

Audio Agreement Donemus



THE UNDERSIGNED:

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

2.

	Name	Role
Contributor 1		
Contributor 2		
Contributor 3		
Contributor 4		
Contributor 5		

hereinafter referred to as “the Contributors”,

The Performers, Composers, Conductors, Managers etc hereinafter are all jointly referred to as “**the Contributors**” and in singular as “**the Contributor**”. Where applicable the signatories under 1 and 2 will hereinafter jointly be referred to as “**Parties**”.

The **Contributors** obtained a mandate from the parties that have performed the Recordings, 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 Appendix).

WHEREAS:

- The Contributors 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 Distribution channels like iTunes, eMusic and Spotify;
- The Contributors 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 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, streaming platforms like Spotify and all similar platforms for digital exploitation of music

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 of 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	
Composer:	
Title:	
Year of composition:	
Year of performance:	

2.2 The Contributors 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 and that can (still) invoke Intellectual Property Rights to 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/STEMRA and SENA) or Donemus;
- (b) the Contributors 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 Contributors and/or the Recordings, that can stand in the way to a sound execution of the Agreement;
- (d) the Contributors 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 Contributors 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 Contributors 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 Contributors 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.
- 2.6 Donemus acknowledges that the Contributors do not need to request permission to enter into this Agreement from parties who attributed to the Recordings but whose Intellectual Property Rights have lapsed or expired, for instance if it regards a composition that is now in the public domain.

3. License of rights

- 3.1 The Contributors 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 Distribution channels. Donemus herewith accepts this license. Donemus shall have the right to make available and/or reproduce the Recordings through Distribution channels.
- 3.2 In so far as this may be necessary, the Contributors 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 Contributors will receive the royalties set out in clause 7 of this Agreement. The Contributors 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 Distribution channels.
- 3.5 Donemus is entitled to indicate that it or one of the Donemus labels is the producer of the Recordings and Album, for instance when registering the Recordings with Distribution channels and collective rights societies. To that extent Donemus may also use the © symbol and enter its name in any fields designated to such rights.
- 3.6 In case the Contributors 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 Contributors 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 Contributors 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 Contributors 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 Contributors 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 Contributors 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 Contributors 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 Contributors 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 Contributors undertake to supply Donemus with a readable and exploitable copy of the Recordings, either analogue or digital.
- 5.2 Donemus shall be entitled to master and edit the Recordings in any way that it deems fit with the purpose of the exploitation of the Recordings, including through the Distribution channels. More in particular, Donemus shall be entitled to take the following actions:
- in the event the Contributors supply Donemus with a copy of the Recordings that is not digital, Donemus shall be entitled to digitalize the Recordings;
 - Donemus shall be entitled to (re)master and/or otherwise adapt the Recordings, for instance to fit any commercial standards;
 - Donemus may undertake to enhance the (quality of the) sound of the Recordings;
 - Donemus may amend the (quality of the) artwork in relation to the Recordings or may develop new artwork.

Donemus shall edit the Recordings solely at its own discretion, inter alia taking into account the quality of the Recordings, commercial standards and costs. This also means that Donemus may decide not to strive for perfection when mastering the Recordings when this is not commercially viable. For that reason the Contributors hereby waive any personal or moral rights they may have in relation to the Recordings, insofar as this is legally possible.

- 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 Contributors to adapt the Recordings. In the event the Contributors 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 Contributors declare that they are aware of the fact that in some countries the respective collective rights management societies award a certain compensation for the making available and/or reproducing of the Recordings through the 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 societies.

7. Royalties

- 7.1 The (sales) price to which the Recordings shall be offered at the Distribution channels, shall be determined by Donemus.
- 7.2 Donemus shall receive the Revenues from the Distribution channels directly or from a third party.

- 7.3 Unless agreed upon otherwise in writing, Donemus shall first deduct its costs for mastering the Recordings as set out in clause 5.2 of this Agreement as well as any taxes that have to be paid in relation to the Recordings from the Revenues. Donemus shall then divide the remaining amount of the Revenues as royalties between the Parties as follows:
- 50% (fifty percent) shall be divided equally between the Contributors;
 - 25% (twenty-five percent) shall be divided equally between the Composers;
 - 25% (twenty-five percent) shall fall to Donemus.
- 7.4 Donemus shall have no obligation to pay any Revenues or other remunerations to parties that cannot invoke any Intellectual Property Rights to the Recordings. In that event the share concerned shall automatically fall to Donemus. If for instance the composition of the Recordings is in the public domain as set out in clause 2.6 of this Agreement, Donemus is also entitled to receive the 25% that would otherwise have been paid out to the Composers.
- 7.5 It is the responsibility of the Contributors themselves to apply for their share from the collective rights societies. Donemus shall be entitled to receive the standard share for the producer from the collective rights societies. In the event the collective rights societies – for whatever reason – decide not to award this share to Donemus, Donemus is entitled to an amount equal to this share. Donemus shall in that event be entitled to deduct the amount from the Revenues. The Contributors shall provide Donemus at its first request with any and all information necessary to calculate this share.
- 7.6 Donemus shall remit the royalties payable to the Contributors once every year within 90 days after the 31st of December of that year.
- 7.7 An Contributor can only claim royalties and Donemus is only held to remit royalties to an Contributor when the amount of his royalties in that year exceeds the amount of € 40.00.
- 7.8 At the first request of an Contributor, Donemus will provide the Contributor with a statement with the information on the Recordings provided by the Distribution channels or other sources.
- 7.9 In the event that profits are remitted, any Contributor 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 annul (in Dutch: opzeggen) 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 dissolve (in Dutch: ontbinden) 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 dissolve (in Dutch: ontbinden) 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 strive to withdraw the Recordings and Album from the Distribution channels at the earliest possible moment according to the applicable contracts, to that extent that the contracts will no longer include the Recordings. Donemus shall in no event be liable for any costs and/or damages in case this Agreement is terminated.

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 Contributors, 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.

Appendix: AUTHORIZATION

The undersigned contributors declare that they have taken notice of the **Audio Agreement Donemus**, that is to be concluded between the undersigned and Donemus (hereinafter referred to as: “the Audio Agreement”), with regard to the following recording(s):

Recording	
Composer:	
Title:	
Year of composition:	
Year of performance:	

The undersigned contributors wish to enter the recording(s) into the Audio Agreement with Donemus. For that reason, the parties that have composed and performed on the recording(s), hereby authorize Donemus to conclude the Audio Agreement and to represent all their interests in respect to the Audio Agreement, including the collection and distribution of the earnings:

Contributors:

Name	Davo van Peursen
Role	Secretary of Donemus Foundation
Date	
Signature	

Name	
Role	
Date	
Signature	

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