

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

## Exploitation Agreement NV/BV

This present English text is for information purposes only and is not legally binding. Only the Dutch version of the Exploitation Agreement shall be legally binding.

Exploitation agreement with NV/BV who is the author's successor. Agreement concerning the exploitation and enforcement of musical performing right, as laid down by the Vereniging Buma board on 20 June 2007, last amended by the board on 2 April 2014.

### The undersigned:

Company name:

Established in:

Country:

Registered in the trade register of the Dutch Chamber of Commerce in:

under number:

Dutch BTW-number, if any:

hereinafter called: the company

Represented by the following composer/lyricist who holds at least 90 % of the issued share capital of the above-mentioned company:

Surname:

First names:

Date of birth:

Postal address:

Postal code:

Town/city:

Country:

Email:

Nationality:

Social Security Number:

Customer number:

hereinafter called the author  
*and*

The Vereniging Buma, with registered office in  
Amstelveen, and actual offices in Hoofddorp,  
hereinafter called Buma  
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

Each page of this contract shall be initialed at the bottom by the company, the author and Vereniging Buma.

Company:

Author:

Vereniging Buma:

- 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;
  - 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 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 Exploitations regulations.
  - I.** Company: a 'besloten vennootschap' or 'naamloze vennootschap' with articles of association that determine that the shares are registered, which company is the successor of the author's entire repertoire or of his successor as referred to in article 2 subsection b of the articles of association, which author or successor holds at least ninety percent (90%) of the issued share capital of the company.
  - J.** Author: the author as referred to in article 2 of Buma's articles of association who holds at least 90% of the issued share capital of the company.

## Assignment

### Article 2

1. The company hereby assigns and transfers to Buma the

musical performing right in the company's repertoire within the meaning of article 1 under points A to G and in the scope as defined in Articles 1 and 24 of this agreement, with the exception of those rights that the company wishes to exclude from being transferred to Buma/Stemra, as indicated by the company in the 'Specification of exploitation rights' form. This assignment therefore relates to both the already acquired repertoire and the future repertoire the company shall acquire.

2. Buma accepts the assignment of the musical performing rights as specified in paragraph 1.
3. The musical performing right in the company's existing repertoire is therefore hereby assigned and transferred to Buma. With regard to the company's future repertoire the musical performing right shall each time be assigned and transferred by operation of law the moment the musical performing right of a musical work with or without lyrics has been transferred, whether or not in advance, to the company.
4. As a result of the assignment and transfer as described in paragraphs 1 and 3, 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 company, 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 company hereby grants Buma to the exclusion of any other party including itself, 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

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

Each page of this contract shall be initialed at the bottom by the company, the author and Vereniging Buma.

Company: \_\_\_\_\_

Author: \_\_\_\_\_

Vereniging Buma: \_\_\_\_\_

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 extrajudicially, which the company 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 company'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. The interest rate clause is not applicable to distributions made by sister organisations.
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 company undertakes to notify Buma in the manner to be indicated by Buma, of the existing repertoire and always immediately after acquisition by the company of future repertoire during the term of this agreement. The company 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 company to

distributions with regard to the aforesaid musical works. By means of such notification, the company furthermore confirms the assignment and transfer of the musical performing right in the future musical work as described in article 2.

3. If the company fails to notify Buma of a musical work, it 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 the company shall become entitled to claim payment.
4. Buma shall be entitled to charge the company any costs to be incurred by Buma as a result of incorrect or incomplete notification of musical works by the company.
5. If the company fails to notify Buma of a musical work or to do so in good time, Buma shall have the right to charge to the company any costs it has incurred in obtaining the respective notification after all.

## Warranty obligation

### Article 7

1. The company warrants and guarantees to Buma that it holds the full and unencumbered musical performing right in the repertoire and that the company 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. The company 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 company warrants and guarantees that it has not acquired musical performing right from an author, which the author has assigned and transferred to Buma or is obliged to assign and transfer to Buma.
3. The company furthermore warrants and guarantees that no part of its 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. The company agrees to indemnify Buma against any third-party claims in this respect and against the consequences that such claims may have for Buma.
4. The company 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.

Each page of this contract shall be initialed at the bottom by the company, the author and Vereniging Buma.

Company: \_\_\_\_\_

Author: \_\_\_\_\_

Vereniging Buma: \_\_\_\_\_

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## Other obligations of the company

### 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 company as described in article 7, the company shall not be allowed during the term of this agreement to undertake any actions that create the appearance or give the impression that the company itself or any party other than Buma exploits and/or enforces the musical performing rights in the repertoire covered by the said transfer.
2. The company realises in particular that, as a result of the assignment and transfer as described in article 2, it 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 company - give its consent for the company itself to exploit and enforce the musical performing right assigned and transferred to Buma, without prejudice to what is stipulated in article 17.
4. For each infringement of a prohibition set forth in paragraphs 1, or 2, the board may impose a penalty on the company 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 company undertakes, if and insofar Buma considers the company's 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 company 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 company fails to provide assistance, the board may impose a penalty on the company 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 death of the author given that the author no longer holds at least 90% of the shares, or upon the dissolution of the company, with immediate effect:
- B. upon notice of termination of this agreement given 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. In case of notice of termination on the side of the company, the notice of termination is only valid if it is signed by the author.

### 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. In case of dissolution by the company, the dissolution is valid only if the written statement is signed by the author.
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,
  - A. if the company no longer meets the requirements as referred to in article 1, subsection D and E of this agreement.
  - B. if Buma cannot reasonably be required to continue its relationship with the company.

### 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 company 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.

Each page of this contract shall be initialed at the bottom by the company, the author and Vereniging Buma.

Company: \_\_\_\_\_

Author: \_\_\_\_\_

Vereniging Buma: \_\_\_\_\_

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## Change of (e-mail)address, legal form or share percentage

### Article 14

1. The company or the author respectively is required to immediately inform Buma in writing of any change of legal form, the company's registered address or the home or postal or e-mail address of the author respectively.
2. For any notification to be given by Buma to the company, Buma shall be entitled to consider the address indicated by the company or author respectively as the actual address until the company or author respectively informs Buma of a new address of the company or author respectively.
3. The company or author respectively is required to immediately inform Buma in writing if the company or author respectively no longer meets the requirements of what it means to be a 'company' as referred to in article 1, subsection D, of this agreement (author who holds at least 90 % of the shares, articles of association that determine that the shares are registered, company holds the author's entire repertoire, etc.).

## 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 (Exploitatierglement) 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 company 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 company 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 company and the author explicitly declare 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 company and the author of any amendments referred to in paragraph 1 in the manner as stipulated in
3. By signing this agreement the company and author explicitly declare that they accept 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 company 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.

## Assignment

### Article 18

1. Subject to Buma's explicit written consent, the company 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.
2. Subject to Buma's explicit written consent, the author shall not be entitled to assign to third parties, to pledge or to cede his shares in the company, or to grant third parties any other right with regard to the respective claims.

Each page of this contract shall be initialed at the bottom by the company, the author and Vereniging Buma.

Company: \_\_\_\_\_

Author: \_\_\_\_\_

Vereniging Buma: \_\_\_\_\_

# 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.

## Other provisions

### Article 20

1. The author and the company declare to be aware of the fact that an amendment of an existing legal relationship between author, and publisher(s) and/or other claimants requires the prior consent of the author's relevant other party (parties).
2. If and insofar the author has one or more publishers, the author undertakes to announce his intention to amend the existing legal relationship as referred to in paragraph 1 between the author and his publisher(s) in writing to the relevant publisher.
3. If and insofar the author has one or more publishers, the author and the company declare that the author's publisher(s) have been informed in writing of the intention to enter into this agreement with Buma.
4. The author and the company are required to submit the written announcement as referred to in the previous paragraphs to Buma at the moment this agreement is made.

### Article 21

1. The company declares that the service performed by the company with regard to the musical performing right is taxed with/without [1] VAT.

(initials)

[1] delete where not applicable and initial

2. If the company has declared in paragraph 1 that the service it provides is taxed with VAT the company declares accordingly that VAT should be charged with regard to this contractual obligation.
3. If the company has declared in paragraph 1 that the service it provides is taxed with VAT the company also hereby declares that Buma presents invoices on behalf of the company with regard to the payments by Buma as referred to in article 5. N.B. This does not mean that the company is exempt from its declaration and payment obligations with regard to VAT.

### Article 22

1. The company is required to keep a register of shareholders in which, among other things, information as referred to in article 1 subsection I is entered.
2. The company and the author are required to submit annually to Buma a current report, signed by both company and author, with regard to the information as referred to in article 1 subsection I.

### Article 23

The company grants, partly for the benefit of Buma, the author to the exclusion of any other party including the legal entity itself the irrevocable mandate and power of attorney – without the right of substitution – to perform legal transactions in the name of the company with Buma with regard to the rights and obligations arising from the legal relationship between Buma and the company, especially but not exclusively with regard to:

- the notification of works by the company.
- the company's right to complain.
- the assignment, transfer or pledging of claims or shares or the granting of other rights as referred to in article 18.
- the company's entitlement to give notice of termination or to annul this agreement.
- the company's entitlement to give discharge.
- the company's entitlement to settle with regard to the copyright situation of a work.

The author accepts this irrevocable mandate and power of attorney.

## Special provisions

### Article 24

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

Each page of this contract shall be initialed at the bottom by the company, the author and Vereniging Buma.

Company: \_\_\_\_\_

Author: \_\_\_\_\_

Vereniging Buma: \_\_\_\_\_

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Signed in twofold in Hoofddorp:

On:   -   -     (dd-mm-yyyy)

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Company

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Author

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Vereniging Buma

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