

## **Rights Administration Agreement**

Between

Rights holder/trustee

hereinafter “the Owner”

represented by

and

VGf  
VERWERTUNGSGESELLSCHAFT  
FÜR NUTZUNGSRECHTE AN FILMWERKEN MBH  
Beichstraße 8, 80802 Munich, Germany

hereinafter “the VGf” the following agreement is concluded:

### **Preamble**

The VGf is tasked with assertion the rights and entitlements of film producers as defined by section 94 of the German Copyright Act (UrhG) and of copyright holders and other rights holders throughout the audio-visual industry in the Federal Republic of Germany and overseas. This remit extends in particular to all areas in which the direct assertion of rights by the rights holder is not possible for legal reasons or for reasons either requiring the collective assertion of rights or making such collection advisable.

## 1. Transferred rights

- (1) At the Owner's request, the VGF will exercise rights specified by the owner to types of works and other protected items specified by the owner in areas specified by the owner if: a) the rights, works, other protected items and areas are part of the VGF's sphere of activity; and b) this action on the part of the VGF is not opposed by any objective reasons.
- (2) In consideration of the above, and subject to the provisions stated in (6) below, the Owner hereby transfers to the VGF as a trustee the following rights of the Owner in cinematographic works as defined by UrhG section 2, para. 1, no. 6 as presently held or acquired subsequently, for the purposes of assertion and collection according to the following provisions:
  - a) The right of public broadcast of television programs and of communication of the making available to the public pursuant to UrhG section 22
  - b) The collection of dues from the lending/rental of copies of works (in video rental shops, etc.) pursuant to UrhG section 27
  - c) The collection of dues for waiving the requirement for due deletion of recorded school broadcasts (UrhG section 47, para. 2, sent. 2)
  - d) The collection of appropriate remuneration for making works available to the public for instruction, teaching and research (until 28.02.2018 UrhG section 52a, para. 4) and from 01.03.2018: collections for use under sections 60 a), 60 b), 60 c) in conjunction with section 60 h) UrhG),
  - e) The collection of payment from manufacturers and importers of image recording and similar devices and storage media or equipment for making reproductions as defined by UrhG section 53 due to the private reproduction of works (UrhG sections 53, 54, 54a and 54b)
  - f) The right of retransmission by cable and satellite, i.e. the right to retransmit a transmitted work within a cable or satellite system in analogue or digital form; including the collection of remuneration defined in UrhG section 20b, para. 2

- g) The collection of dues for the inclusion of the work in collections for religious, school or instructional use (UrhG section 46, para. 4)
  - h) The right to make internal copies by broadcasters to simplify technical broadcasting requirements, insofar as the broadcaster has acquired the relevant broadcasting rights (ephemeral recording)
  - i) The collection of appropriate remuneration for making published works accessible at electronic reading places in public libraries, museums and archives (until 28.02.2018: section 52 b) UrhG, from 01.03.2018: the collections for use in accordance with sections 60 e) para. 4, 60 f) in conjunction with section 60 h) UrhG),
  - j) The collection of appropriate remuneration for reproductions by publicly accessible libraries, archives, institutions in the field of cinematic and audio heritage as well as for publicly accessible museums and educational institutions for the purposes of making accessible, indexing, cataloguing, preservation and restoration, for the distribution of a work to other institutions and the other permissible purposes specified in sections 60 e) in conjunction with 60 f) UrhG pursuant to section 60 h) UrhG,
  - k) The rights and entitlements granted above to the VGF also apply to modern manifestations of the corresponding uses, in particular private reproductions and non-public transmissions to enable offers such as "sideloading", "sidestreaming", from "set-top-box to set-top-box", "TV Everywhere" and "In Home via any device" or "Sync & Go".
- l) The corresponding rights (this section 1, a) to h)) to the version of the work dubbed into German
- (3) Subject to the provisions stated in (5), the Owner also transfers to the VGF all abovementioned rights and entitlements and all comparable rights and entitlements in foreign countries, as well as all other remuneration entitlements granted in foreign countries that may be exercised only collectively.
  - (4) Insofar as the abovementioned rights have been transferred for assertion in foreign countries, this

transfer constitutes a trusteeship in the context of reciprocal agreements with foreign collecting societies.

- (5) The transfer of rights also applies in the case of the exploitation of works in part, in excerpts, in adaptations and in transformations.
- (6) By means of a written statement, the Owner may exclude any of the abovementioned rights from transfer to the VGF or prohibit the assertion of rights and entitlements by the VGF in any single country or in all countries. Once the corresponding rights have been transferred to the VGF, such an act of limitation is made on the terms applicable for the termination of this Rights Administration Agreement (section 11, para. 1).

## **2. Ownership of rights**

- (1) Insofar as the Owner cannot currently exercise the rights, s/he transfers these rights for the eventuality that s/he regains a right to exercise them. Such a transfer also encompasses the abovementioned rights in cases where the Owner obtains or has obtained these rights by succession.
- (2) If the Owner only has partial rights in a work, s/he shall notify the VGF of this work and the proportion of rights owned in this work.

## **3. Duty of disclosure**

- (1) The Owner shall at all times provide the VGF with the information and advice required by the VGF for the ascertainment and assertion of the former's rights and claims, and shall provide such details as are required to prepare and execute the distribution plan, and shall make the necessary documentation available. The VGF is also authorised to procure the necessary information and particulars independently. This duty of disclosure also encompasses the listing of all cinematographic works and motion pictures in which the Owner possesses the abovementioned rights (section 1). The Owner shall supplement or amend this listing on an ongoing basis.
- (2) The Owner shall complete all forms supplied by the VGF to the former for the purposes of

establishing claims, providing truthful answers and returning such forms within a time frame of six weeks. Details envisaged by these forms include the type of rights acquisition (as producer or film author or by later acquisition), video broadcast dates, video exploitation and the contractual situation re individual rights.

- (3) If these details are not provided truthfully or in time, the VGF shall not be required to make payments.
- (4) The VGF is authorised to audit these details itself or to commission an authorised auditor to do so.

#### **4. Authorisation granted to the VGF**

- (1) Concerning the rights transferred to the VGF by the Owner, the VGF is authorised to exercise these rights in its own name, to exploit such rights, to collect payments due and issue legally binding receipts for such payments, to retransfer or prohibit the usage of these transferred rights in whole or in part on the terms of contracts held with foreign and international collecting societies or rights exploiters, and to assert all rights to which the VGF is entitled in its own name and using any vehicle considered necessary, including bringing an action before a court.
- (2) The VGF is authorised to conclude inclusive agreements with user associations (section 35 of the German Collecting Societies Act, VGG) and to conclude representation agreements (VGG section 44).

#### **5. Non-infringement warranty**

- (1) The Owner warrants that the rights s/he transfers to the VGF are not encumbered by third-party rights except in cases where the former has expressly stated that such rights exist (other related rights holders, co-author rights, etc.).
- (2) Should the assertion of the transferred rights infringe extant third-party rights, the Owner indemnifies the VGF against all claims of such parties.

## **6. Prohibition of assignment**

All claims of the Owner against the VGF may be assigned or pledged only with the consent of the VGF. The VGF is entitled to charge an administrative fee for the processing of pledges and assertions on behalf of the Owner (as obligor) in an amount corresponding to the costs incurred by such activities.

## **7. Articles of Association, distribution plans, changes to this agreement**

- (1) All accounting and payments will comply with the VGF's Articles of Association and the distribution plans.
- (2) All Articles, distribution plans, and conflict-of-law rules passed by the VGF General Assembly - including any future changes made to the same - form an integral part of this Agreement.
- (3) Should the VGF General Assembly make changes or amendments to this Rights Administration Agreement in the future, these will also form an integral part of this Agreement; this also applies in particular to usage types unknown at the time this Agreement was made. The Owner is to be notified of changes or amendments in writing or by means of electronic communications. The Owner's consent to a change or amendment is assumed if no express rejection from the former is forthcoming within six weeks of this notification; the Owner must be advised of this legal consequence in such notifications.

## **8. Duty of notification**

- (1) The Owner shall notify the VGF without delay of any and all changes and amendments to his/her address, nationality, company name or registration details and ownership/shareholder status, and concerning any restructuring or merger of the company or a relocation of the company's place of business. Furthermore, the Owner shall inform the VGF of relevant taxation details (tax authority, tax ID, VAT registration number).
- (2) If an Owner cannot be identified, the procedures resulting from VGG sections 29 and 30 are to be adopted and followed.

- (3) Should it not be possible to determine the address of the Owner or his/her legal successors by enquiries made at the local registration authority for the last known address and other appropriate measures, the VGF is entitled to terminate the Rights Administration Agreement at the end of the third financial year in which proceeds were collected from rights for which the Owner could not be identified. In such a case, notice of termination will be sent by registered post to the Owner's last-known address held on file at the VGF.

### **9. Legal succession**

- (1) Legal succession in this contractual relationship is governed by general legal provisions insofar as the Articles and Agreement do not contain any provisions to the contrary.
- (2) In the event of the Owner's death, the Rights Administration Agreement will continue with the former's heirs. If there are several heirs, these must exercise their rights through a mutually authorised representative. The VGF is not obliged to make payments until proof is furnished of legal succession and an authorised representative is appointed. The VGF may demand the submission of notarised documents as proof of succession and powers of representation.

### **10. Multiple Owners**

Co-producers, other collective owners of related rights derived from film producer rights as defined in UrhG section 94, authors of compound works and co-authors may assert their rights separately by concluding Rights Administration Agreements. Payment is made solely to the Owners' mutually authorised representative or on the terms of a joint declaration made by the Owners concerning the ownership structure.

### **11. Distribution plans, deductions**

- (1) The VGF sets out rules ("distribution plans") for the distribution of the proceeds collected by the VGF, so as to exclude an arbitrary approach to the distribution of these proceeds from the rights.

- (2) The deadlines for distribution envisaged in the distribution plans must be in line with the provisions of VGG section 28.
- (3) Deductions from the proceeds collected from the rights transferred to VGF must be appropriate to the services performed by VGF for the Owners and specified in accordance with objective criteria. Deductions from proceeds from the transferred rights intended to cover administrative costs must not exceed the justifiable and documented administrative costs.
- (4) The VGF General Assembly may pass resolutions to make deductions totalling no more than 10% of proceeds collected for the funding of culturally significant works and services, and for pension schemes/support funds.

## **12. Contractual term**

- (1) This Agreement is concluded for an indefinite period. It may be terminated at the end of a calendar year by giving six months' notice in advance. The Owner may also revoke any rights to any works and for any countries transferred to the VGF as s/he sees fit by observing the same period of notice.
- (2) On termination of the Agreement, rights revert to the former Owner without any specific retransfer arrangements being required.
- (3) Agreements concluded before the termination of this Rights Administration Agreement with third parties for the usage of works of the Owner no longer under contract are concluded with effect for and against the Owner even after the expiry of the Rights Administration Agreement, until the next possible termination date.
- (4) Concerning proceeds from rights granted to the VGF by the Owner, the VGF shall nonetheless continue to collect, manage and distribute these proceeds, while observing the general regulations and on the terms of the applicable distribution plans, if the Owner is owed proceeds from the rights: a) for usages in a period before the effective termination of the Rights Administration Agreement or the effective revocation of the rights; or b) from a usage right that the VGF had granted before the effective termination of the Rights Administration Agreement or the effective revocation of the rights.



### **13. Dissolution of the VGF**

If the VGF is wound up, this Agreement is considered to be terminated at the end of the quarter following the quarter in which the winding-up order was approved by the competent authority.

### **14. Prior agreements**

This Agreement is signed by both parties; the Owner receives a copy of the Agreement. Insofar as a prior contractual relationship existed between the contractual parties, this new Agreement supplants the prior contract in all matters.

### **15. Limitation period**

The limitation period for claims asserted by the Owner against the VGF on the terms of this Agreement is three years. The provisions of the German Civil Code (BGB) apply for the calculation of this limitation period.

### **16. Electronic communication**

- (1) Until further notice, Owners may also communicate with the VGF in writing and by fax.
- (2) In addition, the VGF offers all Owners the option of utilising electronic communications. Until further notice, the VGF email address is [info@vgf.de](mailto:info@vgf.de).
- (3) The VGF may decide that all matters to be communicated to the Owner - namely checklists, notifications of cases of conflicts affecting the Owner and the communication of any other information affecting the Owner - will in the future be communicated solely via electronic channels (e.g. by providing such materials in a protected area on the VGF website and notifying Owners by email of these materials). Owners are to be informed of this decision using an appropriate channel. The VGF may also decide that exemptions to be submitted by Owners in relation to expected payments must also be submitted via electronic channels.

## **17. Data protection**

The Owner hereby agrees to the electronic storage and processing of his/her data and its use by the VGF, all such usage being moreover expressly limited to the scope and terms of this contractual relationship.

## **18. Duty to provide information**

- (1) By signing this Agreement, the Owner confirms that s/he is fully cognisant of his/her rights as resulting from VGG sections 9 to 12, including the conditions named in section 11, such as have been taken into consideration by this Rights Administration Agreement. These details and information provided pursuant to VGG section 53, para. 1, no. 2 can (also) be accessed from the VGG website at <https://www.gesetze-im-internet.de/vgg/>.
- (2) The VGF will provide Owners with the information envisaged by VGG section 54 within the time frames as envisaged there.
- (3) The VGF will provide the Owner with the information envisaged by VGG section 55 at the latter's request.

## **19. Grievance procedure, places of performance and jurisdiction**

- (1) The Owner may submit a written complaint to the VGF concerning any matter affecting the former or concerning the matters as set out in VGG section 33. The VGF will provide a written response to such complaints. The VGF will justify any inability to remedy a complaint.
- (2) Where legally permissible, the place of performance and jurisdiction is Munich; otherwise, the place of business of the VGF or one of its branches.

**20. Special agreements, rights excluded**

(place), ..... (date)

.....  
(Owner)

Munich,.....

.....  
(VGF)