

Audio Agreement Donemus

THE UNDERSIGNED:

1. STICHTING DONEMUS BEHEER having its registered office at Rijswijk, hereinafter to be called: “Donemus” and

2.

Name	
Street	
House	
Zip code	
Place	
Country	

hereinafter referred to as “the Artists or Contact Person”,

The Contact Person obtained a mandate from the parties that have performed the Recordings (hereinafter referred to as “the Performers”), as well as the parties that have composed the Recordings and/or have written the texts of the Recordings (hereinafter referred to as “the Composers”) to enter into this Agreement with Donemus (see annex 1).

The Performers and the Composers hereinafter are all jointly referred to as “**the Artists**” and in singular as “**the Artist**”. Where applicable the signatories under 1 and 2 will hereinafter jointly be referred to as “**Parties**”.

WHEREAS:

- The Artists hold Intellectual Property Rights to the Recordings which are detailed in this Agreement;
- Donemus – amongst others - exploits and distributes recordings;
- Donemus has made an arrangement with a third party regarding the offering for sale of music through the digital distribution channels like iTunes, eMusic and Spotify;
- The Artists wish to grant Donemus a license to the Intellectual Property Rights to the Recordings detailed in this Agreement, as well as to the artwork of these Recordings, in order for Donemus to make available and/or reproduce the Recordings through digital distribution channels;
- Donemus is willing to accept this license subject to the terms and conditions stipulated in this Agreement;

DECLARE THAT THEY HAVE AGREED AS FOLLOWS:

1. Definitions

The terms bear the meaning assigned to them for the purposes of this Agreement:

Agreement	This Audio Agreement Donemus 2020
Album	Any collection of Recordings being exploited together;
Date of Assignment	The date on which the last party signs this Agreement;
Distribution channels	The worldwide online stores like iTunes or streaming platforms like Spotify

Intellectual Property Rights	All international intellectual property, similar and/or related rights in the broadest sense of the term, which are deemed to include in particular, but are not confined to (1) copyright and (2) neighbouring rights, as well as (3) design rights, (4) trademark rights, (5) patents, (6) database rights and (7) know-how, including any future intellectual rights, which is also deemed to refer to any related entitlements – being all entitlements to commercial exploitation, including but not confined to the right to hire out, lend, sell, distribute and reproduce – which are or may yet be conferred under the terms of relevant national and international legislation;
Recordings	A recording or a performance by the Performers of the work as described in paragraph 2.1. of this Agreement, as a whole, as well as parts of it, including any additions or (other) modifications to it;
Revenues	The receipts to Donemus from any digital distribution channel

2. Recordings rights

2.1 This Agreement relates to the following Recordings:

Recording	
Title:	
Year of composition:	
Year of performance:	
Duration:	

2.2 The Artists declare and warrant that:

- (a) all the composers, song writers, performing musicians and/or other people that have attributed to the coming into existence of the Recordings, have signed this Agreement and that no other party can claim (legally or otherwise) all or part of any Intellectual Property Rights to the Recordings, lyrics, composition and/or performances referred to in this clause in any manner whatsoever, except for any intellectual property rights transferred to a collective rights society (such as BUMA/STREMRA) or Donemus;
- (b) the Artists are all free to sign this Agreement with Donemus and that the Intellectual Property Rights are not burdened (for example because of any pawn or attachment);
- (c) no claims have been submitted or threaten to be submitted against the Artists and/or the Recordings, that can stand in the way to a sound execution of the Agreement;
- (d) the Artists will do and/or omit nothing that will jeopardize the Intellectual Property Rights or the free disposal of Donemus of these rights.

2.3 Furthermore, the Artists declare that they can dispose of the artwork that has been made for the Recordings and that the potential altering of the artwork by Donemus, the act of licensing Intellectual Property Rights to the artwork to Donemus and sublicensing the Intellectual Property Rights to the artwork from Donemus to third parties, nor the making available and/or reproduction of the artwork in online stores will constitute an infringement of the Intellectual Property Rights of third parties.

2.4 In the event that the Artists have knowledge of any circumstance that can conflict with a full compliance with the clauses 2.2. and 2.3., they will notify Donemus of this immediately, in writing.

- 2.5 The Artists undertake to supply Donemus with the complete and correct information of the Recordings, including information on the identity of the Performers and Composers of the Recording, the year the Recording was composed and performed and the duration of the Recording, as soon as possible.

3. License of rights

- 3.1 The Artists hereby grant Donemus – completely and without any reservation – a worldwide (unless agreed upon otherwise) license to all of their Intellectual Property Rights to (1) the recordings that have been made and (2) the lyrics, (3) the composition, (4) the performances contained in the Recordings as well as (5) the artwork in relation to the Recordings, for the purpose of making available and/or reproducing the Recordings through digital distribution channels. Donemus herewith accepts this license. Donemus shall have the right to make available and/or reproduce the Recordings through digital distribution channels.
- 3.2 In so far as this may be necessary, the Artists undertake, when first requested, to assist Donemus with (the completion of) any formalities which may be required and/or prescribed in connection with the licensing of the Intellectual Property Rights to Donemus.
- 3.3 In return for the licensing of Intellectual Property Rights, the Artists will receive the royalties set out in clause 7 of this Agreement. The Artists will not be entitled to any additional fees for the licensing of their rights and/or the fulfillment of any extra formalities and/or requirements as referred to in the previous paragraph.
- 3.4 Donemus is by virtue of this Agreement explicitly entitled to grant a sublicense to a third party to make available and/or reproduce the Recordings through digital distribution channels.
- 3.5 Donemus is entitled to indicate to the Recordings and Album that the Recordings sold are produced by one of Donemus's labels.
- 3.6 In case the Artists wish to take action against any infringement of their Intellectual Property Rights to the Recordings, they will do so at their own expense. If such an event occurs, the Artists will undertake to protect the interests of Donemus as licensee, including (but not defined to) claiming any costs that Donemus had to make and/or any damages that Donemus suffered as a result of the infringement. In the event that the Artists do not take any action against the infringement within a reasonable set of time, then Donemus shall be authorised – but in no way obliged – to take (legal) action against the infringement. The Artists undertake to grant power of attorney for this purpose should this be needed. The costs respectively the profits of any legal action will be allocated to the parties that take part in that action.

4. Liabilities

- 4.1 The Artists undertake to acquire the permission of all the parties that can assert any Intellectual Property rights to the Recordings, or any other rights that would affect the exploitation of the Recordings by Donemus, by having them all sign the Agreement.
- 4.2 In case the permission of one of the parties as meant in paragraph 4.1. of this Agreement lacks, Donemus is allowed to decide not to continue with the making available and/or reproducing of the Recordings through the distribution channels.
- 4.3 The Artists undertake to indemnify Donemus fully against any claims submitted by a third party. In the event that a third party nevertheless submits a claim, the Artists undertake to compensate Donemus in full for any loss suffered and/or any costs that occur as a result thereof. Donemus shall be entitled to set off any loss it suffers and/or expenses it incurs against any royalties that are to be paid as provided for further on in this Agreement. The Artists are held to give Donemus all the help it needs when having to defend itself against the allegations of third parties.

5. Recording editing

- 5.1 The Artists undertake to supply Donemus with a readable and exploitable copy of the Recordings, either analogue or digital.

- 5.2 Donemus shall be entitled to alter the Recordings in any way that it deems fit in order for the Recordings to be offered for sale. More in particular, Donemus shall be entitled to take the following actions:
- in the event the Artists supply Donemus with a copy of the Recordings that is not digital, Donemus shall be entitled to digitalize the Recordings;
 - in the event the Recordings do not fit the commercial standards that are required to make the Recordings available and/or reproduce through digital distribution channels, Donemus shall be entitled to remaster and/or otherwise adapt the Recordings to fit these standards;
 - in the event the Artists request Donemus to do so, Donemus will undertake to enhance the (quality of the) sound of the Recordings, as well as the (quality of the) artwork in relation to the Recordings.
- 5.3 In the event the supplied Recordings are of such a quality that – to the opinion of Donemus or any of the distribution channels like Apple – they cannot fit the commercial standards for making the Recording available and/or reproduce through distribution channels, Donemus will set a term of 25 days for the Artists to adapt the Recordings. In the event the Artists fail to do so within this period of time, Donemus will be entitled to refuse the Recordings and/or terminate the Agreement.
- 5.4 In so far as the Recording and/or the Album cannot dispose of it already, Donemus will undertake to obtain an ISRC code for each Recording and, in the event the Recordings detailed in this Agreement constitute a whole Album, an EAN number for the album.
- 5.5 In the event Donemus has received all the necessary information about the Recordings as meant in clause 2 of this Agreement, as well as the authorization of all the parties that can assert any Intellectual Property Rights to the Recordings as meant in clause 4 of this Agreement, Donemus undertakes to submit the Recordings to a third party and add the relevant information to the Recordings.
- 5.6 Donemus has no obligation to promote the Recordings in any way.

6. Collective rights management

The Artists declare that they are aware of the fact that in some countries the respective collective rights management organisations award a certain compensation for the making available and/or reproducing of the Recordings through the digital distribution channels. The rightholders of the Intellectual Property Rights to the Recordings are responsible to register their rights to the Recordings with the worldwide collective rights management organisations.

7. Royalties

- 7.1 The (sales) price to which the Recordings shall be offered at the distribution channels, can to a limited extent be determined by Donemus.
- 7.2 Donemus shall receive the Revenues from the distribution channels directly or by a third party.
- 7.3 Unless agreed upon otherwise in writing, Donemus shall – after deducting the taxes that have to be paid on the Revenues first – divide the Revenues it receives as royalties between the Parties as follows:
- 50% (fifty percent) shall be divided equally between the Performers;
 - 25% (twenty-five percent) shall be divided equally between the Composers;
 - 25% (twenty-five percent) shall fall to Donemus.
- 7.4 Donemus shall remit the royalties payable to the Artists once every year within 90 days after the 31st of December of that year.
- 7.5 An Artist can only claim royalties and Donemus is only held to remit royalties to an Artist when the amount of his royalties in that year exceeds the amount of € 20.00.
- 7.6 At the first request of an Artist, Donemus will provide the Artist with a statement with the information on the Recordings provided by the digital distribution channels or other sources.

- 7.7 In the event that profits are remitted, any Artist is entitled to have a chartered accountant whom he appoints and pays for this purpose, audit the statements sent to him by Donemus to ensure that they are correct, and to check the payment of the relevant royalties.

8. Term and termination

- 8.1 This Agreement has been entered into for an indefinite period of time.
- 8.2 Either party shall be entitled to cancel this Agreement, provided that this occurs by registered letter subject to a period of notice of three (3) months.
- 8.3 Either party shall be entitled to cancel all or part of this Agreement immediately by means of a registered letter if and in so far as the other party fails to comply with its obligations pursuant to this Agreement within a reasonable period of time after it has been notified that it is in default.
- 8.4 Either party shall be entitled to cancel all or part of this Agreement immediately by means of a registered letter if and in so far as: (i) the other party files for a moratorium on payments or bankruptcy, or (ii) the other party is declared bankrupt or (iii) it is decided to liquidate the other party's business.
- 8.5 In case this Agreement is terminated in any way (including those mentioned in paragraphs 8.2 – 8.4) Donemus will do its utmost to withdraw the Album from the distribution channels at the earliest possible moment according to these contracts, to that extent that the contracts will no longer include the Recordings.

9. Miscellaneous

- 9.1 This Agreement will come into effect after the Date of Assignment.
- 9.2 Any amendment of or supplement to this Agreement shall only apply if agreed to in writing and signed by all of the parties.
- 9.3 The full or partial nullity or nullification of any provision of this Agreement for any reason whatsoever shall not affect the validity of its other provisions. The relevant parts of such provision shall be transformed by operation of the law into the legally permissible provision which most closely coincides with its substance and purport.
- 9.4 General conditions of any of the Artists, however those general conditions may be called and whatever form these general conditions may have, shall not apply to this Agreement.
- 9.5 Donemus shall be entitled to transfer the rights and obligations that derive from this Agreement to a third party, under the condition that the third party will accept without any reservation the rights and obligations that follow from this Agreement.

10. Choice of law and forum

- 10.1 This Agreement and any arising pursuant or in relation to it and any other legal act shall be governed and construed solely in accordance with the law of the Netherlands.
- 10.2 Any dispute arising pursuant or in relation to this Agreement and any other agreements arising pursuant or in relation to it, the execution thereof and any other legal act, which is deemed to include what only one of the parties considers to be such, and which cannot be resolved amicably, shall be adjudicated by the District Court of The Hague, the Netherlands.

Agreed	
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