

Vereniging Buma is the performing rights organisation for composers, lyricists and music publishers

## Exploitation Agreement A (author)

Agreement concerning the exploitation and enforcement of musical performing right, as laid down by the Vereniging Buma board on 14 October 1992, last amended by the board on 2 April 2014.

### The undersigned:

Surname: \_\_\_\_\_

First names: \_\_\_\_\_

Place of birth: \_\_\_\_\_

Date of birth: \_\_\_\_\_

Address: \_\_\_\_\_

Postal code: \_\_\_\_\_

Town/city: \_\_\_\_\_

Country: \_\_\_\_\_

Email: \_\_\_\_\_

Nationality: \_\_\_\_\_

Social Security Number: \_\_\_\_\_

Customer number: \_\_\_\_\_

Composer/lyricist, hereinafter to be called the author on the one hand  
*and*  
the Vereniging Buma, with registered office in Amstelveen, and actual offices in Hoofddorp, hereinafter called Buma, on the other hand, have agreed as follows:

## Definitions

### Article 1

For the purposes of this agreement:

- A.** Musical performing right: the rights and/or claims under the law, a convention or a statutory regulation to which the author or his successors in title are entitled, anywhere in the world, with regard to every publication - with the exception of reproductions or the distribution of reproductions - of copyright-protected musical works with or without lyrics, including the performance of dramatic-musical works if rendered without being shown, including the rights specified under points B to F;
- B.** Making available right for non-interactive use: online performing right for non-interactive online use of musical works (excluding simulcasting);
- C.** Making available right for interactive use: online making available right for interactive use of musical works (excluding simulcasting), also including on-demand use (excluding simulcasting);
- D.** Events: the

category of rights used by Buma/Stemra, as described in the 'Specification of exploitation rights' form and the 'Amendment to exploitation rights' form. This category includes performing rights;

- D.** Events: de door Buma/Stemra gehanteerde categorie van rechten zoals omschreven in het formulier Specificatie exploitatie auteursrechten en het Wijzigingsformulier exploitatie auteursrechten. Deze categorie omvat het uitvoeringsrecht;
- E.** RTV and Simulcasting: the bundled group of rights used by Buma/Stemra, as described in the 'Specification of exploitation rights' form and the 'Amendment to exploitation rights' form. This bundle covers the radio broadcasting right, the television broadcasting right, retransmission right and secondary transmission right of performances;
- F.** Background music: the bundled group of rights used by Buma/ Stemra, as described in the 'Specification of exploitation rights' form and the 'Amendment to exploitation rights' form. This bundle comprises the right of public performance of radio broadcast, the right of public performance of television broadcast and the right of public performance of a recording;
- G.** Repertoire: the total number of musical works with regard to which a natural person or legal entity holds either the musical performing right, or a right to payment by virtue of the musical performing right at the moment this agreement is entered into, and all musical works he will create during the term of this agreement or with regard to which he will acquire

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either the musical performing right, or the right to payment by virtue of the musical performing right for the duration of this agreement;

- H. Participant: the participant within the meaning of Buma's Exploitation regulations.

## Assignment

### Article 2

1. The author hereby assigns and transfers to Buma the musical performing right in his repertoire within the meaning of article 1 under points A to G and in the scope as defined in Articles 1 and 20 of this agreement, with the exception of those rights that the author wishes to exclude from being transferred to Buma/ Stemra, as indicated by the author in the 'Specification of exploitation rights' form. This assignment therefore relates to both the existing and the future repertoire of the author. Buma accepts the assignment of the musical performing right as specified in paragraph
2. The musical performing right in the author's existing repertoire is therefore hereby assigned and transferred to Buma. With regard to the author's future repertoire, the musical performing right shall each time be assigned and transferred by operation of law the moment the author has composed a musical work with or without lyrics.
3. As a result of the assignment and transfer as described in paragraphs 1 and 2, the assigned and transferred musical performing right in any musical work belonging to the repertoire shall become part of Buma's assets. Buma has thus acquired the exclusive right, to the exclusion of all other parties, including the author, to exercise or cause the exercise anywhere in the world of the musical performing right assigned and transferred to it.

## Mandate and power of attorney

### Article 3

If and insofar as the future repertoire as referred to in article 2 might not be assignable or transferable in advance, the author hereby grants Buma to the exclusion of any other party including himself, the irrevocable mandate and power of attorney subject to the right of substitution, to exercise the musical performing right in such future repertoire anywhere in the world in its own name. Buma accepts this irrevocable mandate and power of attorney with regard to the future repertoire.

## Exploitation and enforcement

### Article 4

1. Buma shall exploit and enforce the musical performing right in the repertoire, either under its own name or not,

anywhere in the world and shall perform or cause the performance of any and all legal acts relating thereto.<sup>1</sup>

2. Buma shall therefore license or refuse to license the public performance of musical works of the repertoire as well as the public performance of reproductions of those works, determine the conditions for granting such license, be entitled to take legal action against any infringement of the musical performing right, and perform or cause the performance of any and all acts, both judicially and extra judicially, which the author would be entitled to perform in the absence of this agreement.

## Distribution

### Article 5

1. Buma undertakes with due observance of the relevant articles, regulations and decisions lawfully taken by Buma to distribute the revenues it receives to the participants entitled to a share thereof.
2. Complaints concerning distributions made in any year will be accepted at the latest on 31 December of the second year following the calendar year in which the relevant distribution was made. After this period, the author's right to complain with regard to the relevant distribution shall have expired.
3. If Buma has established that a complaint is well-founded, it will only be obliged to pay back the deficit; interest will be paid if notice is given, from the date of notification and no earlier, at the 12-month Euribor rate plus 1.5%. The interest notified shall run from the moment that a claim is substantiated by the rightholder in the manner indicated by Buma, and only from the moment at which, and for the extent to which, Buma has actually received the general or specific licence fee in question. The Board determines annually what information has to be provided and informs the participants of this.
4. Except in the event of wilful intent or gross negligence on the part of Buma itself, it shall never be liable for any form of damage or loss, under any name whatsoever, or for payment of interest other than provided for in paragraph 3.

## Notification of repertoire

### Article 6

1. Upon entering into this agreement, the author undertakes to notify Buma in the manner to be indicated by Buma, of the existing repertoire and always immediately after creating a musical work in the repertoire subsequently to be created during the term of this agreement. He shall furthermore send Buma, at Buma's first request, all documents relating to the aforesaid musical works that Buma requires.
2. Such notification shall entitle the author to distributions with regard to the aforesaid musical works. By means of

<sup>1</sup> Commitment to make a reasonable effort: specified in the Notes to the Exploitation rules of Vereniging Buma.

such notification, the author furthermore confirms the assignment and transfer of the musical performing right in the future musical work as described in article 2.

3. If the author fails to notify Buma of a musical work, he may not claim any payment with regard to the relevant musical work, notwithstanding his obligation yet to notify Buma of the musical work in the manner indicated by Buma, after which he shall become entitled to claim payment.
4. Buma shall be entitled to charge the author any costs to be incurred by Buma as a result of incorrect or incomplete notification of musical works by the author.
5. If the author fails to notify Buma of a musical work or to do so in good time, Buma shall have the right to charge the author any costs it has incurred in obtaining the respective notification after all.

## Warranty obligation

### Article 7

1. The author warrants and guarantees to Buma that he holds the full and unencumbered musical performing right in the repertoire and that he is exclusively authorised to enter into this agreement and to effect the assignment and transfer of the musical performing right in the existing and future repertoire referred to in this agreement. He in particular warrants and guarantees to Buma that the musical performing right in the future repertoire has never previously been assigned, transferred, licensed or otherwise unencumbered to a third party.
2. The author furthermore warrants and guarantees that no part of his repertoire in respect of which Buma exercises or causes the exercise of the musical performing right under this agreement infringes the copyright or any other absolute right of a third party, or involves anything that is otherwise unlawful towards a third party. He agrees to indemnify Buma against any third-party claims in this respect and against the consequences that such claims may have for Buma.
3. The author shall have no right to payment of revenues with regard to musical works that in any way infringe the copyright or any other (absolute) right of a third party.

## Other obligations of the author

### Article 8

1. As a result of the assignment and transfer of the musical performing right as described in article 2, and in relation to the warranty and guarantee obligation of the author as described in article 7, the author shall not be allowed during the term of this agreement to undertake any actions that create the appearance or give the impression that he himself or any party other than Buma exploits and/or enforces the musical performing right in the repertoire covered by the said transfer.
2. The author realises in particular that, as a result of the assignment and transfer as described in article 2, he is

not allowed to assign or transfer the musical performing rights covered by the said transfer to any third party during the term of this agreement.

3. Notwithstanding the provisions of paragraph 1, Buma may in exceptional cases – which are made known by Buma in writing or in a publication issued periodically or by circular letter or by advertisement in a popular national newspaper or by electronic mail or by making available by means of the internet site of Buma or pursuant to a written agreement with the author - give its consent for the author himself to exploit and enforce the musical performing right assigned and transferred to Buma, without prejudice to what is stipulated in article 17.
4. The author who enters into an employment agreement under which he creates musical works in the service of the employer shall be required, on the grounds of a derogation condition provided for in article 7 of the Dutch Copyright Act (Auteurswet) to agree that he himself shall be considered the creator of such works with respect to the music copyright transferred as described in Article 2.
5. For each infringement of a prohibition set forth in paragraphs 1, 2 or 4, the board may impose a penalty on the author of not more than € 2,250, payable to Buma, without prejudice to any other right of claim of Buma, in particular its right to claim full damages.

## Cooperation

### Article 9

1. The author undertakes, if and insofar Buma considers his personal assistance necessary for the implementation of this agreement, to provide such assistance within reason at Buma's first request. To the extent that the author incurs unavoidable costs in providing such assistance, such costs may be compensated by Buma in accordance with reasonable standards.
2. In the event that the author fails to provide assistance, the board may impose a penalty on him of not more than € 2,250, payable to Buma, without prejudice to any other right of claim of Buma, in particular its right to claim full damages.

## Commencement and termination of the agreement

### Article 10

This agreement shall enter into force on the day of signature, unless expressly agreed otherwise. The agreement shall be entered into for an indefinite period of time.

### Article 11

The agreement shall terminate :

- A. upon the author's death: with immediate effect:
- B. upon notice of termination of this agreement given

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by one party to the other. Notice of termination may be given effective from 31 December of any year. Notice of termination must be given in writing, with due observance of a notice period of at least three months.

#### **Article 12**

1. Any failure of a party in the performance of this agreement shall entitle the other party to dissolve this agreement in full or in part by means of a written statement, without any judicial intervention being required, unless the failure does not justify such dissolution, considering its special nature or limited significance.
2. Buma shall furthermore be entitled to give notice of termination of the agreement with immediate effect in writing, stating the reasons of such termination, if Buma cannot reasonably be required to continue its relationship with the author.

#### **Article 13**

1. Buma shall be required, as soon as the exploitation and enforcement of its rights with regard to the repertoire have terminated, to transfer the musical performing right back to the author or his successor(s) in title by means of a legally valid assignment and transfer.
2. If this agreement terminates, in any way whatsoever, the licenses with regard to the repertoire already granted by or on behalf of Buma shall remain effective.

## **Change of (e-mail)address**

#### **Article 14**

1. The author shall immediately inform Buma in writing of any change of his (e-mail)address or in the legal form in which he practices his profession.
2. For any notification to be given by Buma to the author, Buma shall be entitled to consider the address indicated by the author as the actual address until the author gives Buma notice of a change of address.

## **Articles of association and rules**

#### **Article 15**

1. The following rules shall in any event apply and shall be considered part of this agreement:
  - A. the Distribution rules (Repartitiereglement) as referred to in the articles of association
  - B. the Exploitation rules (Exploitiereglement) as referred to in the articles of association
  - C. the Indexation rules (Indexeringsreglement) as referred to in the articles of association
  - D. the Rules on dealing with disputes on plagiarism between participants of Buma and Stemra referred to in the Exploitation rules

2. The author declares to have received the articles of association applicable at the time of signature of this agreement and to have taken note of their contents.
3. Any future amendments to the rules referred to in paragraph 1 that have been adopted by legally valid decision of Buma shall be applicable to and shall be deemed to form an integral part of this agreement.
4. Any future rules that relate to participants and that have been adopted by legally valid decision of Buma shall be applicable to and shall be deemed to form an integral part of this agreement.
5. Buma undertakes to inform the author of any amendments to the rules referred to in paragraph 3, of any new rules referred to in paragraph 4 and of any amendments to the articles of association in the manner as stipulated in article 15a. 6. By signing this agreement the author explicitly declares to accept in advance the future rules as referred to in paragraph 4 and the future amendments to the rules as referred to in paragraph 3.

#### **Article 15a**

Buma undertakes to inform the participants of amendments to the articles of association, the rules and this agreement, and of any new rules, by publication issued periodically by Buma or by circular letter or by advertisement in a popular national newspaper or by electronic mail or by making available by means of the internet site of Buma.

## **Amendment to the agreement**

#### **Article 16**

1. Buma shall furthermore be entitled to amend this agreement unilaterally by legally valid board resolution.
2. Buma undertakes to inform the author of any amendments referred to in paragraph 1 in the manner as stipulated in article 15a.
3. By signing this agreement the author explicitly declares that he accepts in advance the amendments referred to in paragraph 1.

## **Partial withdrawal of rights**

#### **Article 17**

By means of the 'Amendment to exploitation rights' form, the author may partially withdraw rights as defined in Article 1 sub B, C, D, E and/or F that have been transferred to Buma. Amendments are possible as of 31 December of any given year, taking a period of notice of at least three months into account.

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## Assignment

### Article 18

Subject to Buma's explicit written consent, the author shall not be entitled to assign to third parties or to pledge existing or future claims against Buma or to grant third parties any other right with regard to the respective claims.

## Choice of law and competent Court

### Article 19

This agreement shall be governed by Dutch law. Any disputes arising from this agreement or its implementation shall be settled by the competent Court of Amsterdam to the exclusion of all other courts.

## Special provisions

### Article 20

The following territories are excluded from the transfer of performing rights as defined in Article 1:

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Signed in twofold in Hoofddorp:

On:   -   -     (dd-mm-yyyy)

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Author, or if a minor, his legal representative:

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Vereniging Buma:

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### As at 1 January 1987, Article 7 of the Dutch Copyright Act reads as follows:

"If the work performed in the service of another party consists of the creation of specific works of literature, science or art, the person in whose service the works were created shall be regarded as the creator of such works, unless agreed otherwise between the parties."