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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 Audio and/or Audiovisual Performers (Principals)**

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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 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 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 performances a Principal gives as a performing artist during the term of the Agreement (both on his/her own and together with other performing artists), as well as the fixation of those performances (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. The principal shall be obliged to inform SWISSPERFORM of any other legal assignments of Rights for his/her Performances concluded prior to signing the Agreement, with legal effect in Switzerland and Liechtenstein. 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 pursuant to section 3.3 of these General Terms for the Administration of Rights.

### **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 for administration purposes.

### **3.3 Possible restriction of the scope of assignment of Rights**

The Principal may restrict the scope at which he/she assigns the Rights to those Rights which, pursuant to Art. 40 para. 1 lit. a<sup>bis</sup> and b URG, can only be administered by an approved collecting society. In this case, the Principal will not be able to participate in the proceeds SWISSPERFORM generates collectively outside Federal supervision.

The Principal is required to declare in section 2 of the Agreement whether or not he/she intends to restrict the scope of the assignment of Rights. 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. This period and date do not apply to restriction declarations made as a consequence of a contractual assignment of the relevant Rights to a broadcasting organization or a producer pursuant to Art. 3 para. 2 of SWISSPERFORM's statutes. In this case, a written restriction declaration is not subject to any notification period and will be effective immediately and at any time.

If no declaration is made in section 2 of the Agreement or the information given by the Principal is unclear or contradictory, it is assumed that all of the rights listed under section 4 in the Agreement are assigned to SWISSPERFORM.

### **3.4 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).

#### **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 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**

SWISSPERFORM is using electronic means (e-mail, online services, etc.) for communicating with the Principal and performing its services.

### **7.2 Web portal for the Principals**

SWISSPERFORM provides Principals with a web portal for the purpose of communication and efficient data management and processing. The portal can be accessed after providing an e-mail address and with a user identification (user name and password).

General Terms and Conditions of Use apply to the use of the web portal, which the Principal accepts by entering the login. All documents (including statements) are generally sent to the member via the portal.

Documents and communications addressed to the Principal are considered delivered at the time they become electronically accessible in the portal. Any deadlines shall begin to run on the following day. If, by exception, a payment is made before the delivery of a statement or without one because the statement cannot be delivered, the time of receipt of the payment in the Principal's account shall be decisive for any time limit for objecting to the statement.

The Principal is responsible for taking note of the documents made available in the portal in good time in order to be able to meet any contractual obligations that may arise (e.g. the deadline for objecting to statements).

### **7.3 Request for delivery by post**

If a Principal does not wish to have access the portal, it may request SWISSPERFORM to send documents and communications by post. SWISSPERFORM may charge a fee for the resulting expenses.

## **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 for correspondence 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.

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 continuously register with SWISSPERFORM its Performances (recordings) it has rendered or helped to render as a performing artist in the web portal (or by means of the discography and filmography forms on SWISSPERFORM's website).

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.

The Principal warrants that he/she will not register any Performances (recordings) generated exclusively by artificial intelligence.

## **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.

Moreover, the Principal acknowledges that any undistributed funds upon expiry of the limitation periods and amounts that are below the threshold stated in the distribution regulations will be used for collective purposes of performing artists and for social and cultural purposes, pursuant to 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 or the Mandated Organization, respectively, is entitled to deduct from the allocated proceeds any taxes or other duties owed under Swiss or foreign law or international agreements.

If the Principal is or becomes subject to VAT during the term of the Agreement (due to an annual revenue that rules out tax exemption, currently CHF 100,000.00, due to waiving tax exemption or due to opting in for taxation, e.g. for cultural services), he/she will immediately inform SWISSPERFORM of this and also provide his/her VAT no. SWISSPERFORM or the Mandated Organization, respectively, will then calculate the proceeds plus VAT at the applicable rate.

SWISSPERFORM or the Mandated Organization, respectively, 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 is obliged to settle VAT with the tax administration him/herself.

The Principal is obliged to inform SWISSPERFORM of any changes to his/her tax status (mainly if he/she is no longer a tax subject), of any changes to the way he/she is entered in the VAT register, and the exercise and cancellation of options for the taxation of individual revenue. This has to be made immediately and by means of a registered letter. If SWISSPERFORM suffers a loss due to the Principal delaying or failing to report a change or making a false statement, the Principal is obliged to indemnify SWISSPERFORM (in particular tax fees, interest on arrears and costs of inconveniences caused).

The Principal is responsible for disclosing all allocated proceeds to the tax administration and social insurance organizations (OASI, DI, UI, etc.)

## **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. Otherwise, the contents of the communication are considered to be approved.

## **12. Pseudonyms**

The Principal will list all his/her pseudonyms in the Agreement.

New pseudonyms can be added, but are subject to approval by SWISSPERFORM in order to avoid confusion with other names or pseudonyms.

## **13. 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.

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

### **14.1 Entry into force**

The Agreement enters into force upon signature by the Principal. SWISSPERFORM is authorized to conclude the agreement electronically with a two-factor authentication and a verification through an official identity card.

The Agreement replaces all previous agreements between the parties and it is in force for an indefinite period.

### **14.2 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 Principal 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 Principal's account is overdrawn, his/her right to terminate the contract, the right to restrict the scope of his/her Rights assignment pursuant to section 3.3 and/or section 4.2 of these General Terms for the Administration of Rights, and the automatic termination of the contract when failing to produce a valid address pursuant to para. 2 in connection with para. 2 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.

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

After termination of the Agreement, there are no more claims against SWISSPERFORM. In particular, the Principal is not 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. However, to the extent SWISSPERFORM is aware that the Principal, upon termination of the Agreement, will become a Principal with a foreign collecting organization with which SWISSPERFORM has concluded a Reciprocal Agreement for the mutual administration of related neighbouring 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 former Principal with foreign collecting organizations for the time after the Agreement is terminated.

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