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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 Producers (Principals; acquired rights, national assignment) and/or of Parties entitled to collect remuneration for Phonogram Producers**

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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") and the parties entitled to collect remuneration for phonogram producers (hereinafter referred to as the "Party/Parties entitled to collect"). 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 for Phonogram Producers (Principals; acquired rights, national assignment) and/or Agreement for Parties entitled to collect remuneration for Phonogram Producers concluded between the individual Principals and/or Parties entitled to collect and SWISSPERFORM (hereinafter referred to as the "Agreement").

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

### **1.1 With respect to Principals**

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 A.1 of the Agreement to SWISSPERFORM and entrusts SWISSPERFORM with the collection of the relevant remuneration from the users.

### **1.2 With respect to Parties entitled to collect**

By signing the Agreement the Party entitled to collect declares that it holds the rights to the reported recordings and that it is thus entitled to collect the SWISSPERFORM remunerations. It shall fully indemnify SWISSPERFORM and hold SWISSPERFORM harmless for any claims of third parties with respect to producers' rights with regard to certain recordings.

### **1.3 In general**

SWISSPERFORM will exercise these Rights itself or via other Swiss or foreign collecting organizations, companies or associations (hereinafter re-

ferred 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. Recordings covered by the Agreement**

### **2.1 With respect to Principals**

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.

### **2.2 With respect to Parties entitled to collect**

The Agreement applies to all recordings on phonograms and/or videograms with respect to which the Party entitled to collect is authorized, for the term of the Agreement, to collect the remunerations to producers of phonograms.

### **2.3 In general**

For the duration of the Agreement, no Performances or recordings 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. Remunerations covered by the Agreement**

#### **3.1 With respect to Principals**

##### **3.1.1 Scope of the Administration of Rights**

The Principal assigns the Rights listed in section A.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 In general**

The Principal's assignment of the Rights listed in section A.1 of the Agreement and SWISSPERFORM's obligations with regard to exercising the Rights and the remunerations payable to the Party entitled to collect 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 A.1 of the Agreement and the management of rights by SWISSPERFORM cover Switzerland and Liechten-

stein (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 and/or Party entitled to collect 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 and/or the Party entitle to collect if they have been made on the basis of not obviously false statements of the Principal and/or the Party entitle to collect.

With regard to any acts/omissions by Sister Societies with which SWISSPERFORM has concluded a Reciprocal Agreement, 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/or the Party entitled to collect 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 and/or the Party entitled to collect has provided SWISSPERFORM with an e-mail address, the Principal and/or the Party entitled to collect 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 Principal and/or the Party entitled to collect, Performances and data protection**

### **8.1 General information**

The Principal and/or the Party entitled to collect 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 and/or the Party entitled to collect 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 and/or the Party entitled to collect (postal or electronic address) is considered to have been effected regardless of whether such address is in fact current or not.

Should the Principal and/or the Party entitled to collect 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 and/or the Party entitled to collect

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 Member.

SWISSPERFORM assumes that the Principal and/or the Party entitled to collect is the beneficial owner of all proceeds paid to him/her and that this will be taxed accordingly. If the Principal and/or the Party entitled to collect 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 and/or the Party entitled to collect shall be obliged to provide SWISSPERFORM upon its notification with all necessary information.

Upon the death of the Principal and/or the Party entitled to collect, 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 recordings and Performances**

### **8.2.1 With respect to Principals**

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 A.1 of the Agreement.

### **8.2.2 With respect to Parties entitled to collect**

The party entitled to collect undertakes to report all recordings for which it claims the direct payment of the SWISSPERFORM remunerations.



### **8.2.3 In general**

The Principal and/or the Party entitled to collect undertakes to inform SWISSPERFORM without delay of any changes to the authorization to collect with regard to certain recordings. SWISSPERFORM will consider any authorization changes to be authoritative as per 1st January of the year following the authorisation change.

The Principal and/or the Party entitled to collect 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 Rights of the Principal and/or the Party entitled to collect to retroactive participation on uses that took place before the Agreement entered into force.

Registration of the Performances on phonograms has to be done with SWISSPERFORM according to its regulations. The following deadlines apply:

- for all recordings and Performances that were created before the Agreement was signed or with regard to which an entitlement to collect already existed before the Agreement was signed: within three months after signing the Agreement.
- for all recordings and Performances that are created during the term of the Agreement or with regard to which an entitlement to collect comes into existence during the term of the Agreement: within one month after fixation of the recording on a phonogram and/or videogram.

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

SWISSPERFORM is entitled to process all information about the Principal and/or the Party entitled to collect and his/her recordings and Performances (hereinafter referred to as "Data") provided this is necessary for the administration and management of the Rights of the Principal and/or the Party entitled to collect, for combating piracy and for scientific purposes.

In this context of Data processing, the Principal and/or the Party entitled to collect agrees to SWISSPERFORM

- keeping a hard-copy and/or electronic file about the Principal and/or the Party entitled to collect;
- 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 Data of the Principal and/or the Party entitled to collect available to the other Swiss collecting societies and associations of that particular sector in order to be able to compare and update Data of right holders.

Furthermore, SWISSPERFORM is entitled to pass the Data of the Principal and/or the Party entitled to collect 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 recordings and Performances and relevant right holders entered in SWISSPERFORM's databases (however, not the revenues resulting from the uses of the recordings and Performances) publicly available in Switzerland and abroad.

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

The Principal and/or the Party entitled to collect is entitled to request, at any time, that SWISSPERFORM discloses what Data concerning that particular Principal and/or Party entitled to collect 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 and/or the Party entitled to collect 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 and/or the Party entitled to collect 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 and/or the Party entitled to collect 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 and/or the Party entitled to collect 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 and/or the Party entitled to collect 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 and/or the Party entitled to collect. 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)**

### **10.1 With respect to Principals**

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 section 8.1 para. 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.

## **10.2 With respect to Parties entitled to collect**

The Party entitled to collect appears as direct representative of the holder of the producer rights. The Party entitled to collect shall credibly show that it has been authorized by the holder of the producer rights; otherwise, no payments will be made.

If a Party entitled to collect represents several holders of producer rights it is obliged to indicate to SWISSPERFORM with regard to each producer right for which payment of the allocated proceeds is requested, who the holder is.

If an authorization for a certain producer right has been made credible, the authorization will be assumed until the Party entitled to collect or the respective Member provide a notification to the contrary.

If the authorization of the Party entitled to collect is revoked or if it becomes aware that the authorization was ineffective, it is obliged to inform SWISSPERFORM without delay.

The Party entitled to collect notes that as a direct representative of the holders of the producer rights it will be responsible to meet the reporting and declaration requirements of those represented (in particular with regard to value-added tax).

The Party entitled to collect shall bear joint and several liability with the represented rightsholders vis-à-vis SWISSPERFORM for the repayment of any allocated proceeds paid in excess. This includes, in particular, the repayment of wrongly added VAT.

Moreover, the Party entitled to collect shall bear joint and several liability with the represented right holder vis-à-vis SWISSPERFORM for any loss or damage to be compensated by the represented right holder due to inaccurate or late notifications regarding tax liability.

If it turns out that the authorization of the Party entitled to collect was ineffective with respect to all or individual producer rights and for which payments were made, the Party entitled to collect shall be obliged to repay the payments irrespective of whether the payments were forwarded. The repayment obligation includes any added VAT.

If it turns out that the Party entitled to collect was the holder of the producer rights it had claimed in the name of a third party, its claim for payment of the allocated proceeds shall be deemed met. A subsequent addition of the VAT is excluded.

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.

The Party entitled to collect declares in the name of the holders of the producer rights that they undertake to act in accordance with section 10.1 of these General Terms for the Administration of Rights.

### **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 and/or the Party entitled to collect 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 and/or the Party entitled to collect.

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

#### **13.1 Entry into force**

The Agreement enters into force upon signature by the Principal. 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.

With respect to Principals and/or Parties entitled to collect who fail to provide a valid address for correspondence for five consecutive years, the Agreement will be terminated at the end of the following year.

If the legal successors of the Principal and/or the Party entitled to collect fail to designate a representative within 10 years of the death of Principal



and/or the Party entitled to collect, the Agreement will be 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 account of the Principal and/or the Party entitled to collect 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 are suspended.

Upon termination of the Agreement, the assigned Rights are returned to the Principal and/or the Party entitled to collect.

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 and/or the Party entitled to collect 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 and/or the Party entitled to collect, upon termination of the Agreement, is represented by a foreign collecting organization with which SWISSPERFORM has concluded a Reciprocal Agreement for the mutual administration of related neighboring rights, and this collecting organization is authorized to collect remuneration on behalf of the Principal and/or the Party entitled to collect from uses also in 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 and/or the Party entitled to collect. However, SWISSPERFORM is not obliged to search for any subsequent representations of its former Principals and/or the Parties entitled to collect with foreign collecting organizations for the time after the Agreement is terminated.

No further financial claims can be made against SWISSPERFORM.