

Stichting Stemra is the mechanical 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 mechanical reproduction rights, as laid down by the Stichting Stemra 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 Stichting Stemra, with registered office in Amstelveen, and actual offices in Hoofddorp, hereinafter called Stemra have agreed as follows:

## 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 sound and/or image carriers of recorded works and/

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

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

Stichting Stemra: \_\_\_\_\_

- 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.
  - 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.
  - G.** 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.
  - H.** Author: the author as referred to in article 2 of Stemra'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 Stemra the mechanical reproduction rights in the company's repertoire within the meaning of article 1 under 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 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. Stemra accepts the assignment of the mechanical reproduction rights as specified in paragraph 1.
3. The mechanical reproduction rights in the company's existing repertoire are therefore hereby assigned and transferred to Stemra. With regard to the company's future repertoire the mechanical reproduction rights shall each time be assigned and transferred by operation of law the moment the mechanical reproduction rights of a work have 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 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 company, to exercise or cause the exercise anywhere in the world of the mechanical reproduction rights 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 Stemra 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 mechanical reproduction rights in such future repertoire anywhere in the world in its own name. Stemra accepts this irrevocable mandate and power of attorney with regard to the future repertoire.

## Exploitation and enforcement

### Article 4

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 company would be entitled to perform in the absence of this agreement.

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

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

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

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

Stichting Stemra: \_\_\_\_\_

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## Distribution

### Article 5

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. 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 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.
4. 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 3.

## Notification of repertoire

### Article 6

1. Upon entering into this agreement, the company undertakes to notify Stemra in the manner to be indicated by Stemra, 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 Stemra, at Stemra's first request, all documents relating to the aforesaid works that Stemra requires.
2. Such notification shall entitle the company to distributions with regard to the aforesaid works. By means of such notification, the company furthermore confirms the assignment and transfer of the mechanical reproduction rights in the future work as described in article 2.
3. If the company fails to notify Stemra of a work, it may not claim any payment with regard to the relevant work, notwithstanding his obligation yet to notify Stemra of the work in the manner indicated by Stemra, after which the company shall become entitled to claim payment.
4. Stemra shall be entitled to charge the company any

costs to be incurred by Stemra as a result of incorrect or incomplete notification of works by the company.

5. If the company fails to notify Stemra of a work or to do so in good time, Stemra shall have the right to charge 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 Stemra that it holds the full and unencumbered mechanical reproduction rights in the repertoire and that the company is exclusively authorised to enter into this agreement and to effect the assignment and transfer of the mechanical reproduction rights in the existing and future repertoire referred to in this agreement.
2. The company in particular warrants and guarantees to Stemra that the mechanical reproduction rights in the future repertoire have never previously been assigned, transferred, licensed or otherwise unencumbered to a third party.
3. The company warrants and guarantees that it has not acquired mechanical reproduction rights from an author, which the author has assigned and transferred to Stemra or is obliged to assign and transfer to Stemra. The company furthermore warrants and guarantees that no part of its 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. The company agrees to indemnify Stemra against any third-party claims in this respect and against the consequences that such claims may have for Stemra.
4. The company shall have no right to payment of revenues with regard to works that in any way infringe the copyright or any other (absolute) right of a third party.

## Other obligations of the company

### Article 8

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 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 Stemra exploits and/or enforces the mechanical reproduction rights in the repertoire covered by the said transfer.

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

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

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

Stichting Stemra: \_\_\_\_\_

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 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 company - give its consent for the company itself to exploit and enforce the mechanical reproduction rights assigned and transferred to Stemra, 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 Stemra, without prejudice to any other right of claim of Stemra, in particular its right to claim full damages.

## Cooperation

### Article 9

1. The company undertakes, if and insofar Stemra considers the company's personal assistance necessary for the implementation of this agreement, to provide such assistance within reason at Stemra's first request. To the extent that the company incurs unavoidable costs in providing such assistance, such costs may be compensated by Stemra 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 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 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. Stemra shall furthermore be entitled to give notice of termination of the agreement with immediate effect in writing, stating the reasons of such termination,
3. If the company no longer meets the requirements as referred to in article 1, subsection D and E of this agreement.
4. If Stemra cannot reasonably be required to continue its relationship with the company.

### Article 13

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 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 Stemra shall remain effective.

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

### Article 14

1. The company or the author respectively is required to immediately inform Stemra 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 Stemra to the company, Stemra 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 Stemra of a new address of the company or author respectively.
3. The company or author respectively is required to

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

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

Stichting Stemra: \_\_\_\_\_

immediately inform Stemra 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 (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 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 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 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

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 16

1. Stemra shall furthermore be entitled to amend this agreement unilaterally by legally valid board resolution.
2. Stemra undertakes to inform the company and the author of any amendments referred to in paragraph 1 in the manner as stipulated in article 15a.
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, 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 18

1. Subject to Stemra's explicit written consent, the company shall not 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.
2. Subject to Stemra'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.

## 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

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

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

Stichting Stemra: \_\_\_\_\_

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 Stemra.
4. The author and the company are required to submit the written announcement as referred to in the previous paragraphs to Stemra at the moment this agreement is made.

#### Article 21

1. The company declares that the service performed by the company with regard to the mechanical reproduction rights 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 Stemra presents invoices on behalf of the company with regard to the payments by Stemra 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 G is entered.
2. The company and the author are required to submit annually to Stemra a current report, signed by both

company and author, with regard to the information as referred to in article 1 subsection G.

#### Article 23

The company grants, partly for the benefit of Stemra, 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 Stemra with regard to the rights and obligations arising from the legal relationship between Stemra 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 mechanical reproduction rights as defined in Article 1:

Signed in twofold in Hoofddorp:

On:   -   -     (dd-mm-yyyy)

1. Company

2. Author

Stichting Stemra: