWLEDGED AND AGREED:

The Ohio State University hereby authorizes the use and publication of our Recordings (as described above) in the Work to be utilized and published as described above and I hereby agree to the terms, conditions and representations set forth above.

Borror Laboratory of Bioacoustics, The Ohio State University

Recordist's or Organization's Name (Please print or type name exactly as you would like it to appear in the Work.)

Signature of Recordist or Representative

Address

City, State, Postal Code

Date

William J. Shkurti **Date**
Senior Vice President
Business and Finance
The Ohio State University

Phone/Fax (*not for publication*)

eMail Address (*not for publication*)

(Some recordists use the Work as a means to promote their recording business. If you would like the Work to associate your Recordings with contact information, specify an eMail address and/or a URL. Otherwise, leave the following two lines blank.)

eMail Address (*for publication*)

<http://blb.biosci.ohio-state.edu/>

URL (*for publication*)

(Some recordists prefer not to have their real name appear in the Work. If you would prefer to use a pseudonym, specify the desired pseudonym. If you do not want your real name or a pseudonym to appear in the Work, write 'anonymous' in the following line.)

Recordist's Pseudonym (*if pseudonym or anonymity desired*)

Representative of Eduneer

Title of Representative

Date

