

Stichting Stemra is the mechanical rights organisation for composers, lyricists and music publishers

## Exploitation Agreement EE (several heirs)

Agreement concerning the exploitation and enforcement of mechanical reproduction rights, as laid down by the Stichting Stemra board on 14 October 1992, last amended by the board on 2 April 2014.

### The undersigned:

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

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

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

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

Postal code: \_\_\_\_\_ Town/city: \_\_\_\_\_

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

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

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

Social security number: \_\_\_\_\_

Hereinafter to be called the representative, who, by power of attorney of: \_\_\_\_\_

Appointed representative of: \_\_\_\_\_

Hereinafter to be called the heirs, and as such entitled to the musical performing right in respect of the repertoire created by: \_\_\_\_\_

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

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

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

Date of death: \_\_\_\_\_

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

hereinafter called the author

on the one hand

*and*

Stichting Stemra, with registered office in Amstelveen,

and actual offices in Hoofddorp,

hereinafter called Stemra

on the other hand

have agreed as follows:

sound and/or image carriers of recorded works and/or making available such works to third parties, all this in the broadest sense of the word and irrespective of the manner in which such works are recorded and/or reproduced and/or made available, including the rights specified under B, C and D;

- B.** Online mechanical right for non-interactive use: the mechanical reproduction right for the non-interactive online use of works (not simulcasting);
- C.** Online mechanical right for interactive use (not simulcasting): the mechanical reproduction right for online interactive use of musical works, also including on-demand use (excluding simulcasting);
- D.** Mechanical: 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 mechanical right, the synchronisation right, the database right, the right to claim a blank tape remuneration and the rental and lending rights.

## Definitions

### Article 1

For the purposes of this agreement:

- A.** Mechanical reproduction rights: 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 the recording of copyrighted works on sound and/or image carriers and/or the reproduction or causing of the reproduction on

- E. Repertoire: the total number of works with regard to which a natural person or legal entity holds either the mechanical reproduction rights or a right to payment by virtue of the mechanical reproduction rights at the moment this agreement is entered into, and all works he will create during the term of this agreement or with regard to which he will acquire either the mechanical reproduction rights or the right to payment by virtue of the mechanical reproduction rights for the duration of this agreement;
- F. Participant: the participant within the meaning of Stemra's Exploitation regulations.

## Assignment

### Article 2

1. The representative hereby assigns and transfers on behalf of the heirs to Stemra the mechanical reproduction rights in the author's repertoire within the meaning of Article 1 A to E and in the scope as defined in Articles 1 and 19 of this agreement, with the exception of those rights that the representative wishes to exclude from being transferred to Stemra, as indicated by the representative in the 'Specification of exploitation rights' form. Stemra accepts this assignment and transfer of the mechanical reproduction rights.
2. The mechanical reproduction rights in the author's repertoire are therefore hereby assigned and transferred to Stemra.
3. As a result of the assignment and transfer as described in paragraphs 1 and 2, the assigned and transferred mechanical reproduction rights in any work belonging to the repertoire shall become part of Stemra's assets. Stemra has thus acquired the exclusive right, to the exclusion of all other parties, including the heirs and their representative, to exercise or cause the exercise anywhere in the world of the mechanical reproduction rights assigned and transferred to it.

## Exploitation and enforcement

### Article 3

1. Stemra shall exploit and enforce the mechanical reproduction rights 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. Stemra shall therefore grant or refuse a license to record and distribute works of the repertoire on sound and/or image carriers, determine the conditions for granting such license, be entitled to take legal action against any infringement of the mechanical reproduction rights, and perform or cause the performance of any and all acts, both judicially and extrajudicially, which the heirs, the representative or one or more of these, would be entitled to perform in the absence of this agreement.

## Distribution

### Article 4

1. Stemra undertakes with due observance of the relevant articles, regulations and decisions lawfully taken by Stemra to distribute the revenues it receives to the participants entitled to a share thereof.
2. The representative affirms that the heirs have granted him the exclusive power to receive the monies accruing to them and that in making the payment to the representative Stemra has fulfilled all its obligations towards each of them.
3. 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 representative's right to complain with regard to the relevant distribution shall have expired.
4. If Stemra 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 Stemra, and only from the moment at which, and for the extent to which, Stemra 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.
5. Except in the event of wilful intent or gross negligence on the part of Stemra 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 4.

## Notification of repertoire

### Article 5

1. Upon entering into this agreement, the representative on his own account as well as on behalf of the heirs undertakes to notify Stemra of works belonging to the author's repertoire in the manner to be indicated by Stemra, in so far as this notification has not already taken place. The representative shall furthermore send Stemra, at Stemra's first request, all documents relating to the aforesaid works that Stemra requires.
2. Such notification shall entitle the representative to distributions with regard to the aforesaid works. By means of such notification, the representative furthermore confirms the assignment and transfer of the mechanical reproduction rights in any work created by the author but not yet notified, as described in article 2.
3. If the representative fails to notify Stemra of a work, he may not claim any payment with regard to the relevant work, notwithstanding his obligation yet to notify

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

- Stemra of the work in the manner indicated by Stemra, after which he shall become entitled to claim payment.
4. Stemra shall be entitled to charge the representative any costs to be incurred by Stemra as a result of incorrect or incomplete notification of works by the representative.
  5. If the representative fails to notify Stemra of a work or to do so in good time, Stemra shall have the right to charge the representative any costs it has incurred in obtaining the respective notification after all.

## Warranty obligation

### Article 6

1. The representative acting on behalf of the heirs warrants and guarantees to Stemra that the heirs hold the full and unencumbered mechanical reproduction rights in the repertoire and that they are exclusively authorised to enter into this agreement and to effect the assignment and transfer of the mechanical reproduction rights in the repertoire referred to in this agreement.
2. The representative in his capacity furthermore warrants and guarantees that no part of the author's repertoire in respect of which Stemra exercises or causes the exercise of the mechanical reproduction rights 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 Stemra against any third-party claims in this respect and against the consequences that such claims may have for Stemra.
3. No claim and no right to payment of revenues shall arise with regard to works that in any way infringe the copyright or any other (absolute) right of a third party.

## Other obligations of the representative and the heirs

### Article 7

1. As a result of the assignment and transfer of the mechanical reproduction rights as described in article 2, and in relation to the warranty and guarantee obligation of the heirs as described in article 6, neither the representative nor the heirs shall be allowed during the term of this agreement to undertake any actions that create the appearance or give the impression that they or any party other than Stemra exploits and/or enforces the mechanical reproduction rights in the repertoire covered by the said transfer.
2. They realise in particular that, as a result of the assignment and transfer as described in article 2, they are not allowed to assign or transfer the mechanical reproduction rights covered by the said transfer to any third party during the term of this agreement.
3. Notwithstanding the provisions of paragraph 1, Stemra may in exceptional cases – which are made known by Stemra 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 Stemra or pursuant to a written agreement with the representative – give its consent for the heirs themselves to exploit and enforce the mechanical reproduction rights assigned and transferred to Stemra, without prejudice to what is stipulated in article 16.

4. For each infringement of a prohibition set forth in paragraphs 1 or 2, the board may impose a penalty of not more than € 2,250, payable to Stemra, without prejudice to any other right of claim of Stemra, in particular its right to claim full damages.

## Cooperation

### Article 8

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

## Commencement and termination of the agreement

### Article 9

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 10

The agreement shall terminate:

- A. upon the death of an heir: with immediate effect. The heirs or their successor in title may nevertheless immediately re-appoint a representative who will enter into an agreement with Stemra;
- 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.

### Article 11

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. Stemra shall furthermore be entitled to give notice of termination of the agreement with immediate effect in writing, stating the reasons of such termination, if Stemra cannot reasonably be required to continue its relationship with the representative.

#### **Article 12**

1. Stemra shall be required, as soon as the exploitation and enforcement of its rights with regard to the repertoire have terminated, to transfer the mechanical reproduction rights back to the heirs or their 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 Stemra shall remain effective.

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

#### **Article 13**

1. The representative shall immediately inform Stemra 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 Stemra to the representative and heirs, Stemra shall be entitled to consider the address indicated by the representative as the actual address until the heirs or their representative give Stemra notice of a change of address.

## **Articles of association and rules**

#### **Article 14**

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 representative on his own account as well as on behalf of the heirs 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 Stemra 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 Stemra shall be applicable to and shall be deemed to

form an integral part of this agreement.

5. Stemra undertakes to inform the representative 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 14a.
6. By signing this agreement the representative explicitly declares on his own account and behalf of the heirs 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 14a**

Stemra 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 Stemra 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 Stemra.

## **Amendment to the agreement**

#### **Article 15**

1. Stemra shall furthermore be entitled to amend this agreement unilaterally by legally valid board resolution.
2. Stemra undertakes to inform the representative of any amendments referred to in paragraph 1 in the manner as stipulated in article 14a.
3. By signing this agreement the representative explicitly declares on his own account and on behalf of the heirs that they accept in advance the amendments referred to in paragraph 1.

## **Partial withdrawal of rights**

#### **Article 16**

By means of the 'Amendment to exploitation rights' form, the representative may partially withdraw rights as defined in Article 1 sub B, C, and/or D that have been transferred to Stemra. 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 17**

Subject to Stemra's explicit written consent, neither the representative nor the heirs shall be entitled to assign to third parties or to pledge existing or future claims against Stemra or to grant third parties any other right with regard to the respective claims.

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## Choice of law and competent Court

### Article 18

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 19

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

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Signed in twofold in Hoofddorp:

On:   -   -     (dd-mm-yyyy)

Representative:

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Stichting Stemra:

## Power of attorney

1. The undersigned who grant the power of attorney and who, in accordance with the appended inheritance declaration, are the sole heirs of:

On:   -   -     (dd-mm-yyyy)

hereby appoint as their representative and give power of attorney to:

domiciled at:

to act on their behalf towards Stemra in the widest sense, to uphold their interests, and to receive and distribute payments.

2. The person thus appointed is fully entitled to hold on behalf of the undersigned the legator's full mechanical reproduction rights, for which purpose he/she shall be entitled to assign and transfer this right on their behalf to Stemra and to enter on their behalf into the obligations arising from Stemra's exploitation agreement.

Hoofddorp:   -   -     (dd-mm-yyyy)

1)

2)

3)