

Articles of Association of the Cultural Commons Collecting Society SCE mit beschränkter Haftung (C3S SCE)

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Preamble

The developments in digital markets and copyright law necessitate new forms of exploiting creative works, including the possibility of commercial utilisation of free licenses like Creative Commons. Lyricists and composers of musical works are joining together in a company that protects exploitation possibilities and, in view of the present market situation, also develops new possibilities of utilisation. The individual is not able to monitor all usages of his works and collect the income he or she is due, particularly in the digital age. The rights to be transferred to this company are administered as joint rights of the parties involved and the income and remuneration received are distributed according to a set procedure.

§ 1 Name, domicile

- (1) The cooperative society bears the name Cultural Commons Collecting Society SCE mit beschränkter Haftung (with limited liability) (C3S SCE).
- (2) The cooperative is domiciled in Düsseldorf.

§ 2 Purpose and object

- (1) The purpose of the cooperative is to promote its members' economic, social and cultural activities and interests.
- (2) The object of the cooperative is to administer in a fiduciary capacity the members' copyright authorisations that were entrusted to the cooperative by means of a deed of assignment, as well as to distribute the income generated to authorised persons.
- (3) Business operations are based on the authorisation given by the Deutsches Patent- und Markenamt (German Patent and Trade Mark Office) as supervisory authority in accordance with the Urheberrechtswahrnehmungsgesetz (UrhWG – Copyright Administration Act).
- (4) ¹Non-members can use the services of the cooperative and participate in its activities. ²Further details will be stipulated in the guideline on the participation of non-members to be resolved by the administrative board. ³The cooperative can conclude contracts with other rightholders to ensure the most comprehensive exploitation possible of their members' rights.

§ 3 Communication

Communication within the cooperative shall take place in German and in English. When in doubt, the German version is decisive.

§ 4 Acquiring and ending membership

(1) Only natural persons who are directly involved in the creative process through creation of the work or as a performer may become members.

(2) Anyone who does not meet the prerequisites of paragraph 1 can, with the consent of the administrative board, be admitted as non-user (investor) member. ²Non-user members are natural and legal entities or private companies that would not be considered for the use or provision of the cooperative's services. ³Non-user members have the same rights and obligations as the other members of the cooperative unless otherwise stipulated hereinafter.

(3) To acquire membership requires an unconditional written declaration of joining on which the administrative board decides.

(4) Membership ends upon

- a) Resignation,
- b) Expulsion,
- c) Transfer of all shares,
- d) Death or liquidation of a legal entity or private company.

§ 5 Payment obligations

(1) ¹The member's share in the cooperative amounts to € 50 (nominal value). ²It is to be paid in full immediately.

(2) ¹The members must participate with at least one share. ²They may participate with further shares; the maximum possible is sixty.

(3) ¹The share capital is variable in accordance with the number of cooperative members. ²Payments for the shares must total at least € 30,000. ³The share capital may not fall below € 30,000 upon repayment of membership shares (minimum capital).

(4) In case of insolvency of the cooperative, the members are not obligated to pay additional contributions.

(5) Upon resolution adopted by the general assembly, an entrance fee can be defined that will be allocated to the reserves.

(6) The general assembly can decide on rules for membership fees that obligate members to pay an annual contribution.

§ 6 Deed of assignment

(1) ¹The performance relationships between the cooperative and its members and the rightholders who are not members of the cooperative are governed in the deed of assignment. ²The standard contract will be decided by the administrative board and the tariff commission with the consent of the general assembly.

(2) ¹ Distribution of the license fees received will be carried out according to the distribution plan established by the administrative board according to a resolution proposal from the tariff commission. ²The distribution plan may stipulate that the administrative board and the tariff commission are to find a consensual agreement about the balancing of claims that result from subsequently detected systematic errors of distribution, especially those due to the invalidity of a provision of the distribution plan. ³The general principles of the distribution plan, especially those resulting from §§ 7 and 8 WahrnG (Law on the Administration of Copyright and Neighboring Rights) are part of the articles of association. ⁴The distribution plan is to be added as an attachment to the articles of association.

(3) ¹If membership ends in accordance with § 4 paragraph 4, the cooperative is authorised to end the deed of assignment with the departing member or his heir at law through a decision of the administrative board to be communicated to the affected party in writing, unless this is opposed by an obligation to contract. ²In this case, the departing member or his heir at law takes part in a distribution of the licence fees received only to the extent that the licence fee claims arose during the membership period.

§ 7 Members' rights and obligations

(1) Members in accordance with § 4 paragraph 1 are specifically authorised

- a) to use the cooperative's services,
- b) to demand the remuneration decided upon by the administrative board,
- c) to take part in the general assembly and its decision-making,
- d) to demand at their own cost in a timely manner a copy of the annual financial statement, the management report – if required by law – and the report of the administrative board before approval of the annual financial statement by the general assembly,
- e) to inspect the summarised audit results during the general assembly,

- f) to request the convening of the general assembly or the announcement of decision-making if the statutory conditions are satisfied,
 - g) to consult the minutes of the general assembly, and
 - h) to consult the membership list.
- (2) The non-user members are authorised,
- a) to take part in the general assembly as observers,
 - b) to demand copies at their own cost of the annual financial statement, the management report – if required by law – and the report of the administrative board,
 - c) to inspect the summarised audit results during the general assembly,
 - d) to consult the minutes of the general assembly, and
 - e) to consult the membership list.
- (3) The members are obligated
- a) to pay the payments stipulated for the share,
 - b) to promote the interests of the cooperative in every way,
 - c) to comply with the articles of association of the cooperative and to carry out the resolutions decided upon by the cooperative bodies,
 - d) to use the facilities of the cooperative to a reasonable extent, and
 - e) to communicate a change in address, including e-mail address.

§ 8 Resignation

¹Membership can be terminated by a written statement from the member. ²The notice period is one year at the end of the fiscal year. ³This notice period also applies for terminating shares taken on voluntarily.

§ 9 Transferring shares

Shares can be transferred and sold individually or as a whole if the administrative board gives its consent and the acquirer is, or will become, a member.

§ 10 Expulsion of a member

(1) Members can be expelled if

- a) they have been found guilty of a serious breach of their obligations, or
 - b) they have not granted the rights to at least three works or performances within one year after joining the cooperative in accordance with § 4 paragraph 1; if the number of rights granted falls below three, the period of one year begins anew, or
 - c) they act grievously against the cooperative's interests; members in accordance with § 4 paragraph 1 b) also if the cooperative's interest in the membership has lapsed.
- (2) ¹The administrative board decides on expulsion. ²The member must be consulted unless his or her place of residence cannot be determined.
- (3) The general assembly decides on expulsions of members of the administrative board and managing directors.
- (4) ¹The administrative board' decision on expulsion can be appealed before the general assembly. ²The appeal must be declared in writing to the cooperative within six weeks after receiving the decision on expulsion (cut-off period).

§ 11 Winding up membership

- (1) ¹Departure from the cooperative results in a winding up of membership between the departing member or his or her heir at law and the cooperative. ²In case of transfer the winding up shall be omitted.
- (2) ¹Tax-loss carryforwards shall be deducted pro rata on the credit balance from the apportionment of assets and liabilities. ²The resigning member has no claim to the reserves and other assets of the cooperative.
- (3) ¹The approval of the annual financial statements is definitive for settlement between the resigning member and the cooperative. ²The departing member is entitled to claim payment, subject to the provisions in paragraph 4, to the credit balance from the apportionment of assets and liabilities within a time period of one month after approval of the balance sheet, at the latest, however, within seven months after the end of the business year.
- (4) ¹If, through the payment, the minimum capital would fall below its defined low point, payment of the credit balance from the apportionment of assets and liabilities is suspended; the payment of the membership shares repaid in the course of winding up all departing members will be reduced pro rata. ²If the minimum capital again surpasses its defined low point, the suspended membership shares repaid in the course of winding up will become due to payment. Payment then takes place by year.
- (5) The credit balance from the apportionment of assets and liabilities shall be liable to the Cooperative for any default; for members that are not natural persons (legal entities and private companies), this particularly applies in the case of insolvency proceedings against the member.

(6) The member's participation in the distributions in accordance with § 6 paragraph 3 sentence 2 shall remain unaffected.

§ 12 The cooperative's governing bodies

(1) The cooperative is managed under a one-tier system.

(2) The bodies are:

- a) General assembly,
- b) Administrative board,
- c) Managing directors,
- d) Arbitration court,
- e) Advisory board, and
- f) Tariff commission.

§ 13 General assembly

(1) The general assembly is specifically responsible for

- a) Accepting the activity reports from the managing directors and the administrative board,
- b) Discharging the managing directors and the administrative board,
- c) Approving the annual financial statements,
- d) Deciding about appropriating the net income for the year and offsetting the loss for the year,
- e) Accepting the reports about the cooperative audit,
- f) Amendments to the articles of association, and
- g) Deciding about the resolution proposals from the tariff commission, according to § 19 paragraph 4.

(2) ¹The general assembly is convened by the administrative board by directly informing all persons who are eligible to participate, or by means of a notice in the form required in § 25, by complying with a notice period of 30 days between the date of dispatch of the notice referred to and the date of the opening of the general assembly. ²In urgent cases, this notice period can, pursuant to Art. 56 of the EU Regulation No. 1435/2003 on the Statute for a European Cooperative Society (SCE), be reduced to 15 days. ³The invitation must contain information on the company and the domicile of the SCE, on the

place, date and time of the assembly, and, if applicable, on the type of general assembly.⁴In addition, the agenda indicating the subjects to be discussed and the proposals for decisions is to be attached.⁵The notifications will be deemed to be received if they are sent to the members at the last address known to the cooperative, unless a notification in accordance with the 2nd alternative of sentence 1 was chosen.

(3) ¹Annually, at least one general assembly is to be conducted in the first half of the year at which decisions are taken on the approval of the annual financial statements, the appropriation of profits or the compensation of losses and the discharge of the administrative board and managing directors. ²Other general assemblies are to be convened if this is necessary in the interest of the cooperative.

(4) ¹Unless changes in the articles of association are announced, every properly convened general assembly is quorate. ²For determining the presence of a quorum at a general assembly at which an amendment in the articles of association is announced, at least 50% of the total number of registered members entitled to vote at the time the assembly was convened must be present or represented at the time of voting. ³If the minimum number according to sentence 2 is not achieved, another general assembly with the same agenda is quorate without consideration of sentence 2. ⁴The invitation to this additional general assembly may be sent at the earliest on the day after the first general assembly that did not have the presence of a quorum due to not having achieved the minimum number of members, unless it was already sent at the same time as the invitation to the first general assembly. ⁵In the latter case, the second general assembly is to be held at least 14 days and no more than 30 days after the first.

(5) ¹Every full member has one vote, regardless of the number of his or her shares; the non-user members have no right to vote in the general assembly. ²Members can also submit their vote electronically. ³In this case, the casting of the vote is carried out using an electronic process that ensures the transparency and verifiability of the members' voting. ⁴The specific voting procedure will be determined by the administrative board.

(6) ¹Members entitled to vote can issue proxy voting powers. ²No representative, however, may represent more than two members. ³Only members of the cooperative or spouses, parents, children or siblings of a member can be representatives.

(7) ¹The general assembly decides with the majority of the votes cast – simple majority of votes – unless, exceptionally, a larger majority has been defined; abstentions are disregarded. ²Elections take place with the majority of the votes of the members present; abstentions have the same effect as »no« votes. ³In case of more than two alternatives to agree or decide on, the voting process will be carried out by approval voting. ⁴If in this way no clear result is obtained, a run-off election will be conducted.

(8) The general assembly determines the chairperson of the assembly upon proposal of the administrative board.

(9) The general assembly can be broadcast as a live stream in a secure process accessible only to the members.

(10) The decisions will be entered in the minutes in accordance with § 47 German Cooperative Societies Act (GenG).

§ 14 Regionalisation

Once the cooperative has more than 2,500 members, it is intended to form regional assemblies. The administrative board is to draw up proposed articles of association for the general assembly as soon as the number of members exceeds 2,500.

§ 15 Administrative board

(1) ¹The administrative board manages the cooperative, defines the principles of its activity and supervises their implementation. ²The administrative board is to convene a general assembly when this is expressly stated in these articles of association or is otherwise necessary in the interest of the cooperative. ³The administrative board ensures that the required ledgers are kept. ⁴The board can, either by itself or by individually appointed members from its ranks, at any time inspect and review the accounts and correspondence of the cooperative as well as the state of the cooperative fund and the inventories of securities and goods. ⁵The administrative board is responsible for determining the number of managing directors as well as appointing and dismissing them.

(2) ¹The members of the administrative board are selected and recalled by the general assembly. ²The administrative board consists of at least five members to be elected by the general assembly. ³The general assembly determines the number of members of the administrative board before the election. ⁴Investing members may make up at most one quarter of the members of the administrative body.

(3) ¹The period of office of the members of the administrative board lasts until the election of successors at the ordinary general assembly that takes place three years after the election. ²Should members depart before the end of their period of office, the administrative board shall consist only of the remaining members until the next ordinary general assembly, during which replacement members are to be elected. ³Earlier by-elections by an extraordinary general assembly are necessary only if the number of members of the administrative board falls below five or the number of non-user members exceeds one quarter of the number of members of the administrative board.

(4) ¹The meetings of the administrative board shall be convened by the chairperson of the administrative board in text form with a notice period of at least one week. ²The members of the administrative board and the managing directors can demand at any time that a meeting be convened. ³A meeting of the administrative board is to take place at least once every quarter.

(5) ¹The administrative board is quorate if at least half of its members participate in

the adoption of resolutions. ²The administrative board can adopt resolutions in writing, by telephone and electronically if no member of the administrative board objects to the adoption of resolutions.

(6) ¹Contracts of members of the administrative board with the cooperative, particularly supply and service agreements, require the consent of the entire administrative board to be valid. ²Handling these contracts is to be supervised by the administrative board and information is to be provided on this to the general assembly.

(7) ¹The administrative board decides with the majority of the votes cast – simple majority of votes – unless, exceptionally, a larger majority has been defined; abstentions are disregarded. ²Elections take place with the majority of the votes of the members present; abstentions have the same effect as »no« votes. ³In case of more than two alternatives to agree or decide on, the voting process will be carried out by approval voting. ⁴If in this way no clear result is obtained, a run-off election will be conducted.

§ 16 Managing directors

(1) ¹The managing directors conduct the business of the cooperative. ²Tasks assigned by law to the administrative board cannot be transferred to the managing directors.

(2) ¹The administrative board appoints two or more managing directors. ²If the management – for whatever reason – consists of one managing director only, the administrative board must appoint at least one additional managing director within three months. ³Members of the administrative board can be appointed to be managing directors as long as the majority of posts available is not filled by managing directors.

(3) ¹The regular term of office of the managing directors is three years. ²Managing directors can be dismissed at any time by the administrative board by simple majority.

(4) ¹The managing directors can also take decisions in writing, by telephone and electronically. ²They are only jointly authorised to conduct business and to represent the cooperative; the administrative board can issue sole powers of representation to individual managing directors. ³Managing directors who are authorised to represent the cooperative jointly can authorise individual managing directors to execute certain transactions or certain types of transactions. ⁴If the cooperative has only one managing director, he is the sole representative of the cooperative.

§ 17 Arbitration court

(1) ¹All conflicts resulting from the membership relations between cooperative members and the cooperative, between members of the cooperative and bodies of the cooperative and/or between bodies of the cooperative among themselves will be definitively decided

by an arbitration court to the exclusion of the ordinary courts of law. ²Those decisions are exempt that by rights may not be allocated to an arbitration court for decision.

(2) ¹An arbitration agreement with the cooperative is to be concluded by its members governing the composition of the arbitration court and how it will work. ²The text of the arbitration agreement is to be approved by the general assembly. ³Members who do not sign the arbitration agreement in the version adopted by the general assembly are to be expelled.

(3) ¹This does not affect the possibility of invoking an arbitration board to be established to clarify legal issues involving licencing, protecting rights by the cooperative and license fee claims. ²Further details are to be stipulated in the deed of assignment.

§ 18 Assembly of the rightholders

¹In advance of every general assembly, an assembly of the rightholders shall take place. ²Invitations are extended by the managing directors in consultation with the administrative board. ³At this assembly, chaired by the chairperson of the administrative board or his deputy, the management presents the annual report and provides information to the rightholders.

§ 19 Tariff commission

(1) ¹The cooperative establishes a tariff commission. ²It consists of 15 persons who work in an honorary capacity. ³It is composed as follows:

- a) 5 members are elected by the assembly of the rightholders for a term of three years.
- b) 10 members are elected by the general assembly for a term of three years.

(2) Only full members (§ 4 paragraph 1 of the articles of association), or legal representatives of rightholding legal persons who have concluded a deed of assignment with the company can become members of the tariff commission.

(3) ¹The term of office of the tariff commission ends with the new election of its members. ²Re-election is admissible.

(4) The tariff commission works out the following resolution proposals for the general assembly:

- a) Preparing, modifying and amending the distribution plans for the various rights to be exercised by the cooperative, specifically within the scope of the process in accordance with § 6 paragraph 2 sentence 1,
- b) Establishing tariff in accordance with § 13 WahrnG, concluding contracts with the users and general agreements in accordance with §§ 11, 12 WahrnG,

- c) Concluding reciprocal agreements with other collecting societies,
- d) Conducting legal actions in fundamental issues, applying to the arbitrating board in accordance with § 14 WahrnG and contesting its decisions.

(5) ¹The members of the tariff commission present their resolution proposals to the administrative board, which introduces them to the agenda of the general assembly. ²They have the right to attend, to make proposals and to speak at the general assembly. ³Upon their appointment, the members of the tariff commission are to receive in writing their corporate responsibilities according to § 21 of the articles of association.

(6) ¹The tariff commission convenes at least once a year for a meeting. In addition it convenes when the majority of its members, or its chairperson, or his or her deputy requests to do so. ²For participation in meetings, the members of the tariff commission receive travel expenses and a daily allowance on the basis of rules on reimbursement to be decided by the administrative board.

(7) ¹The tariff commission is quorate if at least half of its members are present. ²It decides with the majority of the votes cast – simple majority of votes – unless, exceptionally, a larger majority has been defined; abstentions are disregarded. ³Elections take place with the majority of the votes of the members present; abstentions have the same effect as »no« votes. ⁴In case of more than two alternatives to agree or decide on, the voting process will be carried out by approval voting. ⁵If no clear result is obtained in this way, a run-off election will be conducted. ⁶Passing of resolutions electronically is admissible.

(8) ¹The tariff commission elects for its term of office a chairperson and a deputy from amongst its members. ²Re-election is admissible.

(9) ¹Minutes are to be kept on the meetings; they are to be signed or initialed by the chairperson and the minute taker. ²The minutes are deemed to be approved if not contested by a member of the tariff commission within three weeks after being sent.

(10) ¹Until a tariff commission has been established, its tasks are a matter of the general assembly. ²The cooperative will establish a tariff commission as soon as deeds of assignment have been concluded and the assembly of the rightholders exists.

§ 20 Other advisory boards

¹The general assembly can resolve the formation of other advisory boards that advise the bodies. ²In the resolution it is to be specified how the advisory board is composed and what topics it addresses.

§ 21 Common provisions for the bodies

(1) No one can exercise the right to vote for him- or herself or for another if a resolution is being adopted on whether he or she or the member represented is to be discharged or to be relieved of a liability, or whether the cooperative is intending to assert a claim against him or her or the member represented.

(2) ¹If matters of the cooperative are advised upon which affect the interests of a member of the administrative board of a managing director, his spouse, his parents, children and siblings or a person represented by him by virtue of law or power of attorney, the member affected may not participate in the consultation. ²However, the member is to be heard before the resolution is adopted.

(3) ¹The members of the bodies are to apply the requisite level of diligence of the management of a cooperative when conducting their business. ²They are to maintain secrecy about confidential information and secrets of the cooperative, especially trade and business secrets that have become known to them through their activity for the cooperative. ³Members of the bodies who infringe on their duties are liable jointly and severally to compensate for damages arising from that. ⁴If there is a dispute as to whether they have applied the requisite level of diligence of the management of a cooperative, they bear the burden of proof.

§ 22 Annual financial statement, reimbursement, allocation to reserves and appropriation of net income

(1) ¹The annual financial statement and the management report are to be presented to the general assembly immediately after they have been prepared. ²The general assembly decides on the approval of the annual financial statements and the appropriation of profits or covering of losses.

(2) If a loss, that is not covered by half of the total amount of the assets and the reserves, arises during the preparation of the annual or semi-annual balance sheet, or is to be assumed upon exercising professional judgment, the administrative board is to immediately convene a general assembly and communicate this issue.

(3) ¹The administrative board decides on paying back a reimbursement before drawing up the balance sheet. ²Members have a legal claim to the reimbursement decided upon in this way.

(4) ¹The statutory reserve serves the cooperative to cover losses. ²At least 20% of the annual net income is to go into this until at least 100% of the total of the shares have been reached. ³This is to be decided on by the general assembly.

(5) ¹Other revenue reserves may be established in addition to the statutory reserve. ²The administrative board decides on their use.

(6) The general assembly decides on the profit or loss resulting from the approval of the annual financial statement.

(7) Relating to the annual net income, the general assembly is free to decide in favour of a profit carried forward, allocation to the reserves or providing a return on the credit balance, whereby payment can also occur in shares.

(8) A payment takes place only when the assets are fully replenished.

§ 23 Limitation of claims

¹Claims to the payment of profits, reimbursements and credit balances become time-barred two years after they have fallen due. ²The sums will be allocated to the reserves.

§ 24 Winding-up

¹The decision on winding up the cooperative can only be taken at a general assembly convened exclusively for this purpose. ²When winding up the cooperative the net assets will be distributed among the members according to the assets.

§ 25 Announcements

Announcements that it is mandatory to publish are made under the company name of the cooperative in the *Musikforum*, the bulletin of the Deutscher Musikrat (German Music Council).