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*Gesellschaft für Leistungsschutzrechte*

*Société pour les droits voisins*

*Società per i diritti di protezione affini*

*Societad per ils dretgs vischins*

# ***General Terms for the Administration of Rights of Phonogram and/or Videogram Producers***

***Version of December 3, 2018***

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*These General Terms for the Administration of Rights govern the legal relationship between SWISSPERFORM and its Members who at the same time are its principals with regard to the administration of rights (hereinafter referred to as the "Member/Members"). In their version current at the time the Agreement is concluded, the General Terms for the Administration of Rights form an integral part of the Membership and Rights Administration Agreement concluded between the individual Members and SWISSPERFORM (hereinafter referred to as the "Agreement").*

### **1. Purpose of the Agreement**

*Under the Agreement, the individual Member authorizes SWISSPERFORM to administer the existing and future neighboring rights or claims to remuneration (hereinafter referred to as "Rights") that he/she is entitled to as a producer pursuant to the provisions of the Swiss Federal Law on Copyright and Neighboring Rights (URG), and that are managed by a collecting society or otherwise collectively administered.*

*To the extent necessary, the Member assigns the Rights listed in section 4 of the Agreement to SWISSPERFORM and entrusts SWISSPERFORM with the collection of the relevant remuneration from the users. SWISSPERFORM will exercise these Rights itself or via other Swiss or foreign collecting organizations, companies or associations (hereinafter referred to as the "Sister Society/Societies"). For this purpose, it may conclude reciprocal, one-sided and other cooperation agreements (hereinafter referred to as "Reciprocal Agreements") and thus further assign the Rights assigned to it. SWISSPERFORM does not commercially utilize the Rights assigned to it.*

*SWISSPERFORM does not generate profits.*

### **2. Performances covered by the administration of Rights**

*The Agreement covers all recordings fixed on a phonogram and/or video-gram on which the Member participates as a producer during the term of*

*the Agreement (both on his/her own and together with other producers; hereinafter referred to as "Performances").*

*Any Performances rendered before the Member has signed the Agreement (alone or together with others) are also covered by the Agreement, unless the Member has already assigned Rights arising from these Performances to a third party, and they are not subject to mandatory administration by a collecting society. Any previously assigned Rights that are returned to the Member will also fall under the Agreement, i.e. they will automatically be assigned to SWISSPERFORM.*

*For the duration of the Agreement, no Performances can be excluded from the Agreement, unless the applicable law does not subject the Rights arising from these Performances to the mandatory administration of a collecting society. The option to restrict the assignment to certain territories pursuant to section 4.2 of these General Terms for the Administration of Rights remains reserved.*

### ***3. Neighboring rights and claims to remuneration assigned for administration***

#### ***3.1 Scope of the Administration of Rights***

*The Member assigns the Rights listed in section 4 of the Agreement to SWISSPERFORM and entrusts SWISSPERFORM with their administration worldwide pursuant to the statutes and regulations and the Agreement. SWISSPERFORM accepts this assignment.*

#### ***3.2 Scope of the assignment***

*SWISSPERFORM shall be entitled to undertake whatever is necessary to exercise the assigned Rights. In particular, it shall be entitled to act in its own name in or out of court in order to enforce Rights, make claims for compensation and reach settlements. It is entitled to assign these Rights*

*or individual powers resulting thereof to a Sister Society in Switzerland or abroad for administration purposes.*

### **3.3 Nature of Rights administration**

*The assignment of the Rights listed in section 4 of the Agreement and SWISSPERFORM's obligations with regard to exercising the Rights are restricted to a collective administration of Rights. They do not oblige SWISSPERFORM to exercise any Rights for an individual case.*

*SWISSPERFORM is required to manage its business in accordance with the principles of sound financial management. Its aim is to administer the Rights assigned to it as comprehensively as possible.*

*In principle, however, the licensing and collection of remuneration can only be effected on the basis of the notifications and information provided by the users themselves. For cost reasons, SWISSPERFORM cannot guarantee comprehensive market coverage and/or enforcement of Rights.*

## **4. Territorial scope of the Agreement**

### **4.1 Administration of Rights in Switzerland and Liechtenstein**

*The assignment of Rights as listed in section 4 of the Agreement covers Switzerland and Liechtenstein (to the extent provided for in Liechtenstein, and a decision to that effect has been passed by the Board of Directors of SWISSPERFORM), and all other countries worldwide in which SWISSPERFORM has concluded Reciprocal Agreements with relevant Sister Societies.*

*In this context, the Member also entrusts SWISSPERFORM with administering the Rights which the Member is entitled to in Switzerland and abroad and which are administered by a Sister Society, and he/she assigns the Rights listed in section 4 of the Agreement which he/she is entitled to in Switzerland and abroad to SWISSPERFORM.*

*The Member acknowledges the rules established between SWISSPERFORM and any Sister Society which exclude multiple memberships with different*

*collecting organizations for the administration of the same Rights in the same territory. The Member shall be obliged to terminate any potentially colliding memberships with Sister Societies upon first notice by SWISSPERFORM or, if possible, amend the Agreement with SWISSPERFORM and the Rights administration agreements with the relevant Sister Societies by including country-specific restrictions.*

#### **4.2 Possible territorial restriction**

*The Member has three options at his/her disposal for applying territorial restrictions to his/her assignment of the Rights listed in section 4 of the Agreement and to the actual administration mandate. The first option ("Worldwide minus") allows the Member to exclude individual countries in the assignment agreement. The second option ("Regional plus") allows the Member to assign the Rights only in Switzerland, Liechtenstein and additional countries of his/her choice. The third option ("Regional") allows the Member to restrict his/her assignment of Rights to Switzerland and Liechtenstein.*

*Restricting the assignment of Rights using one of the above options results in SWISSPERFORM neither being authorized nor instructed to administer the Member's Rights via its Sister Societies in the countries this restriction applies to. As a consequence, the Member is also not entitled to any higher remuneration that may arise due to compensation of foreign uses based on so-called non-exchange agreements with Sister Societies abroad.*

*If the Member chooses to assign his/her Rights with territorial restrictions as set out above, he/she must declare this intention in section 5 of the Agreement. This declaration can be modified subsequently in writing, subject to a period of 6 months in order for the modification to become effective as of the beginning of any calendar year.*

*If no declaration is made in section 5 of the Agreement or the information provided by the Member is unclear or contradictory, it is assumed that the*

*Rights assignment is intended worldwide (according to section 4.1 of these General Terms for the Administration of Rights).*

*The Member is aware that the recording processes for any country-specific exceptions (i.e. the first and second of the territorial restriction options) are still being developed for SWISSPERFORM's databases and that the full implementation of these restriction options will take some time. SWISSPERFORM does not assume any liability for losses the Member might suffer from an incomplete implementation of country-specific exceptions.*

#### **4.3 Administration of Rights abroad**

*SWISSPERFORM also administers the Member's Rights as listed in section 4 of the Agreement abroad, insofar as corresponding rights are also recognized by law and collectively administered in the relevant county and insofar as a Reciprocal Agreement exists with the responsible Sister Society.*

*SWISSPERFORM, in cooperation with its Sister Societies, aims at administering the Rights listed in section 4 of the Agreement and assigned to it as comprehensively as possible. SWISSPERFORM will notify the relevant Sister Societies of any uses that come to its attention.*

*The administration of Rights through Sister Societies abroad is subject to the relevant national legal provisions, tariffs, distribution rules and agreements. Every Sister Society determines its procedures individually. Therefore, SWISSPERFORM cannot guarantee comprehensive administration of the Member's Rights. SWISSPERFORM is not obliged to fulfill its administration obligations abroad.*

*Should several Sister Societies be active in an individual country, SWISSPERFORM will conclude one or several Reciprocal Agreements with the Sister Society or Societies of its choice.*

*SWISSPERFORM only administers neighboring rights abroad insofar as the Member has the rights from a territorial and temporal aspect and informs SWISSPERFORM accordingly.*

## **5. Liability of SWISSPERFORM**

*SWISSPERFORM shall be liable for the accurate and diligent execution of the obligations arising from the Agreement. This liability is limited to damages caused by intention or gross negligence. SWISSPERFORM shall not be liable for any unjustified or incomplete payments to the Member if they have been made on the basis of the Member's not obviously false statements.*

*With regard to any acts/omissions by Sister Societies with which SWISSPERFORM has concluded a Reciprocal Agreement for the administration of its Members' Rights, SWISSPERFORM shall be liable according to the substitution rules pursuant to Art. 399 para. 2 of the Swiss Code of Obligations. In particular, SWISSPERFORM shall not be liable for any insolvency of Swiss or foreign Sister Societies representing SWISSPERFORM in the administration of its Members' Rights.*

## **6. Claims against SWISSPERFORM**

*The Member's claims against SWISSPERFORM can only be assigned and pledged upon SWISSPERFORM'S written consent.*

## **7. Electronic communication**

### **7.1 General information**

*Increasingly, SWISSPERFORM will be using electronic means (e-mail, online services, etc.) for communicating with the Member and performing its services. It is entitled to fully replace the previous mode of communication and exchange of information via postal services with electronic means.*



## **7.2 Communication via e-mail**

*Once the Member has provided SWISSPERFORM with an e-mail address, the Member and SWISSPERFORM are authorized to communicate via e-mail. SWISSPERFORM is entitled to send all notifications and documents via e-mail instead of using postal services.*

## **8. Information concerning the Right holder, Performances and data protection**

### **8.1 General information**

*The Member shall be obliged to supply SWISSPERFORM with the information required for the purposes of determining and administering his or her Rights and provide all relevant documents. The same applies to the information and documentation required for the purposes of distribution.*

*The Member undertakes to inform SWISSPERFORM immediately of any changes to his/her address, phone no., e-mail address, payment details, VAT no. etc. The dispatch of statements of account and other correspondence to the address last provided by the Member (postal or electronic address) is considered to have been effected regardless of whether such address is in fact current or not.*

*Should the Member fail to provide a valid address, SWISSPERFORM is entitled to suspend membership pursuant to Art. 5a of the statutes. This means that SWISSPERFORM's obligation to send out statements of account and other correspondence and to disburse any allocated proceeds to the Member is also suspended. SWISSPERFORM is not obliged to search for a valid postal/e-mail address or valid payment details.*

*The Member may authorize a third party to request and collect the allocated proceeds from SWISSPERFORM. In this case the Member shall be obliged to provide SWISSPERFORM with all information of this party entitled to collect that is necessary for the distribution. SWISSPERFORM shall*

*only accept a party entitled to collect as a recipient of payments if said party acts as a direct representative of the respective Member.*

*SWISSPERFORM assumes that the Member is the beneficial owner of all proceeds paid to him/her and that this will be taxed accordingly. If the Member is not or only a partial beneficial owner, or the tax authorities require information on the beneficial owner or the proceeds paid out, the Member shall be obliged to provide SWISSPERFORM upon its notification with all necessary information.*

*Upon the death of the Member, the legal successors must designate a representative and inform SWISSPERFORM of this accordingly. If no legal successors are known or no representative is designated, or the distribution of the estate has not been executed definitively, SWISSPERFORM's obligation to send out statements of account and other correspondence and to pay out allocated proceeds is suspended.*

## **8.2 Registering the Performances**

*The Member shall be obliged to register with SWISSPERFORM all phonograms and videograms to which it holds the rights for producers as listed in section 4 of the Agreement.*

*The Member acknowledges potential provisions in the distribution regulations governing that, if Right holders have not documented or claimed those Rights by the deadline stipulated in the distribution regulations, their entitlement cannot or only partially be considered for the distribution. Such regulations may also limit the Member's Rights to retroactive participation on uses that took place before his/her membership with SWISSPERFORM.*

*Registration by the Phonogram Producers has to be done with SWISSPERFORM. The following deadlines apply for registering Performances on phonograms:*

- *for all Performances that were recorded before the Agreement was signed: within three months after signing the Agreement.*
- *for all Performances that are recorded on phonograms during the term of the Agreement: within one month after recording the Performance.*

*Registration by the Videogram Producers has to be done with SUISSIMAGE, the Swiss authors' rights cooperative for audiovisual works, according to its regulations.*

### **8.3 Use of information (data protection)**

*SWISSPERFORM is entitled to process all information about the Member and his/her Performances (hereinafter referred to as "Data") provided this is necessary for the administration and management of the Member's Rights, for combating piracy and for scientific purposes.*

*In this context of Data processing, the Member agrees to SWISSPERFORM*

- *keeping a hard-copy and/or electronic file about the Member;*
- *entering the Data in one or more databases;*
- *passing the Data on to its employees, its Swiss and foreign Sister Societies and other trustworthy organizations in Switzerland and abroad who document Rights, within the scope of agreements intended to fulfill the above-mentioned purposes;*
- *passing the Data on to third parties within the scope of agreements intended to fulfill the above-mentioned purposes also in countries in which adequate data protection that is comparable to Swiss law cannot be guaranteed. However, when transmitting Data to other countries, SWISSPERFORM will always ensure to the extent possible that it complies with applicable laws and regulations, for example by concluding agreements that ensure that the recipients of the Data maintain an adequate level of data protection.*

*Subject to a different, explicit set of instructions that must be in writing, SWISSPERFORM is also entitled to make the Member's Data available to the other Swiss collecting societies and associations of that particular sector in order to be able to compare and update membership Data.*

*Furthermore, SWISSPERFORM is entitled to pass the Member's Data on to governments and governmental offices, to supervisory authorities and other persons, in compliance with applicable provisions, instructions, summons, requests by the authorities or similar procedures, to the extent stipulated or permitted by the law.*

*Even if none of the purposes stated in section 1 is given, SWISSPERFORM is still entitled to make the Performances and relevant right holders entered in SWISSPERFORM's databases (however, not the revenues resulting from the Performances) publicly available in Switzerland and abroad.*

*SWISSPERFORM uses technical and organizational measures to protect the Data against unauthorized processing.*

*The Member is entitled to request, at any time, that SWISSPERFORM discloses what Data concerning that particular Member it keeps in its databases, and that any errors be corrected.*

## **9. Distribution and statements of account**

### **9.1 Distribution of the proceeds**

*The Member acknowledges that SWISSPERFORM is obliged to draw up distribution regulations governing the distribution of the remuneration collected by SWISSPERFORM, subject to the approval of the supervisory authority - the Swiss Federal Institute of Intellectual Property (IGE) - and that it must carry out the distribution according to these regulations. Furthermore, the Member acknowledges that SWISSPERFORM is obliged to cover its administrative costs with the proceeds and to use part of the proceeds in line with the procedures for cultural and social purposes as*

*well as for combating piracy, as laid down in the statutes and the distribution regulations. The distribution regulations valid at the time of the statement of account apply.*

*The Member also acknowledges that SWISSPERFORM may transfer certain distribution-related tasks to an appropriate organization (hereinafter referred to as the "Mandated Organization") to the extent permitted in the distribution regulations.*

*The Member also acknowledges that the distribution regulations can be amended any time. All amendments to the distribution regulations and - for changes subject to approval - the relevant approval decisions by the supervisory authority, the IGE, will be published in the Swiss Official Gazette of Commerce (SOGC). An approval decision by the IGE can be appealed against within 30 days of the relevant publication in the SOGC. The amendments to the distribution regulations will be published on SWISSPERFORM's website.*

## **9.2 Statements of account**

*SWISSPERFORM or the Mandated Organization, respectively, is obliged to provide the Member with a statement summing up all of his/her revenues at least once a year, according to its own distribution regulations or that of the Sister Society.*

*All statements are sent to the (postal or electronic) address last provided by the Member. If SWISSPERFORM does not have a valid address to send the statement to, the provisions of section 8.1 para. 2 and 3 of these General Terms for the Administration of Rights apply.*

## **10. Duties to be paid to the government (taxes, social insurance and similar)**

*SWISSPERFORM is entitled to deduct from the allocated proceeds any taxes or other duties owed under Swiss or foreign law or international agreements.*

*Upon conclusion of the Agreement the Member shall inform SWISSPERFORM whether or not it is subject to VAT.*

*If the VAT status of the Member changes, the Member shall inform SWISSPERFORM without delay.*

*The taxable Members shall receive the allocated proceeds including the VAT owed by the Member so that the net proceeds remain with the Member.*

*With regard to the payment of the allocated proceeds the Member shall issue an invoice addressed to SWISSPERFORM stating the VAT owed, if applicable. SWISSPERFORM shall issue the invoice in the name of the Member so that the dispatch of the invoice to SWISSPERFORM is unnecessary.*

*If the Member is not yet registered with SWISSPERFORM as being subject to VAT, the Member shall be obliged to notify SWISSPERFORM of its tax liability 7 days prior to the distribution of the allocated proceeds at the latest (to be received by SWISSPERFORM). If the notification has not been received in due time, the Member will lose its entitlement to the addition of the VAT for the respective payment. SWISSPERFORM shall announce the payment of the allocated proceeds at least 14 days prior to the payment (to be dispatched by SWISSPERFORM).*

*If the Member is registered with SWISSPERFORM as being subject to VAT, the notification that the Member is no longer subject to VAT must be received by SWISSPERFORM 7 days prior to the payment of the allocated proceeds. If the notification is not received in due time, the payment of the allocated proceeds will be made including VAT and the amount of the VAT will be stated in the invoice of the Member. The Member is not entitled to a correction of the invoice. SWISSPERFORM shall announce the payment of the allocated proceeds at least 14 days prior to the payment (to be dispatched by SWISSPERFORM). The Member whose notification was late*

*takes note that tax liability of the Member arises if the VAT is stated on the invoice issued by SWISSPERFORM in the name of the Member.*

*Should the notification of a Member that it is subject to VAT not be accurate, the Member providing the inaccurate notification takes note that tax liability of the Member arises if the VAT is stated on the invoice issued by SWISSPERFORM in the name of the Member. SWISSPERFORM is not obliged to agree to a correction of the invoice of a Member.*

*Should the notification of a Member that it is not (or no longer) subject to VAT not be accurate, the Member still loses its right to addition of the VAT if the payment based on the inaccurate notification has already been made.*

*Should SWISSPERFORM agree to a correction of an invoice, the Member shall be obliged to reimburse the sum received as addition of the VAT (plus 10% interest p.a. as of the receipt of payment, plus VAT on the interest).*

*SWISSPERFORM reserves the right to only reimburse VAT to the Member if the Swiss Federal Tax Administration confirms before every payment that the Member is in fact subject to VAT.*

*The Member shall be obliged to settle VAT with the tax administration itself.*

*The Member shall be obliged to indemnify SWISSPERFORM if SWISSPERFORM suffers any additional loss due to an inaccurate or late notification regarding VAT.*

*The Member shall be responsible for disclosing all allocated proceeds to the tax administration and social insurance organizations (OASI, DI, UI, etc.).*

*The provisions of this paragraph shall also apply if a Member authorizes a third party to request and collect its allocated proceeds from SWISSPERFORM (see section 8.1 para. 4 of these General Terms for the Administration of Rights). The Member shall be responsible that the party authorized*

*to collect makes correct notifications and meets all deadlines. False notifications and the failure to meet deadlines shall be attributed to the Member.*

*If a Member is represented by a party authorized to collect it will mention on its invoice that payment shall be made to a party authorized to collect. The invoice shall contain detailed information regarding the party authorized to collect and regarding the rights holder.*

*The forms of SWISSPERFORM shall be used for all notifications and declarations according to this paragraph. Notifications and declarations provided in any other way shall be deemed not received.*

*SWISSPERFORM shall be entitled to contract a third party to perform its obligations according to this paragraph.*

## **11. Complaints**

*Complaints, for example concerning one of SWISSPERFORM's or the Mandated Organization's statements of account, must be submitted in writing to SWISSPERFORM or the Mandated Organization, respectively, within 60 days of dispatch of the statement unless the distribution regulations provide for longer periods. Otherwise, the contents of the communication are considered to be approved.*

## **12. Membership with SWISSPERFORM**

*The Member is accepted as a voting and electing Member of the rightsholder group indicated in the Agreement as soon as he/she meets the criteria stipulated in the applicable statutes of SWISSPERFORM. If the Member chooses a rightsholder group that is evidently wrong, SWISSPERFORM will reallocate the Member to an appropriate rightsholder group pursuant to Art. 4a of the statutes.*



### **13. Additional rules**

*The Member acknowledges to be bound by the statutes and regulations of SWISSPERFORM in their respective applicable version. SWISSPERFORM's updated statutes and regulations are accessible on its website and thus binding for the Member.*

### **14. Entry into force and termination of the Agreement**

#### **14.1 Entry into force**

*The Agreement enters into force when signed by both parties. It is for an indefinite period.*

*The Agreement replaces all previous agreements between the parties.*

#### **14.2 Termination**

*The Agreement can be terminated with a notice period of six months to the end of a calendar year.*

*Members that do not within 60 days of SWISSPERFORM's notice prove that they still fulfill the membership requirements of Art. 3 of the statutes will be removed from the Membership list. Similarly, Members who fail to provide a valid address for correspondence for five consecutive years will be removed from the membership list at the end of the following year. SWISSPERFORM reserves the right to exclude Members who, despite a reminder, do not within 60 days of being reminded fulfill their obligations towards the Society or who intentionally act against the Society's purpose.*

*If the legal successors of the Member fail to designate a representative within 10 years of the Member's death, the Membership ceases as of the end of the following year without further action being taken.*

*Terminating the membership for one of the reasons in para. 2 and 3 will result in a simultaneous termination of the Agreement.*

*If the Member is excluded due to failing to provide a valid address for correspondence pursuant to para. 2, or if no legal representative is designated pursuant to para. 3, the non-disbursable proceeds will be retained for another 5 years before it expires in favor of SWISSPERFORM.*

*As long as the Member's account is overdrawn, his/her right to terminate the contract and the automatic termination of the contract when failing to produce a valid address pursuant to para. 2 in connection with para. 4 are suspended.*

*Upon termination of the Agreement, the assigned Rights are returned to the Member.*

*Any uses already licensed by SWISSPERFORM that occur after termination of the Agreement will remain intact.*

#### **14.3 Financial consequences of terminating the Agreement**

*After termination of the Agreement, the Member is entitled to SWISSPERFORM or the Mandated Organization, respectively, sending him/her a statement of uses occurred during the term of the Agreement and paying him/her the respective remuneration. To the extent SWISSPERFORM is aware that the Member, upon termination of the Agreement, will become a Member with a foreign collecting organization with which SWISSPERFORM has concluded a Reciprocal Agreement for the mutual administration of related neighboring rights, and the Member has assigned his/her Rights to that collecting organization also for Switzerland and Liechtenstein, SWISSPERFORM may pay any subsequent remuneration from uses during the term of the Agreement to this collecting organization and ask it to pass it on to the Member. However, SWISSPERFORM is not obliged to search for any subsequent memberships of its former Members with foreign collecting organizations for the time after the Agreement is terminated.*

*No further financial claims can be made against SWISSPERFORM.*