

## GENERAL TERMS AND CONDITIONS FOR DIGITAL MUSIC DISTRIBUTION ("WORLD REPERTOIRE")

### Clause 1. Definitions

**Advertising Income:** all proceeds, including but not limited to:

- all royalties, commissions, income and other monies; and
- the cash value of all goods, services and/or "in kind" arrangement(s) (including without limitation by way of barter) supplied or made available from all sources (such cash value being the market value of such goods, services or arrangement(s) at the date of supply),

which are in each case paid (or payable) and/or credited and/or rendered to and/or received by and/or supplied or made available to the Licensee and/or any Affiliate and/or any person, firm, corporation and/or other entity on behalf of any of them directly or indirectly in relation to and/or in connection with each and every advertisement (including without limitation, so-called instream ads, companion ads, click-throughs and/or banner ads) and sponsorship message included in and/or on and/or related to and/or as part of the Licensed Services and/or any individual page(s) comprised in the Licensed Service(s). This definition also includes all income with regard to advertisements of Licensee that are focused on the Territory in general.

**Affiliate:**

- any company (a parent company) holding any shares in the Licensee or any company (a subsidiary) in which the Licensee holds any shares or any company in which a parent company of the Licensee holds any shares; and/or
- each and every third party that is as a partner involved in and/or connected with the provision of the Licensed Service(s) in collaboration with, by order of and/or at the instruction of the Licensee.

**Agreement:** the agreement under which the Licensed Services are granted the right of use Buma/Stemra Repertoire, either physically or electronically which includes these General Terms and Conditions for Digital Music Distribution, the Agreement for Digital Music Distribution, and the Appendices attached thereto.

**Album:** a media file solely consisting of several Musical Works.

**Background Music:** a Service in which the Licensee offers Musical Works to End Consumers, on the basis of Linear Making Available, exclusively for the purpose of background music. Background music is defined as the use of Music Works exclusively for embellishment of a website, in which the Licensee will have no intend to distribute or broadcast these Musical Works on a website.

**Buma/Stemra Repertoire:** all musical works and/or lyrics and/or words written to be used with musical works that Buma/Stemra owns or controls from time to time during the Term, directly or by means of third parties (including, without limitation, via reciprocal and/or other agreements with other collective rights societies), for the purpose of exploiting and exercising certain rights including all copyright related to said musical works, lyrics and/or words.

**Commercial:** any entity that is registered with a Chamber of Commerce (companies, general partnerships, sole traders, etc.); and private individuals who generate income with their Service.

**Conditional Download:** the Non-Linear Making Available by which the Licensee may authorise End Consumers to Reproduce Tracks and/or Products on a Device, but where such a Reproduction can only be retained, accessed and played if the End Consumer periodically pays a subscription or similar fee.

**Consumer Price:** any and all fees and other monies paid by any End Consumer(s) directly or indirectly to the Licensee and/or any Affiliate and/or any person, firm, corporation and/or other entity on behalf of any of them in respect of every purchase, play and/or other use of a Product and/or Track (in whole or in part) and/or (periodical) payments for a Subscription, including premiums and surcharges, but excluding VAT, sales or similar tax based on the purchase price.

For the purpose of this Agreement, the Consumer Price does not include:

- any amounts generated from the sale of authorised physical records on applicable media (including but not limited to CDs);
- any amounts paid to the Licensee by the End Consumer, which the Licensee has subsequently refunded to the End Consumer (in each case in the same Reporting Period) because the End Consumer was unable to download the Musical Works in question due to a technical error, provided that the Licensee was under a legal obligation to make such refund;
- fees received by the Licensee for hosting and similar technical services if and to the extent that these services are not in any way related to the exploitation of Musical Works

- reversal of fraudulent credit card transactions.

**Device:** any type of device with which the End Consumer can directly or indirectly access and/or make use of the Licensed Service(s), including but not limited to a computer, game console, mobile telephone, media player, or any other such devices that have yet to come in existence.

**Downloads On Demand:** a Service in which the Licensee offers Tracks and/or Albums to End Consumers on the basis of Non-Linear Permanent Making Available.

**Downloads On Demand Film Works:** a Service in which the Licensee offers Products consisting of film works (all forms of film works, including but not limited to feature films, TV series, TV shows, etc. with the exception of music videos, (video) clips or concert recordings) to End Consumers on the basis of Non-Linear Permanent Making Available.

**Downloads On Demand Concerts:** a Service in which the Licensee offers Products consisting of the recordings of concerts to End Consumers on the basis of Non-Linear Permanent Making Available.

**End Consumer:** an individual user who is authorised to make use of the Licensed Service(s) of the Licensee via a Device for non-commercial purposes.

**Interactive Webcast:** A Service in which the Licensee Makes Musical Works Available to End Consumers, on the basis of Temporary Making Available, and which gives the End Consumer limited possibilities to influence the content that is offered, because he can for instance, but not exclusively, pause, skip or comment on the Tracks and Products that are Made Available, but he does not have the option to (completely) determine the content and order of the Tracks and Products and the time at which these are Made Available, unlike Non-Linear Temporary Making Available.

**Licensed Service(s):** The digital Service(s), as described in this Agreement, for which the Licensee has obtained permission from BUMA/Stemra to use Musical Works under the conditions of this Agreement.

**Linear Making Available:** the functionality through which the Licensee offers a Service via a Network, where the Licensee and not the End Consumer determines the content of and the time at which a Track or Product is Made Available to the End Consumer (so-called push technology).

**Live streaming:** a Service in which the Licensee Makes Products consisting of real time broadcasts of live events Available to End Customers on the basis of Linear Temporary Making Available and in which the Making Available takes place simultaneous, unabridged and unaltered to the event, subject to any temporary short delay caused by technical failure.

**Making Available:** the Temporary or Permanent, and Linear or Non-Linear Making Available of Musical Works as the context permits and Made Available shall be construed accordingly.

**Musical Work(s):** musical work(s) and/or lyrics and/or words written to be used with musical work(s) within the BUMA/Stemra Repertoire, whether currently existing or written and/or composed in the future and including dramatic-musical choreographic works within the BUMA/Stemra Repertoire in the event that such works are Made Available for listening without being performed.

**Network:** the distribution channels that can be used for the Licensed Services to Publicly Perform or Make Available the Musical Works for which the Licensee provides and is responsible for the contents, including but not limited to internet sites, mobile networks, client software, wireless services such as Wi-Fi and Bluetooth.

**Non-Commercial:** private individuals who do not generate any income with their Service.

**Non-Linear Making Available:** the functionality through which the Licensee offers a Service via a Network, where the End Consumer makes his own selection from the Tracks/Products offered by or on behalf of the Licensee at the time and place chosen by the End Consumer (so-called pull technology).

**Ringtones On Demand:** a Service in which the Licensee makes Ringtones available to End Consumers on the basis of Non-Linear Making Available. A "**Ringtone**" is considered a fragment of a Musical Work that can be reproduced via a mobile telephone and serves to signal an incoming call for the End Consumer or as a ring back signal for the caller (so-called Ringback Tone).

**Payment Period:** a calendar quarter, unless determined otherwise in this Agreement.

**Permanent Making Available:** the Linear or Non-Linear Making Available in which the End Consumer is authorised to Reproduce a Musical Work without any limitation as to time, whether or not this is limited in terms of number, format, quality, device or in some other manner, exclusively for his or her own practice, study or use.

**Product:** any type of product/content/media file reproducing, comprising, containing and/or consisting of more than one Musical Work (or any part of any Musical Work), including but not limited to an Album, audio book, film work and/or video game.

**Pre-use/preview:** a Service in which the Licensee offers the End Consumer the possibility to listen to a fragment of a Track and/or Product that is related to the Licensee's offer on the basis of a Non-Linear Temporary Making Available. The maximum duration of the aforesaid fragment is 45 seconds without interruptions.

**Public Performance:** public performance (*openbaarmaking*) in the sense of the Dutch Copyright Act (*Auteurswet*), including the Temporary or Permanent, and Linear or Non-Linear Making Available of Musical Works and 'Publicly Perform' shall be construed accordingly.

**Relevant Income:** All income, including, without limitation, royalties, fees, commission, and other monies including cash and the cash value of any goods, service(s) or "in kind" arrangement(s) supplied or made available including without limitation by way of barter (such cash value being the market value of such goods, service(s) or arrangement(s) at the date same are so supplied or made available) from all sources which are paid (or payable) and/or credited and/or rendered to and/or received by and/or supplied or made available to the Licensee and/or any Affiliate and/or any person, firm, corporation and/or other entity on behalf of any of them directly and/or indirectly related to and/or connected with the Reproduction, Public Performance and/or Making Available of Musical Works, including without limitation, the Consumer Price, Advertising Income, and the sale of market data or other income from third parties (insofar as such data is related to the Licensed Services).

**Reporting Period:** Quarterly, meaning the period until the last day of each calendar quarter, unless provided otherwise in this Agreement.

**Reproduction/Reproduce:** any type of reproduction of Musical Works, regardless of the technical process used.

**RTV Portal:** a Service in which the Licensee offers Products to End Consumers, as a collection of different radio and TV programmes. The Licensee has no editorial influence or responsibility regarding the programmes/Products offered.

**RTV Station Commercial:** a Service in which the Commercial Licensee offers Tracks/Products to End Consumers on the basis of Linear Temporary Making Available, in which the Licensee has editorial responsibility for the composition of the programme/Product offered.

**RTV Station Non-Commercial:** a Service in which the Non-Commercial Licensee offers Tracks/Products to End Consumers on the basis of Linear Temporary Making Available and in which the Licensee has editorial responsibility for the composition of the programme/Product offered.

**Service(s):** the internet site, Network service or similar products or means through which (products with) Musical Works are offered and the Licensee provides and is responsible to the End Consumer for the contents of these Musical Works.

**Started Stream:** a Track or Product played in excess of 30 seconds.

**Streaming On Demand:** a Service in which the Licensee makes Tracks and/or Albums available to End Consumers on the basis of Non-Linear Temporary Making Available.

**Streaming On Demand Concerts:** a Service in which the Licensee offers Products consisting of the recordings of concerts to End Consumers on the basis of Non-Linear Temporary Making Available.

**Streaming On Demand Film Works:** a Service in which the Licensee offers Products consisting of film works (all forms of film works, including but not limited to feature films, episodes of TV series, TV shows, etc. with the exception of music videos, (video) clips and/or concert recordings) to End Consumers on the basis of Non-Linear Temporary Making Available.

**Subscription:** an agreement between the Licensee and a consumer, usually End Consumer, based on which the consumer upon payment of a fixed or periodical subscription fee may use the Service during a certain amount of time.

**Subscriber:** a user that upon payment of a fixed or periodical subscription fee may use the Service during a certain amount of time.

**Temporary Making Available:** the Linear or Non-Linear Making Available in which the End Consumer is authorised to Reproduce a Musical Work for a limited period, whether or not this is limited in terms of number, format, quality, Device or in some other manner.

**Territory:** Kingdom of the Netherlands, Aruba, Bonaire, Curaçao, Saba, St. Eustatius and St. Maarten.

**Track:** a media file which contains a single Musical Work (or any part(s) of a single Musical Work).

## Clause 2. Licensing

1. Within its authority and subject to the Licensee complying with the terms and conditions of the Agreement, Buma/Stemra will in the Agreement grant to the Licensee permission to use Musical Works throughout the Territory (the **License**). Such License does not comprise the Reproduction of Musical Works in synchronization with other sounds and/or images (whether moving or still) including without limitation in feature films, tv-shows, in store films, corporate films, educational productions, user generated content and registrations. The preceding sentence does not apply to the situation where an ordinary web page is visible when Musical Works are Reproduced, Publicly Performed and/or Made Available, provided the relevant Musical Works are not associated with any product, service, brand, person cause and/or commercial entity. For the avoidance of doubt, abovementioned limitation does also not apply to the depiction of live concerts and/or shows.
2. The Licensee shall inform Buma/Stemra on beforehand and in writing in the event that one or more of the Licensed Services is altered in any material respect and/or the Licensee offers the End Consumer a new digital service that uses Musical Work(s) in any way. In the event that the Licensee fails to notify Buma/Stemra of any material alteration of the Licensed Services and/or that the Licensee is offering a new digital service as aforesaid, Buma/Stemra shall be entitled to suspend or terminate the Licence with immediate effect upon notice of the same to the Licensee. Any such suspension or termination shall be without prejudice to any of Buma/Stemra's other rights and remedies.
3. Buma/Stemra's records are binding regarding the scope and contents of the Buma/Stemra Repertoire, subject to the Licensee's right to furnish proof to the contrary.

## Clause 3. Conditions, Rates and Percentage for the Buma/Stemra Repertoire used

1. The Licensed Services covered by the License will be stipulated in the Agreement. In addition to the General Terms and Conditions for Digital Music Distribution, the Agreement for Digital Music Distribution will establish the specific conditions and limitations to the Licence, such as the due licence fee, the advance and the percentage music used, per Licensed Service.
2. Buma/Stemra shall be entitled to change the Appendices from time to time as a result of changes in its conditions and rates, subject to a notice period of at least three (3) months. Buma/Stemra may for instance change the reporting forms in case of a new reporting format. Such change(s) shall take effect immediately upon the expiry of such notice period, unless the Licensee ends the Agreement in accordance with Clause 12.3.
3. Buma/Stemra shall be entitled to adapt the Agreement in order to comply with directives, laws and other legal obligations such as the European Directive on Collective Management of copyright and related rights and Multi-territorial Licensing of rights in musical works for online use in the internal market (Directive 2014/26/EU).
4. In order to establish the music use percentage, Buma/Stemra will determine the average music use percentage by way of an estimation, unless the Licensee upon entering into the Agreement provides Buma/Stemra with substantiated information as to what percentage of music use is relevant for the Licensed Service. At Licensees request, Buma/Stemra shall measure the music use percentage, for instance by way of a random check. Buma/Stemra and the Licensee will in such event make on beforehand an arrangement with regard to the accompanying costs.
5. Buma/Stemra may also decide on its own discretion and a yearly basis whether or not a new music use percentage will be established. Should Buma/Stemra decide that a new percentage is applicable, it will notify the Licensee and the new percentage shall apply from the date specified in the notice concerned, which will not be less than three (3) months from the date of such notice

#### Clause 4. Payment and (Rolling) Advances

1. The License will be granted to the Licensee under the condition that Licensee shall pay to Buma/Stemra the licence fee specified for each Licensed Service in the attached Appendices.
2. The Licensee shall pay the licence fee due to Buma/Stemra in Euros. In the event that the Licensee shall pay the licence fee in a currency other than Euros, the exchange rate shall be the closing trade rate on the last day of the applicable Reporting Period. The applicable exchange rate used, shall be the rate published on: [http://www.abnamro.nl/nl/zakelijk/valutacentrum/historische\\_koerslijsten.html](http://www.abnamro.nl/nl/zakelijk/valutacentrum/historische_koerslijsten.html) or on other equivalent sites to be designated by Buma/Stemra.
3. The licence fee and all other sums payable to Buma/Stemra under this Agreement are expressed to be exclusive of VAT, or sales or similar tax based on the purchase price which shall be payable in addition thereto upon presentation of a valid invoice.
4. The Licensee shall pay to Buma/Stemra the non-refundable, non-returnable advance payments (advances) in respect of each Licensed Service in the Territory. An advance may be set off against the actual licence fee due for a Licensed Service within a Payment Period. Should the advance exceed the actual licence fee due in a Payment Period, Licensee may set this off against the actual licence fee due in the next Payment Period, provided this falls within the same year.
5. If any advance that is paid by the Licensee to Buma/Stemra for any Licensed Service in respect of a particular Payment Period falls behind by the (actual) licence fee due for that Payment Period in respect of the Licensed Service concerned, Buma/Stemra is entitled to increase such advance for any Licensed Service in order to cover the expected licence fee due for the next Payment Period, subject to a notice period of one (1) at month. Such change(s) shall take effect immediately following the expiry of such notice period.
6. Following payment of the initial advance (Initial Advance) at the end of the first Payment Period, Licensee will pay to Buma/Stemra a continuing advance based on the average numbers of the foregoing period ('Continued Advance'). These advances will continue for the rest of the Term.
7. Buma/Stemra invoices each Payment Period, where an invoice may address two (2) Payment Periods, being:
  - a) The past Payment Period (final invoice); and
  - b) The current Payment Period (Initial Advance/Continued Advance).
8. Buma/Stemra will render an invoice in the first month of each Payment Period or send an invoice in conformity with Clause 5.2. The Licensee shall pay all invoices from Buma/Stemra within 30 days of the date that the invoice concerned is rendered, unless the invoice itself specifies otherwise.

#### Clause 5. Reporting Information

1. Before the 21st day of the first month of each Reporting Period, the Licensee shall provide to Buma/Stemra (the RTV & Digital Department) an (electronic) overview that will contain all necessary reporting information for all Licensed Services, in relation to the past Reporting Period, and which will be delivered in accordance with the formats set out in the Appendices (the "**Reporting Information**"):
  - a) Usage Report: the reporting schedules for each or the Licensed Services separately, in accordance with the model in the Appendices;
  - b) Financial Report: the Relevant Income, including – when relevant – the Consumer Price, number of Subscribers and relevant valid deductions;
2. In addition to the above provisions, Licensee shall annually provide Buma/Stemra with an accurate overview of the Relevant Income regarding the preceding year. Such overview shall contain relevant information to enable Buma/Stemra to verify the amount payable to Buma/Stemra during the year covered by the overview concerned and shall include without limitation the total amount of all income in respect of all Licensed Service(s) and – if relevant - the quantity of subscribers who have used each Licensed Service during such period. At Buma/Stemra's request, the Licensee shall provide Buma/Stemra with a statement from an independent, out of house chartered accountant in relation to any such overview(s). Any costs regarding such statement will be borne by Licensee. The chartered accountant will need to declare that the overview is complete and correct in light of this Agreement. The Licensee shall provide said chartered accountant's overview and the statement before 1 July of the year following the year covered by the overview. Based on the information contained in said overview/statement, Buma/Stemra will draw up a final account establishing whether the Licensee owes Buma/Stemra any additional monies in respect of the period covered by the review or whether Buma/Stemra owes the Licensee any monies. Buma/Stemra will offset any such amounts due to the Licensee against amounts payable by the Licensee to Buma/Stemra in the future or, in the event that such offsetting is no longer possible (for example because the Agreement has been terminated), Buma/Stemra will pay such amounts due

to the Licensee within one month after the applicable overview/statement (whichever is later) is provided to Buma/Stemra. In the event that any amounts are due by Licensee, Buma/Stemra will render an invoice in conformity with Clause 4.8.

3. At Buma/Stemra's request, Licensee will cooperate as soon as possible in collecting and providing any additional data required by Buma/Stemra to correctly allocate the fees that Buma/Stemra has received from the Licensee.
4. The Licensee will provide Buma/Stemra with all other commercially reasonable information that Buma/Stemra requires within the scope of this Agreement, within three (3) weeks upon receipt of an initial written request to this effect from Buma/Stemra.

#### Clause 6. Late reporting

1. In the event that the Licensee supplies incorrect reporting information and/or supplies the Reporting Information too late, and as a result Buma/Stemra is unable to electronically match the Reporting Information with its databases at reasonable cost and is required to match the reporting lines manually, Buma/Stemra shall be entitled to charge the Licensee for the costs of such manual matching at a rate not exceeding ninety-five (95) Euros per hour, with a minimum of one (1) Euro per reporting line. Buma/Stemra may alter the maximum amount to this rate, in case it no longer covers such expenses. Licensee will be informed of such a change no later than three months before the date on which this change takes effect.
2. For the purposes of this Agreement 'incorrect' reporting information means any reporting information that is (materially) incorrect due to omissions or errors of whatsoever nature. Such omissions or errors may for example, but not exclusively, consist of Musical Works having been omitted from the reports, Musical Works having been incorrectly named and/or the amount of streams/downloads of Musical Works having been underreported and/or relate to the provision of incorrect financial reporting information.
3. In the event that the Licensee supplies the Reporting Information late or fails to provide it at all and/or supplies incorrect reporting information or supplies the annual statement from the chartered accountant late or fails to provide it at all, the Licensee shall automatically be deemed to be in default of this Agreement without further formality (including without any notice of default to the Licensee from Buma/Stemra being required) and:
  - a) Buma/Stemra shall be entitled to estimate the amount due to Buma/Stemra from the Licensee based on the data available to Buma/Stemra regarding the payment due for the relevant Reporting Period and to invoice the Licensee for this amount (upon which interest at the Dutch statutory commercial interest rate shall be payable by the Licensee from the first date on which the payment became due until the date that payment is made); the Licensee must pay this invoice within 30 days; and
  - b) the Licensee shall pay a maximum penalty of 10% of the amounts invoiced during the period of 12 months prior to the date of the default concerned; and
  - c) the Licensee shall pay all costs, including but not limited to the judicial and extrajudicial costs that Buma/Stemra incurred in collecting the amount due; and
  - d) the extrajudicial costs incurred by Buma/Stemra for collecting the amount due are set at twenty percent (20%) of the amount to be collected excluding VAT, if applicable; and
  - e) Buma/Stemra shall be entitled to suspend the Licence with immediate effect upon notice to the Licensee to this effect and such suspension shall take effect automatically and without further formality (including without limitation by way of judicial intervention). Any such suspension shall be for such period as the Licensee is in default and shall be without prejudice to any of Buma/Stemra's other rights and remedies.
4. In the event that Buma/Stemra is unable to distribute any amount at all or is unable to distribute the full amount due to songwriters, composers, publishers and/or other parties as a result of any incomplete or incorrect provision of the Reporting Information and/or the annual overview by the Licensee, Buma/Stemra shall be entitled to recover the resulting costs and damages from the Licensee (the **Subsequent Claims**) and the Licensee shall pay the same to Buma/Stemra promptly upon Buma/Stemra's written request. Buma/Stemra may file Subsequent Claims up to 4 (four) years after the end of the calendar year to which the Subsequent Claim (in part) relates, even where Buma/Stemra has already invoiced the Licensee in respect of the relevant period.

#### Clause 7. Late payment

1. If the Licensee fails to fully pay an invoice from Buma/Stemra under this Agreement within the designated period or fails to pay an invoice at all, without prejudice to Buma/Stemra's other rights and remedies, Buma/Stemra shall be entitled to send a first and then second demand for payment to the Licensee. In the event that the Licensee still fails to fully pay within a reasonable period, not exceeding thirty (30) days after the date of such second demand for payment, the Licensee shall automatically and without further formality be in default of this

Agreement. Consequently, Dutch statutory interest shall be payable by the Licensee on the applicable sums due, calculated from the date upon which the applicable payment first became due until the date that payment is received by Buma/Stemra and:

- a) Buma/Stemra shall be entitled to estimate the amount due to Buma/Stemra from the Licensee based on the data available to Buma/Stemra regarding the payment due for the relevant Reporting Period and to invoice the Licensee for this amount; the Licensee must pay this invoice within 30 days or the date/term mentioned on the invoice;
- b) the Licensee shall pay to Buma/Stemra a maximum penalty of 10% of the amounts invoiced in the 12 preceding months; and
- c) the Licensee shall pay all of Buma/Stemra's costs, including but not limited to the judicial and extrajudicial costs that Buma/Stemra incurs in collecting and/or attempting to collect the amount due; and
- d) the extrajudicial costs incurred by Buma/Stemra for collecting and/or attempting to collect the amount due are set at twenty percent (20%) of the amount to be collected excluding VAT, if applicable; and
- e) Buma/Stemra shall be entitled to suspend the Licence(s) with immediate effect for as long as the Licensee is in default, by notifying the Licensee to this effect in writing. Such suspension shall be without prejudice to any of Buma/Stemra's other rights and remedies.

#### **Clause 8. Control/Audit**

1. During the term of this Agreement and for a period of four (4) years after the expiry or sooner termination of the Term of this Agreement, the Licensee shall retain and make available for inspection (following a reasonable notice period) proper and detailed books and records, together with all correspondence, documentation, electronic data and other information including Reporting Information in relation to the exploitation of Musical Works under this Agreement and as may be necessary to verify the amount due to Buma/Stemra. The Licensee shall procure that the obligations described in the first sentence of this clause shall also apply to any third party or Affiliate of the Licensee. The Licensee's and such third parties' and/or Affiliates' said books, records, correspondence, documentation, electronic data and other information is referred to below collectively as "Records".
2. The following persons shall have the right to audit the Records, for the purposes of establishing that the Records are correct and that the reporting information that Licensee has delivered is correct and that it has accurately accounted and paid Buma/Stemra the licence fees:
  - a) an accountant designated by Buma/Stemra; and/or
  - b) an authorised Buma/Stemra representative; and/or
  - c) an employee of a third party that Buma/Stemra has appointed to ascertain the accuracy and completeness of the Records and the reports from the Licensee, including but not limited to forensic IT specialists.
3. At the written request of Buma/Stemra, the Licensee shall grant the abovementioned representatives access to its offices and/or the offices of its applicable third parties and/or Affiliates where such Records are kept and will make the applicable Records, available for inspection in order to enable the Buma/Stemra Representatives to carry out each such audit. These representatives will be entitled to examine all Records and other information and/or documents relevant for the audit, regardless of where the same are kept, and to take extracts and copies of the same. The examination will be conducted during normal working hours.
4. In the event that any audit reveals an underpayment to Buma/Stemra, the Licensee shall pay an amount equal to such underpayment, plus Dutch statutory commercial interest payable at the Dutch statutory interest rate (for the period starting on the date that the relevant amount should have been paid until the date that the relevant amount is actually paid to Buma/Stemra), without prejudice to any of Buma/Stemra's other rights and remedies.
5. In case an audit reveals that there is an underpayment to Buma/Stemra of at least 5% of the amounts due to Buma/Stemra for the period in respect of which the audit is undertaken, the Licensee shall pay Buma/Stemra's reasonable costs of such audit (in addition to any payment(s) due to Buma/Stemra by virtue of Clause 6), within 28 days after the date that the Licensee receives a VAT invoice in respect of this from Buma/Stemra, without prejudice to any of Buma/Stemra's other rights and remedies. The provision of the previous sentence only applies if the amount of the applicable underpayment is equal to or exceeds one thousand Euros (EUR 1,000.00).
6. In the event that the Licensee, any applicable third parties and/or Affiliate(s) fail(s) to or is unable to make Records and other requisite documentation available for inspection by Buma/Stemra and/or to grant Authorised Buma/Stemra Representatives access to its offices or the offices of the applicable Affiliates and/or third parties after an Audit Request, the Licensee shall be liable to pay a penalty which shall be payable immediately following such failure to make the applicable Records available and/or to grant the Buma/Stemra

Representatives such access and which is not subject to mitigation, of 10% of the amounts invoiced by Buma/Stemra in the period of 12 months prior to the date of the applicable Audit Request, for each period of seven days in which the failure concerned continues, without prejudice to Buma/Stemra's other rights and remedies in respect of such failure.

7. In performing an audit by virtue of this clause, Buma/Stemra will not disclose or make available any confidential information regarding the Licensee that it acquires during the audit to third parties without the consent of the Licensee. For the avoidance of doubt, the preceding sentence does not apply if such information is disclosed to professional advisers of Buma/Stemra or is disclosed in relation to potential and/or actual legal proceedings.
8. Should the results of the audit give Licensee reasons to start legal proceedings, then these proceedings should have brought to court within two (2) years following the relevant audit. Such legal proceedings shall be without prejudice to the due payment of the invoices.

#### **Clause 9. Liability and indemnification**

1. Buma/Stemra shall indemnify the Licensee only from and against all direct damages arising out of any claim(s) by the copyright owners or their representatives during the Term in relation to the licensed use of Musical Works in accordance with the terms of this Agreement, provided that such financial liability is awarded pursuant to a final adverse judgement of a court of competent jurisdiction or is subject to a settlement made with the prior written consent of Buma/Stemra (such consent not to be unnecessarily withheld or delayed).
2. The scope of the indemnification is limited to the amount that the copyright owner to a musical work or his/her representative responsible for the claim would have received in that year for the use in question of the Musical Work had he/she been represented by Buma/Stemra. The total indemnification amount that Buma/Stemra owes in any calendar year is further limited to the amount that the Licensee paid Buma/Stemra in the calendar year in which the use occurred.
3. In addition, the indemnification is limited to claims that are filed within one year following the day on which the Licensee used the relevant Musical Work.
4. The Licensee shall indemnify Buma/Stemra from and against all loss, damages, costs (including legal fees), expenses and other financial liability arising out of any breach or alleged breach of any of the provisions of this Agreement.

#### **Clause 10. Offsetting**

1. Buma/Stemra is entitled to offset any and all amounts that it owes to the Licensee, regardless whether such amounts have fallen due to be paid, against all amounts that are due and payable by the Licensee to Buma/Stemra under this Agreement or otherwise in the event that:
  - a) the Licensee fails to fulfil or is in breach of any of the provisions of this Agreement in any respect;
  - b) the Licensee persistently breaches any provision of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with having the intention or ability to give effect to the terms of this Agreement;
  - c) any event occurs or proceeding it taken with respect to the Licensee that is mentioned in Clause 12.2c to 12.2d or which has an effect equivalent or similar to any such event or proceeding in any jurisdiction to which the Licensee is subject;
  - d) the Licensee suspends or discontinues, or threatens to suspend or discontinue carrying out all or a substantial part of its commercial activities.

#### **Clause 11. Adaptations, moral rights and neighbouring rights**

1. The Musical Works may be Reproduced, Publicly Performed and/or Made Available under this Agreement in their original form only. This Agreement does not permit adaptations of any Musical Work(s) to be made.
2. The Licensee shall not infringe the writers' authors' and composers' of the Musical Works moral rights. The Licence is granted without prejudice to any claim(s) from such writers, authors and/or composers based on any moral or like rights that they may have.

#### **Clause 12. Term, termination and suspension of the Agreement**

1. The Term will automatically be renewed for a period of one (1) year, unless one of the Parties informs the other party/ies in writing to the contrary, no later than three (3) months prior to the expiration of the then current contract period.

2. Parties shall solely be entitled to terminate this Agreement (without prejudice to its other rights and remedies) in conformity with this clause, by way of a notice via registered mail to the Licensee with immediate effect and without further formality (including, without limitation, by way of judicial intervention) in the event that a Party:
  - a) fails with its obligations under the Agreement, provided that the Party which claims the default notifies the other Party in writing and the defaulting Party fails to remedy the breach within thirty (30) days after service of such notice; and/or
  - b) is declared bankrupt under the *Faillissementswet* (Dutch Bankruptcy Act) or any similar legislation in force in the jurisdiction of the Party or applies for bankruptcy itself; and/or
  - c) the Licensee applies for suspension of payments or suspends, or threatens to suspend, payment of its debts; and/or
  - d) discontinues or threatens to discontinue a substantial part of its commercial activities.
3. Licensee may terminate this Agreement on a three months' notice in case Licensee objects to an alteration in conformity with Clause 3.2.
4. Buma/Stemra shall be entitled to (partly) terminate this Agreement with immediate effect and without further formality in the event that Licensee will offer the Licensed Service outside the Territory or in case the revenue generated with the Licensed Service increases to such amounts that Buma/Stemra is no longer able to grant a blanket license, including the part of the Buma/Stemra Repertoire that Buma/Stemra manages on behalf of other (foreign) societies. Parties will enter into a new licensing agreement regarding Buma/Stemra's direct repertoire, meaning the repertoire it represents for its own direct members.
5. In the event that the Licensee is in breach of one or more of its obligations under this Agreement, Buma/Stemra shall be entitled to suspend the License with immediate effect by way of a notice via registered mail of the same to the Licensee. Any such suspension shall be without further formality (including without limitation by way of judicial intervention) and such suspension shall be for as long as the Licensee is in default and shall be without prejudice to any of Buma/Stemra's other rights and remedies.

#### **Clause 13. Confidentiality and publicity**

1. 'Confidential Information' shall mean the terms of this Agreement and any information, data or other materials provided by one Party to the other under or in connection with this Agreement that is: clearly marked as confidential, is identified by the disclosing party as confidential or is disclosed in a manner which (under the circumstances) indicates that a reasonable person would consider that the disclosed information is confidential. The party disclosing the information shall hereinafter be referred to as the 'Discloser' and the party receiving such information shall hereinafter be referred to as the 'Recipient'.
2. The Recipient's obligations under this clause do not extend to any information, data or materials which:
  - a) Was/were lawfully in the possession of the Recipient prior to the disclosure of said information, data or materials by the Discloser to the Recipient as evidenced by written records;
  - b) is, or has at any time come, into the public domain (otherwise than as a result of its disclosure by the Recipient in breach of this Agreement);
  - c) is or becomes available to the Recipient on a non-confidential basis from a person who, to the Recipient's knowledge, is not bound by an obligation of confidentiality or is otherwise prohibited from disclosing the information to the Recipient;
3. The Recipient agrees to keep the Confidential Information in confidence and not to disclose any part thereof to any person, excluding the Recipient's employees that are on a need to know basis, professional advisers persons working within its company, or (legal) persons entitled by law, existing contracts or statutes of the Recipient to receive this information. For the avoidance of doubt, when Confidential Information is disclosed pursuant to a statutory duty or court order, that will not be regarded as a breach of the terms of this Agreement.
4. The Parties may disclose the business relationship envisaged within this Agreement in general terms (but not, for the avoidance of doubt, Confidential Information) to third parties however, the prior written consent of the other party is required in the following events:
  - a) the disclosure of competitively sensitive information, such as turnover rates and numbers of subscribers, in any way; and
  - b) any type of distribution of a press report or similar publication (including in the event of publication on a website) regarding this Agreement (or part of this Agreement) or the fulfilment or termination of this Agreement.
5. Nothing in this Agreement shall prevent Buma/Stemra from disclosing reporting information collected by Buma/Stemra under this Agreement to its board and members, publishers, individuals, entities and organisations that own or control the relevant Musical Works in the Buma/Stemra Repertoire licensed under the Agreement, for the purpose of complying with Buma/Stemra's obligations to such parties, including with regards

to distribution statements and payments. For the avoidance of doubt, Buma/Stemra may also provide information (including without limitation Confidential Information) with regard to the level and calculation of the licence fees and other amounts received for its Licensee for the Making Available and other exploitation of specific Musical Works by the Licensee under this Agreement to the aforementioned persons and entities.

6. Unless set out in this clause or because of a legal duty or statutory obligation, Parties shall not disclose any Confidential Information with regard to this Agreement.

#### **Clause 14. Full agreement, amendments and divisibility**

1. This Agreement (i) comprises the exclusive and full agreement between the Parties regarding the subject of this Agreement and replaces all prior verbal and/or written agreements between the Parties regarding this subject, (ii) is binding for both the Parties and their respective legal successors and benefits the same and (iii) may be drawn up in several copies, all of which collectively form one and the same document.
2. In the event that any applicable judicial or administrative authority finds that a provision of this Agreement is unlawful, invalid or unenforceable, such invalidity or unenforceability is without prejudice to the other provisions of this Agreement, which remain in full force and effect.

#### **Clause 15. Assignment and share transfer**

Without the prior written consent of the other party, neither Party is entitled to assign, transfer, encumber, or commit all or part of this Agreement or its rights under this Agreement, or handle the same in any other, similar way, and neither Party is entitled to contract out or subcontract all or part of its obligations under this Agreement or to create a fund in favour of a third party for one or more of its obligations under this Agreement, except in the event of a valid transfer and/or assignment by the Licensee to a third party that is a wholly owned subsidiary of the Licensee or is fully controlled by the Licensee or in the event of a purchase or acquisition of all or a substantial proportion of the assets of the Licensee by a third party provided prior to any such transfer and/or assignment taking place, the Licensee shall procure that the transferee/assignee enters into a direct covenant with Buma/Stemra (in a form approved by Buma/Stemra) to perform and observe the Licensee's obligations under this Agreement.

#### **Clause 16. Notices**

1. All notices and other communications given to a party under or in connection with this Agreement shall be in writing in Dutch or English, must be validly signed by or on behalf of the party giving the notice or making the statement and must be sent to the recipient party at the address given in the Agreement or as otherwise notified in writing to the other party.
2. Each party to this Agreement shall inform the other party immediately of any relevant change of contact information, including change of address, a change of telephone number and/or a change regarding contact persons during the Term of this Agreement.

#### **Clause 17. No partnership**

Nothing in this Agreement creates a partnership or joint venture between the Parties and, except to the extent that this is explicitly stipulated in this Agreement, neither Party is entitled to enter into any obligation or issue any guarantee on behalf of the other Party or to bind the other Party in any other way or to incur through liability on behalf of the other party.

#### **Clause 18. Other provisions**

1. This Agreement does not permit or authorise the portrayal of song texts, CD inlays and the use of musical notations in the Licensed Services or otherwise.
2. Nothing in this Agreement will prevent Buma/Stemra from taking advantage of measures or regulations regarding the *Thuiskopie-heffing* (Private Copying Levy) in force in the Territory and to acquire income from this; this income can in no way affect the fee(s) that Buma/Stemra receives (or is entitled to receive) by virtue of this Agreement.
3. At the request of Buma/Stemra, the Licensee will provide Buma/Stemra with the terms and conditions of delivery use, and/or for the Licensed Services and/or contracts that it uses in relation to the delivery of the Licensed Services to End Consumers. The Licensee guarantees that these terms, conditions and contracts do not and shall not constitute a breach of any of the provisions of this Agreement and do not and will not prevent or restrict Buma/Stemra in any way in exploiting the copyrights in Musical Works.
4. Buma/Stemra reserves the right upon notice to the Licensee to withdraw from the ambit of this Agreement any and/or all rights in respect of certain Musical Work(s) within the Buma/Stemra Repertoire at any time including

without limitation in the event that the Musical Work(s) in question are the subject of legal proceedings or that the rights of Buma/Stemra in respect of such Musical Works are contested. Upon service of such notice the Licensee shall as soon as practicable (and in any event within five (5) working days after the date of the notice cease to Reproduce, Publicly Perform, Make Available and/or otherwise exploit the Musical Work(s) concerned.

5. All Appendices to this Agreement comprise an integral part of this Agreement.
6. Upon the expiry or earlier termination of this Agreement, the Licensee shall not derive any rights from this Agreement and all rights licensed to the Licensee under this Agreement shall automatically revert to Buma/Stemra and the Licensee shall immediately cease exploitation of the Musical Works and any associated materials.
7. This Agreement is governed by and will be interpreted in accordance with Dutch law. All disputes regarding this Agreement will be submitted exclusively to the competent court in Amsterdam.
8. No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
9. The titles and headings used in connection with the provisions of this Agreement are included exclusively for ease of reference and do not influence or change the meaning and interpretation of the provisions in this Agreement.

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