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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 (Principals)***

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

## **Contents**

|   |           |
|---|-----------|
| <i>1. Purpose of the Agreement .....</i>  | <i>3</i>  |
| <i>2. Performances covered by the administration of Rights.....</i>                           | <i>3</i>  |
| <i>3. Neighboring rights and claims to remuneration assigned for<br/>administration .....</i> | <i>4</i>  |
| <i>4. Territorial scope of the Agreement .....</i>  | <i>5</i>  |
| <i>5. Liability of SWISSPERFORM .....</i>   | <i>5</i>  |
| <i>6. Claims against SWISSPERFORM.....</i>  | <i>6</i>  |
| <i>7. Electronic communication .....</i>  | <i>6</i>  |
| <i>8. Information concerning the Right holder, Performances and data<br/>protection .....</i> | <i>7</i>  |
| <i>9. Distribution and statements of account.....</i>   | <i>10</i> |
| <i>10. Duties to be paid to the government (taxes, social insurance and<br/>similar).....</i> | <i>11</i> |
| <i>11. Complaints.....</i>  | <i>14</i> |
| <i>12. Additional rules .....</i>   | <i>14</i> |
| <i>13. Entry into force and termination of the Agreement .....</i>                            | <i>14</i> |

*These General Terms for the Administration of Rights govern the legal relationship between SWISSPERFORM and its principals with regard to the administration of rights (hereinafter referred to as the "Principal/Principals"). 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 Rights Administration Agreement concluded between the individual Principal and SWISSPERFORM (hereinafter referred to as the "Agreement").*

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

*Under the Agreement, the individual Principal 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 Principal assigns the Rights listed in section 1 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 cooperation 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 videogram on which the Principal 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 Principal has signed the Agreement (alone or together with others) are also covered by the Agreement, unless the Principal 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 Principal 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.*

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

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

*The Principal assigns the Rights listed in section 1 of the Agreement to SWISSPERFORM and entrusts SWISSPERFORM with their administration 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 1 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**

*The assignment of Rights as listed in section 1 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).*

*The Principal 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 Principal 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.*

#### **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 Principal if*

*they have been made on the basis of the Principal's not obviously false statements.*

*With regard to any acts/omissions by Sister Societies with which SWISSPERFORM has concluded an agreement for the administration of its Principals' 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 Principals' Rights.*

## **6. Claims against SWISSPERFORM**

*The Principal'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 Principal 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 Principal has provided SWISSPERFORM with an e-mail address, the Principal 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 Principal 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 Principal 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 Principal (postal or electronic address) is considered to have been effected regardless of whether such address is in fact current or not.*

*Should the Principal fail to provide a valid address or valid payment details, SWISSPERFORM's obligation to send out statements of account and other correspondence and to disburse any allocated proceeds to the Principal is suspended. SWISSPERFORM is not obliged to search for a valid postal/e-mail address or valid payment details.*

*The Principal may authorize a third party to request and collect the allocated proceeds from SWISSPERFORM. In this case the Principal 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 Principal.*

*SWISSPERFORM assumes that the Principal is the beneficial owner of all proceeds paid to him/her and that this will be taxed accordingly. If the Principal is not or only a partial beneficial owner, or the tax authorities require information on the beneficial owner or the proceeds paid out, the*

*Principal shall be obliged to provide SWISSPERFORM upon its notification with all necessary information.*

*Upon the death of the Principal, 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 Principal shall be obliged to register with SWISSPERFORM all phonograms and videograms to which it holds the rights for producers as listed in section 1 of the Agreement.*

*The Principal 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 Principal's Rights to retroactive participation on uses that took place before the Agreement entered into force.*

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

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

- keeping a hard-copy and/or electronic file about the Principal;*
- 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.*

*Furthermore, SWISSPERFORM is entitled to pass the Principal'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 Principal is entitled to request, at any time, that SWISSPERFORM discloses what Data concerning that particular Principal it keeps in its databases, and that any errors be corrected.*

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

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

*The Principal 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 Principal 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 Principal 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 Principal 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 Principal 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 Principal. 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 Principal shall inform SWISSPERFORM whether or not it is subject to VAT.*

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

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

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

*If the Principal is not yet registered with SWISSPERFORM as being subject to VAT, the Principal 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 Principal 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 Principal is registered with SWISSPERFORM as being subject to VAT, the notification that the Principal 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 Principal. The Principal 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 Principal whose notification was late takes note that tax liability of the Principal arises if the VAT is stated on the invoice issued by SWISSPERFORM in the name of the Principal.*

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

*Should the notification of a Principal that it is not (or no longer) subject to VAT not be accurate, the Principal 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 Principal 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 Principal if the Swiss Federal Tax Administration confirms before every payment that the Principal is in fact subject to VAT.*

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

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

*The Principal 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 Principal authorizes a third party to request and collect its allocated proceeds from SWISSPERFORM (see para. 8.1 (4) of these General Terms for the Administration of Rights). The Principal 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 Principal.*

*If a Principal 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. Additional rules**

*The Principal 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 Principal.*

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

### **13.1 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.*

### **13.2 Termination**

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

*Should the Principal fail to provide a valid address for correspondence for five consecutive years, the Agreement will be terminated as of the end of the following year without further action.*

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

*If the Agreement is terminated 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 Principal'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 Principal.*

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

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

*After termination of the Agreement, the Principal 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 Principal, 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 Principal 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 Principal. However, SWISSPERFORM is not obliged to search for any subsequent memberships of its Principals with foreign collecting organizations for the time after the Agreement is terminated.*

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

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