

Организација за колективно управување на правата на произведувачите на фонограми и уметниците музички изведувачи **ММИ Скопје**

Примено: 18.04.2015			
Орг. Един.	Број:	Прилог:	Вредност:
03	171/1	1	

ORGANIZACIJA <b>O.F.P.S.</b>	
Br.:	2961/15
Datum:	23.04.2015 god.
Beograd	

## Bilateral Agreement

### The undersigned Parties:

#### **Organizacija proizvođača fonograma Srbije – O.F.P.S.**

Masarikova 5/19, 11000 Beograd, E: info@ofps.org.rs; office@ofps.org.rs

Tel-Fax: +381 11 404-9090; 404-9091; Web: www.ofps.org.rs

on the one hand

and

#### **“MMI” Skopje**

**The Collective rights management organization of**

**phonogram producers and artists music performers (hereinafter as MMI)**

Ul. “Jordan Mijalkov” 44/2-1, 1000 Skopje R. Makedonija

Represented by Bodan Arsovski - Managing Director

on the other hand

### **Declare that**

Whereas the Contracting Parties will co-operate in order to strengthen the producers' rights and ensure an effectively functioning international administration of such rights;

Whereas the proper administration of producers' rights requires that the Contracting Parties have set up an effective administration which enables the Contracting Parties to distribute individually among the producers the remuneration as much in proportion to the actual use of their protected phonograms as possible;

Whereas the sole purpose of this Agreement is to facilitate the payment of remuneration due to producers and hereby remedy difficulties arising for producers represented by the Contracting Parties;

Whereas the Contracting Parties are able to effect full exchange of individual remuneration to the producers of the respective societies as from the entering into force of this agreement,

Whereas the Contracting Parties shall make their best efforts to prevent a disturbance of the relationship between the licensor and licensee of producers' rights,

the Contracting Parties have made the following

# AGREEMENT

## **Article 1 - Territory of the Agreement**

1. This agreement covers the administration of producers' rights concerning the communication to the public of phonograms published for commercial purposes, including: broadcasting, rebroadcasting and public performance in Serbia and Macedonia, protected under national law, and the applicable international conventions.
2. On behalf of the producers of phonograms, O.F.P.S. and MMI are in accordance to their regulations and declarations of membership authorized to collect and distribute remuneration in respect of the producers' rights as mentioned in par. 1 respectively in Serbia (O.F.P.S.'s territory) and in Macedonia (MMI's territory).

## **Article 2 - Authorisation to Administer**

1. O.F.P.S. and MMI have been directly and exclusively authorized by their respective associated producers of phonograms, not having an office and/or a licensee in the territory of the other Party - hereafter called "members"- to represent their rights abroad and with a binding effect on their behalf to make arrangements for an exchange of remuneration with corresponding organizations abroad.
2. This Agreement only covers the above-mentioned members having given O.F.P.S. respectively MMI such a mandate.
3. In accordance to these mandates given by their members the Contracting Parties assign and grant to each other (if and insofar the Parties are not directly authorized to do so by virtue of the national law) to the exclusion of any other and of themselves to exercise and maintain the Producers' Rights and claims their respective members are entitled to in the territory of the other society.

## **Article 3 - Objective of this Agreement**

The objective of this Agreement is the transfer between the Contracting Parties of remuneration distributed to individual producers represented by the other Party, as from 1 January 2015, for the first time concerning the remuneration collected over 2015.

#### **Article 4 - Exchange of Information**

Upon signature of this Agreement and before the end of October each year, the Parties will exchange the following information in three phases as mentioned below:

1. Once a year, before the end of May the Contracting Parties shall provide each other with information in digital format as to which producers are covered by this Agreement and the labels and repertoire of these producers for whom they do hold the collection rights in the territory of the contracting Party.
2. Once a year, before the end of September the Contracting Parties shall provide each other with information in digital format regarding tracks (belonging to the producers of the other claiming Contracting Party) being broadcast in the other country, for which the societies need further information in order to be able to distribute the remuneration.
3. Once a year, before the end of October the Contracting Parties shall provide each other information in digital format regarding the rightful producer per track.
4. Technical format used for the exchange, shall be discussed between MMI and O.F.P.S.

#### **Article 5 - Distribution and Transfer of Remuneration**

1. MMI and O.F.P.S. each undertake to exercise principles and procedures for collecting and distributing remuneration which are the same as those applied for their own members.
2. Those net remuneration, which in accordance to individual account of reference to the national distribution plan is entitled to members of the other Party, and which has not already been represented by another producer which has been legitimately nominated, shall be exchanged between MMI and O.F.P.S. on an annual basis on or before 15 December in the year following to the year of collection.
3. Members of MMI and O.F.P.S., respectively, who have received remuneration in accordance to this present Agreement are not positioned to claim remuneration from the society of the other country directly.

## **Article 6 - Payment of the Beneficiaries**

1. The Contracting Parties will pay all monies received from the other Contracting Party under Article 4 to the named producers, without any deduction, within a maximum time limit of six months starting on the date that the moneys were received. The origin of the distributed sums should thereby be mentioned.
2. The Contracting Parties will provide each other within 28 days after payment (but no more than three times in any calendar year) with a written statement setting out what moneys received from the other Contracting Party have been passed on to producers, specifying the name of each relevant producer, its address, the amount and date of payment.
3. The amounts transferred and for which the payment address of the beneficiary cannot be identified or cannot be paid out to the producers for any other reason within 6 months, shall be returned to the society of collection.

## **Article 7 - Administration Costs**

The Contracting Parties cover their own costs incurred under the administration of this Agreement.

## **Article 8 - Fiscal Modalities**

The Contracting Parties shall not deduct tax at source on collected remuneration in the country of collection, according to the Taxation Agreement between Macedonia and the Serbia. This tax deduction will take place in the receiving country, being the country of residence.

## **Article 9 - Disputes Between Producers ("Double claims")**

1. Disputes between two or more record producers who are resident or principally based in the other Contracting Party's territory and which producers each claim an entitlement to the Producers' Right in the same territory for the same period are considered as Double Claim Disputes. Within 28 days after receipt of the information as mentioned in Article 4 par. 3, each of the Contracting Parties shall notify the other of any Double Claim Disputes or potential disputes which come to their notice.
2. The Contracting Parties shall use reasonable endeavours to resolve any Double Claim Dispute in the following manner:

- Contracting Party shall inform the producers involved in a double claim on airplay in the country of collection in writing about the Double Claim Dispute in which the producers are involved.
- Producers involved in a double claim are requested to sort out the double claim mutually without interference of the Contracting Parties.
- Each party shall calculate the financial value of the Producers' Right and freeze future payments of the Producers' Right.

Each party shall end the frozen future payments if a written confirmation by all relevant producers to the Double Claim Dispute is received that payment can be made and to whom or resolution of the Double Claim Dispute to the reasonable satisfaction of the relevant producers, whichever is earlier;

#### **Article 10 - Control Procedures**

1. The Contracting Parties shall have access to all relevant information on the producers, registered recordings and documents within the office premises of the other Party, which enables the Parties to exercise control of the proper functioning of this Agreement.
2. Upon request the Contracting Parties are obliged to supply the other Party with all specific information on the actual use of producers' recordings available.
3. Upon request, the external accountants of the Contracting Party are obliged to supply to the other Party an audit of Accuracy, Completeness, and Delivery in time of the supplied information. If requested by the receiving Party, its own external accountant shall review the provided audit.
4. The Contracting Parties take appropriate steps to ensure confidentiality of information to the extent required by the other Party or statutory provisions in the territory of this Agreement.

#### **Article 11 - Settlement of Disputes between the Contracting Parties / Applicable Law**

1. The Contracting parties shall use their best efforts to settle by negotiation any dispute that might arise from or in connection with this Agreement or its application.
2. Such disputes shall be settled, first and foremost, by arbitration upon which the Contracting Parties shall agree. However, if the application of this Agreement might lead to legal proceedings, the said dispute shall be submitted to and governed by the law of the Defendant's court of venue.

## Article 12 - Force Majeure and Hardship

If for reasons of force majeure or hardship a Contracting Party cannot fulfil its obligations in accordance with this Agreement the necessary consequences shall be negotiated by the Parties or settled in accordance with Article 11. The parties will renegotiate this Agreement in good faith in order to take into account the changes that took place.

## Article 13 - Untransferrability of this Agreement

Neither of the Contracting Parties shall have the right to assign all or parts of this Agreement to any third party whatsoever without the written consent of the other Party.

## Article 14 - Duration and Termination

1. This Agreement enters into effect immediately upon duly signatures of the two parties.
2. This Agreement shall remain in force until notice of termination has been made in writing by either Party no later than six (6) months before the expiration of a calendar year.

In Belgrade

23.04.2015.

**O.F.P.S.**

Petar Djurić

Managing Director



in Skopje

08.04.2015

**MMI**

Bodan Arsovski

Managing Director

