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APPENDIX VOD EXPLOITATION

Provisions with respect to the assignment agreement between the principal director / screenwriter / leading actor and producer/broadcaster.

WHEREAS:

- A. RODAP and the collective management organizations (CMOs) LIRA, VEVAM and NORMA have made arrangements in their agreement dated 22 January 2015 ("Agreement") that are meant to effectuate that the screenwriters, principal directors and leading actors who have transferred their rights to the producer with regard to VOD exploitation, as defined in this appendix, can demand payment of a Fair Proportional Compensation from the VOD operators directly through LIRA, VEVAM and NORMA, as a result of which RODAP and LIRA, VEVAM and NORMA provide a model for voluntary collective management ("VCM model") for VOD Exploitation.*
- B. The VCM model means that this present appendix ("Appendix VOD Exploitation") is included in the assignment agreement between the producer or broadcaster and a screenwriter, principal director or a leading actor for the delivery of a contribution to a Film in which the rights with respect to VOD Exploitation, as described hereinafter, are transferred to the producer or broadcaster.*
- C. If it is agreed in the assignment agreement that the rights with respect to VOD Exploitation are not transferred to the producer and are therefore retained by the creator, then this Appendix VOD Exploitation should not be attached/signed.*

DEFINITIONS:

Contribution means all services provided by the Contractor (and their results) as referred to in Article 45a of the Copyright Act or Article 4 of the Neighbouring Rights Act in the context of the realisation of the Film;

Creator means the screenwriter, principal director or the performer who fills a leading role (as referred to in Article 45d paragraph 2 of the Copyright Act respectively Article 4 of the Neighbouring Rights Act) who is contractually affiliated with LIRA, VEVAM or NORMA directly and is a party in the assignment agreement in question with the Producer for the delivery of a Contribution to a Film.

Fair Proportional Compensation means the fair proportional compensation, for which the rate structure and the methodology pursuant to the Agreement must be agreed upon by RODAP and the CMOs, which the VOD Operator must pay to the CMOs based on the VOD Compensation Agreement for VOD Exploitation;

Film means a cinematographic work or cinematographic works as referred to in Article 45a of the Copyright Act, which is the subject of this assignment agreement, or its episodes or fragments;

Producer means the counterparty of the Creator to the assignment agreement in question for the delivery of a contribution to a Film. This could also be a broadcaster that concludes a contract with the Creator directly.

Third Party Clause the Third-Party Clause as included as an appendix to this Appendix;

VOD Compensation Agreement means the agreement concluded between the CMOs and the VOD Operator based on the general conditions as published on the websites of the CMOs, on the basis of which the VOD Operator undertakes to the CMOs to pay the Fair Proportional Compensation to the CMOs for the benefit of the Creators.

VOD Exploitation means the availability of a Film in the context of a service that is entirely or partially aimed at a Dutch public, in such a way that the Film is accessible to the members of the public subject to payment in the Netherlands at a location and time individually chosen by them, with the exception of such availability that is freely accessible or available in the context of a catch up service that provides the consumer with access to the Film for a period of a maximum of 14 days after the linear broadcast without requiring the consumer to pay an amount in addition to the subscription for the linear broadcasting.

VOD Exploitation Agreement means the agreement in which the counterparty, by virtue of transfer, license or other means, acquires the authority, whether with time limits or under a condition precedent, for VOD Exploitation and/or for granting consent for VOD Exploitation to third parties.

1. APPLICATION OF THE THIRD-PARTY CLAUSE

- 1.1 To effectuate that all VOD Operators conclude a VOD Compensation Agreement, the Producer is required to include the Third-Party Clause, complete and without modification, in each VOD Exploitation Agreement that the Producer concludes.
- 1.2 If the Producer himself proceeds with VOD Exploitation, the Third-Party Clause also applies between the Creator and the Producer. For that VOD Exploitation, the Creator is Party 1 and the Producer is Party 2.
- 1.3 This Appendix and the associated Third-Party Clause only applies to Films of Producers who, at the time of the production, were associated with one of the following associations or foundations: The RODAP Association for the Legal Consultation for the Distribution of Audiovisual Productions (Vereniging Rechtenoverleg voor Distributie van Audiovisuele Producties RODAP), the Independent Dutch Producers Foundation (Stichting Onafhankelijke Producenten Nederland).

2. FURTHER CONDITIONS FOR THE TRANSFER OF RIGHTS WITH RESPECT TO VOD EXPLOITATION

- 2.1 The Creator and Producer hereby confirm that – with regard to the rights based on the Copyright Act respectively on the Neighbouring Rights Act with respect to the VOD Exploitation – the assignment agreement, of which this Appendix is a part, does not include any derogation condition as referred to in Article 45d of the Copyright Act or Article 4 of the Neighbouring Rights Act and that these rights are therefore transferred to the Producer.
- 2.2 With due regard to the provisions of Article 2.1, the Creator and Producer have agreed that the transfer of the right to VOD Exploitation has occurred under the condition subsequent that the provisions of this Appendix VOD Exploitation, including the Third-Party Clause, integrated into the assignment agreement, are not included by the Producer in the VOD Exploitation Agreements that he will conclude, whereby the subsequent condition commences at the time that the Producer concludes a VOD Exploitation Agreement in which the Third-Party Clause, is not applicable integrally and completely.
- 2.3 In the event of a conflict between the conditions in the assignment agreement between the Creator and the Producer and the conditions in this Appendix including Third-Party Clause, the conditions in this Appendix with respect to VOD Exploitation shall prevail.

3. FAIR PROPORTIONAL COMPENSATION AND SETTLEMENT

- 3.1 The Producer undertakes to pay the Creator a fee alongside the fair compensation based on Article 45d paragraph 1 of the Copyright Act respectively Article 4 of the Neighbouring Rights Act for VOD Exploitation.
- 3.2 The CMOs shall collect a Fair Proportional Compensation from the VOD Operators who have concluded a VOD Compensation Agreement and shall distribute this compensation to the Creators.
- 3.3 The Producer is not allowed to take the Fair Proportional Compensation back in any way via setoff, indemnity or other means from the individual creators or their CMOs.
- 3.4 The Creator, on his own behalf and on behalf of the CMO with which he is associated, grants the Producer acquittance with respect to any claim based on Article 45d paragraph 1 of the Copyright Act respectively Article 4 of the Neighbouring Rights Act to fair compensation for any VOD Exploitation as referred to in Article 1 of this Appendix under the condition precedent that the Producer fulfils the obligations arising from the assignment agreement, including this Appendix VOD Exploitation, with respect to the VOD Exploitation and that he or other parties in the chain do not take the compensation back from the Creator in some other manner, such as by means of kickback constructions.

- 3.5 The provisions of this Appendix VOD Exploitation do not apply to any exploitations other than VOD Exploitation. The fair compensation ex Article 45d paragraph 1 or 2 of the Copyright Act respectively Article 4 of the Neighbouring Rights Act for other exploitations shall not be settled by any means with the Fair Proportional Compensation.

4. Duration

The provisions of this Appendix and in the Third-Party Clause apply for the duration of the copyright respectively neighbouring right regarding the Films to which the Appendix and Third-Party Clause apply.

Appendix: Third-Party Clause VOD Exploitation

THIRD-PARTY CLAUSE VOD EXPLOITATION

RODAP and the collective management organizations (CMOs) LIRA, VEVAM and NORMA have made arrangements that are meant to effectuate that the screenwriters, principal directors and leading actors associated with them can claim direct payment of Fair Proportional Compensation from the VOD operators via these collective management organizations if they transfer their rights with respect to VOD exploitation to the producer/broadcaster.

This Third-Party Clause intends to, by means of chain and third-party clauses, effectuate that each party in the distribution chain that proceeds with complete or partial VOD exploitation aimed at the Dutch public shall conclude an agreement with the joint collective management organizations LIRA, VEVAM and NORMA for the payment of a Fair Proportional Compensation for the benefit of screenwriters, principal directors and leading actors. To that end, the Third-Party Clause is included in the assignment agreement between the Creator and the producer or broadcaster and in each subsequent agreement within the chain in which rights with regard to VOD exploitation are granted. The transfer of these rights by the creator to the producer or broadcaster (with respect to broadcaster own productions) depends on the condition subsequent that the producer or broadcaster declares this Third-Party Clause, complete and without modification, not applicable to the VOD Exploitation Agreements that he will conclude.

1. DEFINITIONS

The definitions used in this Third-Party Clause have the following meaning unless defined otherwise in this Third-Party Clause:

CMOs mean the jointly acting collective management organizations LIRA, VEVAM and NORMA.

Creator means the screenwriter, principal director or the performer who fills a leading role (as referred to in Article 45d paragraph 2 of the Copyright Act respectively Article 4 of the Neighbouring Rights Act) who is contractually affiliated with one of the CMOs directly and has concluded a assignment agreement with a Producer for a contribution to a Film.

Fair Proportional Compensation means the fair proportional compensation, for which RODAP and the CMOs must agree on the rate structure and the methodology pursuant to their Agreement dated 22 January 2015, that the VOD Operator must pay to the CMOs based on the VOD Compensation Agreement for VOD Exploitation;

Film means a cinematographic work as referred to in Article 45a of the Dutch Copyright Act;

First Exploitation means the first VOD Exploitation of the Film by the VOD Operator;

Producer means the party that concludes or has concluded a assignment agreement with the Creator for the delivery of a contribution to a Film. This could also be a broadcaster that concludes a contract with the Creator directly.

VOD Compensation Agreement means the agreement concluded between the CMOs and the VOD Operator based on the general conditions as published on the websites of the CMOs, on the basis of which the VOD Operator undertakes to the CMOs to pay the Fair Proportional Compensation to the CMOs for the benefit of the Creators.

VOD Exploitation means the availability of a Film in the context of a service that is entirely or partially directed at a Dutch public, in such a way that the Film is accessible to the members of the public subject to payment in the Netherlands at a location and time individually chosen by them, with the exception of such availability that is freely accessible or available in the context of a catch up service that provides the consumer with access to the Film for a period of a maximum of 14 days after the linear broadcast without requiring the consumer to pay an amount in addition to the subscription for the linear broadcasting;

VOD Exploitation Agreement means the agreement in which, by virtue of transfer, license or other means, the authority is granted or acquired, whether with time limits or under condition precedent, for VOD Exploitation and/or for granting consent for VOD Exploitation to third parties;

VOD Operator means each party that proceeds with VOD Exploitation;

2. THIS THIRD-PARTY CLAUSE

- 2.1 This Third-Party Clause is part of the VOD Exploitation Agreement between
Party 1: [name and address] and
Party 2: [name and address of the party entitled to VOD Exploitation].
- 2.2 This Third-Party Clause applies to Films of which the rights for VOD Exploitation have been transferred by the Creators to Producers who, at the time of the production, were associated with one of the following associations or foundations: The RODAP Association for the Legal Consultation for the Distribution of Audiovisual Productions (Vereniging Rechtenoverleg voor Distributie van Audiovisuele Producties RODAP), the Independent Dutch Producers Foundation (Stichting Onafhankelijke Producenten Nederland).
- 2.3 If the Producer arranges VOD Exploitation himself, this Third-Party Clause also applies between the Producer and the Creator. For that VOD Exploitation, the Creator is Party 1 and the Producer is Party 2.

3. THE FAIR PROPORTIONAL COMPENSATION

- 3.1 Party 2 is required to pay the Fair Proportional Compensation for the benefit of the Creators to the CMOs.
- 3.2 If Party 2 proceeds with VOD Exploitation, then Party 2 shall conclude a VOD Exploitation Agreement with the CMOs (insofar as not already in force between the VOD Operator and the CMOs) as soon as possible or at least within 30 working days after the conclusion of a VOD Compensation Agreement or, if the First Exploitation of a Film has already occurred, within 30 working days after that First Exploitation. The aforementioned periods of 30 working days only apply if the CMOs and RODAP have reached an agreement on the rate structure and the methodology for the Fair Proportional Compensation as shall be used in the VOD Compensation Agreement to be concluded with the CMOs. The reporting by Party 2 of VOD Exploitations of the Films to which this Third-Party Clause applies shall take place in accordance with the VOD Compensation Agreement.
- 3.3 The Fair Proportional Compensation is owed for each VOD Exploitation by Party 2 (including all VOD Exploitations that have taken place prior to the signing of the VOD Compensation Agreement).

4. REPORTING OBLIGATIONS

- 4.1 As soon as possible after the conclusion of the agreement of which this Third-Party Clause is part, or at least within 30 working days after the conclusion of the written agreement or the First Exploitation of the Film, Party 2 shall provide the CMOs with the following data:
 - (a) a confirmation of the conclusion of the exploitation agreement (of which this Third-Party Clause is a part), on the grounds of which Party 2 is entitled to VOD Exploitation of the Film;
 - (b) the parties to this agreement and identification of the Film; and
 - (c) a copy of this Third-Party Clause, initialled by the parties to the agreement of which this Third-Party Clause is a part.
- 4.2 In the absence of an agreement to the contrary between Party 2 and the CMOs, the data as referred to in 4.1 shall be provided in the format as published on the websites of the CMOs and RODAP.
- 4.3 Submission to the CMOs takes place jointly by e-mail to the following e-mail address: opgave@pam-cbos.nl.
- 4.4 Party 2's obligation to provide data as referred to in paragraph 1 is fulfilled if Party 1 has already provided the CMOs with the data referred to there completely and correctly within the time period set in that paragraph.

5. THIRD-PARTY & PERPETUAL CLAUSE

- 5.1 Party 2 is required to include this Third-Party Clause, complete and without modification, in each VOD Exploitation Agreement that Party 2 concludes with third parties (including Party 1).
- 5.2 If Party 2 neglects to include this Third-Party Clause, complete and without modification, in a VOD Exploitation Agreement with a third party, then Party 2 is obligated to pay the Fair Proportional Compensation to the CMOs for VOD Exploitations that that third party carries out up until the time that that third party finally concludes a VOD Compensation Agreement. The scope of the VOD Exploitations and the Fair Proportional Compensation owed by Party 2 is reasonably estimated and substantiated by the CMOs. This estimate shall apply, insofar as reasonable and substantiated, save proof to the contrary, as the Fair Proportional Compensation. Party 2 is not required to any compensation for Fair Proportional Compensation missed out on if he has fulfilled his obligations on the basis of this Third-Party Clause but the third party (as referred to in this article) does not fulfil one or more obligations of this Third-Party Clause completely.
- 5.3 Third-party clause and power of attorney: Party 1 hereby stipulates irrevocably for the benefit of the CMOs that Party 2 irrevocably undertakes to the CMOs to fulfil its obligations as included in this Third-Party Clause. The CMOs are authorised to enforce these obligations independently (without the collaboration of Party 1) with respect to Party 2. Insofar as a claim on this third-party clause would not be possible, Party 1 hereby grants the CMOs an unconditional and irrevocable power of attorney to demand compliance with the obligations in this Third-Party Clause from Party 2 independently (without collaboration by Party 2). The CMOs have accepted this power of attorney.
- 5.4 The provisions of this Third-Party Clause related to the VOD Exploitation Agreement also apply to a transfer of VOD Exploitation rights as a result of execution by a pledgee. In connection with this, the pledgor shall impose on the pledgee the obligation to declare the Third-Party Clause applicable to the third party that, pursuant to execution, becomes the successor in title.
- 5.5 The obligations based on this Third-Party Clause with respect to VOD Exploitation remain in force throughout the period that such exploitation takes place, regardless of whether the VOD Exploitation Agreement of which this Third-Party Clause is part has terminated or expired, until the relevant copyrights and/or neighbouring rights have expired.
- 5.6 Except for the provisions for the benefit of the CMOs, this Third-Party Clause does not contain any provisions to which third parties (including, but not restricted to, Creators) can appeal by way of a third-party clause or otherwise.

6. APPLICABLE LAW

- 6.1 This Third-Party Clause is governed by Dutch law.

6.2 All conflicts that arise in connection with this Third-Party Clause or the following agreements and obligations , shall be submitted to the competent court in Amsterdam.