

COMMUNICATING TO THE PUBLIC TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

The following definitions apply to Licences issued by SAMPra that authorize the communicating to the public of Sound Recordings in the Repertoire:

"the Act" means the Copyright Act 98 of 1978;

"authorised signatory of SAMPra" means a director or head of department of SAMPra;

"Commercial Site" means each separate and distinct premise to which members of the public (including employees) are granted access for any purposes connected with commerce, employment, leisure or entertainment and at which during the whole or some part of such times of access they may listen to the acoustic rendition of sound recordings;

"Communicating to the Public Terms and Conditions" means the terms and conditions contained herein (as may be amended from time to time);

"the CPI" means the official Consumer Price Index (All Items) published by the South African Government;

"Excluded Track" means a track notified by RiSA to the Licensee in accordance with Clause 7.1;

"Funds" means cash or the cash value (in Rand) of any goods, services or "in kind" arrangement supplied or made available, such value being the value of such goods, services or arrangement at the date the same are supplied or made available. It is hereby specifically recorded that it shall also include all advertising revenue;

"Gross Revenue" means all Funds directly or indirectly payable or credited to or receivable by or on behalf of the Licensee or any Associate, agent or representative of the Licensee;

"Information" means any information relating to the use of the Sound Recordings by the Licensee supplied to SAMPra by the Licensee whenever supplied including, without limitation, all information the Licensee is required to provide SAMPra for the purposes of determining a Licence Fee

"Licence Agreement" means the document issued by SAMPra that records the details of the Licence subject to the Relevant Tariff;

"Licence Fee" means the fee for the Licence as specified in the Licence Agreement;

"Licence Period" means the period of one calendar year commencing on the date of application for the relevant Licence Agreement and subject to the termination of this Licence;

"Licensee" means the licensee named in the relevant SAMPra Licence Agreement;

"The Members" means the persons, firms, companies or entities who are members of RiSA from time to time;

"Named Premises" means the premises situate at or such other premises as may be notified by the Licensee to SAMPra pursuant to the provisions of Clause 11 from the date specified in such notification;

"RiSA" means Recording Industry of South Africa (a Section 21 Company);

"Quarter" means the period of three consecutive months starting on 1 January, 1 April, 1 July and 1 October as the case may be.

"Record" means any disc, tape, gramophone record, computer disk or other device or mechanism used for the storage of sound recordings;

"Relevant Tariff" means the relevant SAMPra communicating to the public tariff, or tariffs applicable from time to time;

"Renewed Licence" means any renewal of a Licence (whether or not on the same terms as this Licence);

"The Repertoire" means all those sound recordings the ownership or control of the relevant copyright in which shall be vested in RiSA members from time to time, subject always to the provisions of Clause 7 and excluding any soundtrack associated with a cinematographic film or music video to the extent that such soundtrack is only designed to be played in synchronization with that film or music video;

"SAMPra" means South African Music Performance Rights Association (a Section 21 Company limited by guarantee);

"Sound Recording" means a sound recording in the Repertoire;

"Territory" means the Republic of South Africa;

"Track" means a sequence of sounds comprising the whole or part of a sound recording that is identified by a number or other device indicated by or on any descriptive text accompanying the sound recording or by information embodied in or on the Record on which the sound recording is stored;

"VAT" means value added tax at the prevailing rate from time to time

2. TERMS

- 2.1. A SAMPra licence (on taking effect as provided in Clause 3.2) granted pursuant to the Relevant Tariff is subject to the Communicating to the Public Terms and Conditions. For the avoidance of doubt, terms and conditions stipulated by the Licensee when applying for the Licence do not form part of the Licence.

- 2.2. Where the provisions of a SAMPra Licence Agreement conflict with any provision of the Communicating to the Public Terms and Conditions, the Communicating to the Public Terms and Conditions shall prevail.

- 2.3. Where the provisions of the Licence Agreement conflict with any provision of the Relevant Tariff, the Relevant Tariff shall prevail.

- 2.4. The Communicating to the Public Terms and Conditions shall not entitle the Licensee to include any Sound Recording in any Broadcast, or copy any Sound Recording for any purpose whatsoever. Such exploitation of any Sound Recording must be licensed under SAMPra's appropriate terms and conditions.

3. LICENCE FEE

- 3.1. An offer by or on behalf of the Licensee to obtain a Licence may only be made by making full payment of the Licence Fee to SAMPra. Such an offer may only be accepted by SAMPra accepting full payment of the Licence Fee. Neither the submission of any application form or pro-forma invoice by SAMPra to the Licensee nor the return of a completed application form by the Licensee to SAMPra nor the provision of any information by the Licensee to SAMPra shall be treated as an offer by the Licensee to obtain a licence from SAMPra.

- 3.2. The Licence only takes effect as and when SAMPra has received the Licence Fee and the VAT amount thereon in cleared funds (subject to clause 2.4). Unless and until full payment of the Licence Fee and any other outstanding fees (together with accrued interest) has been made by or on behalf of the Licensee and acknowledged in writing by SAMPra, the communication to the public of Sound Recordings at the Named Premises shall therefore remain unlicensed. The Licence Period will, however, remain unaffected.

- 3.3. The Licensee must pay SAMPra all amounts due to SAMPra in full without any deductions or set-off (equitable or otherwise). The Licensee may not assert any credit or counterclaim against SAMPra to justify withholding all or part of any payment.

- 3.4. SAMPra may apply any sums paid by or on behalf of the Licensee to SAMPra against any amounts owed by the Licensee to SAMPra.

- 3.5. The Licence Fee is calculated according to the Relevant Tariff and based on the information supplied to SAMPra before the Licence was granted. If there is any change in circumstances that causes or will cause any of the information to become misleading or inaccurate to any material extent during the Licence Period and/ or if there is any change in the information stated in the Licence Document, the Licensee must notify SAMPra promptly in writing of such changes. If the change in circumstances is such that the Licensee requires amendment and/ or any additional SAMPra licence is required, the Licensee must notify SAMPra and pay any additional licence fees payable in advance of the change in circumstances occurring. Failure to do so will mean that the Licence shall be cancelled with effect from such change in circumstances occurring. It is expressly agreed and declared that the obligation to notify SAMPra contained in this clause shall not be construed as implying any consent on the part of SAMPra to any change so notified.

- 3.6. The Licence Fee does not include VAT and the Licensee shall pay VAT at the prevailing rate or rates from time to time.

4. DURATION OF LICENCE

The Licence shall be for the Licence Period subject to Clause 2.2.

5. RESERVATION OF RIGHTS

- 5.1. All rights in the Sound Recordings that are owned or controlled by the members of RiSA and not expressly licensed to the Licensee under the Licence are expressly reserved.

- 5.2. Nothing contained in the Licence Agreement, the Relevant Tariff shall be construed as:

- 5.2.1. permitting the Licensee to do anything in relation to the Sound Recording unless it is expressly permitted by the Licence; or

- 5.2.2. entitling the Licensee to communicate to the public anything other than legitimately purchased Sound Recordings, and SAMPra expressly reserves its rights in respect of any such activity.

6. THE LICENSEE'S OBLIGATION TO SAMPra

- 6.1. The Licensee hereby undertakes:

- 6.1.1. not to engage in or authorize or permit any other person to engage in the communicate to the public of any Sound Recording other than as permitted under the Licence;

- 6.1.2. not to make or authorize or permit or encourage any other person to make any unauthorized copy of any Sound Recording;

- 6.1.3. not to use or authorize or permit or encourage any other person to use any Sound Recording in such a way as may be taken to state or imply that any groups or individuals or any goods or services other than Sound Recordings are endorsed by, advertised or associated with any artist whose performance is contained on the Sound Recording or other party who owns rights in or in connection with such Sound Recording;

- 6.1.4. not to use or authorize or permit or encourage any other person to use any Sound Recording in any context which ought reasonably to be considered as likely to be derogatory or detrimental to the artist or group of artists featured in such Sound Recording; and

- 6.1.5. to inform SAMPra of any breach of SAMPra's rights or the rights of its members or other illegal activities concerning the rights of its members which come to the notice of the Licensee.

- 6.2. The Licensee warrants that all information given to SAMPra is accurate and not misleading to any material extent. In the event that such information is inaccurate, SAMPra shall have no liability in respect of the same and, in particular, will be under no obligation to refund any money already paid in respect of the Licence to SAMPra.
7. SAMPra'S OBLIGATION TO THE LICENSEE
- 7.1. SAMPra warrants to the Licensee that it has the right to grant the Licence subject to notification given to a licensee by SAMPra of tracks excluded from SAMPra's repertoire from time to time.
- 7.2. The Licence relates only to the communicating to the public of the Sound Recordings and does not grant any other consents or authorizations of any nature which may be required for the use of the Sound Recordings. SAMPra shall not be liable for any claims arising out of the use of the Sound Recordings that may be made by the owners of the copyright in any literary, dramatic or musical works embodied in the Sound Recordings (or any other rights SAMPra does not control). Accordingly, SAMPra shall not be liable in respect of failure on the part of the Licensee or any third party to obtain any consent or authorization which may be required, other than the licence(s) issued by SAMPra.
8. INSPECTION
- 8.1. Where SAMPra has a reasonable belief that any of its rights have been, are being or may be infringed or otherwise prejudiced at the Named Premises or any other premises of the Licensee, the Licensee shall permit (and warrants that it is able to permit) SAMPra (and/or any other party reasonably authorized by SAMPra including without limitations agents, professional advisors and experts) to enter and remain at such premises to:
- 8.1.1. determine if the Information is accurate; and/or
- 8.1.2. ascertain whether the Communicating to the Public Terms and Conditions have been complied with; and/or
- 8.1.3. ascertain whether SAMPra's rights in the Sound Recordings are being infringed or otherwise prejudiced.
- 8.2. The Licensee shall provide SAMPra (and/or any other party reasonably authorized by SAMPra including without limitation agents, professional advisors and experts appointed by SAMPra) with all assistance of whatever nature that SAMPra may reasonably require in connection with Clause 8.1.
9. TERMINATION
- 9.1. The Licence will automatically terminate:
- 9.1.1. on the expiry of the Licence Period;
- 9.1.2. if the Licensee is in breach of any of the Communicating to the Public Terms and Conditions; or
- 9.1.3. if a statutory demand is served upon the Licensee or the Licensee enters into an agreement or composition with or for the benefit of its creditors or suffers an execution to be levied against its goods or property or (being a company) it is wound up whether compulsory or voluntary (save for the purpose of reconstruction or amalgamation) or suffers an execution to be levied against its goods or property or has a receiver or administrator appointed over its assets or any of them or if any liquidation or other proceedings relating to insolvency are served upon it.
- 9.2. Termination of the Licence will not affect any rights accrued to the date of termination.
10. RENEWAL
- 10.1. SAMPra may send the Licensee a renewal notice before the end of the Licence Period inviting the Licensee to tender payment for a Renewed Licence. Any renewal notice is not an offer to grant a Renewed Licence (or any other licence). If the Licensee wishes to renew the Licence it must pay SAMPra the appropriate licence fee (which for the avoidance of doubt may change in accordance with any increase in the Relevant Tariff). It is the Licensee's responsibility to contact SAMPra and ensure that it obtains a Renewed Licence (or any other licence) if it requires one.
- 10.2. If any of the details set out in any renewal notice are incorrect the Licensee must notify SAMPra in writing within one calendar month of any changes that are required to the renewal notice so that such changes may be incorporated into any Renewed Licence.
- 10.3. For avoidance of doubt the Communicating to the Public Terms and Conditions will apply in full to any Renewed Licence and any reference to "the Licence" in the Communicating to the Public Terms and Conditions shall, in the context of any Renewed Licence, be read as referring to such Renewed Licence.
11. NOTICES
- Any notice or other communication under or in connection with the Licence shall be in writing and shall be delivered personally or sent by registered post or by facsimile to the party due to receive the notice or communication at its registered address (in the case of SAMPra) or the address specified in the Licence Agreement (in the case of the Licensee) or such other address as a party may specify by notice in writing to the other. In the absence of evidence of earlier receipt, any notice or other communication shall be deemed to have been duly given: if delivered personally, when left at the address referred to above; if sent by registered mail, two days after posting it; and if sent by facsimile machine, on completion of transmission.
12. DATA PROTECTION
- 12.1. SAMPra may use the Information (including any personal data such as names and contact details) provided to it in connection with the Licence for the purpose of calculating appropriate licence fees, contacting licensees, applicants and other respondents regarding SAMPra licences and to research and analyze the types of organizations and entities that hold, or should potentially hold, relevant copyright licences. Information may be disclosed to law enforcement bodies from time to time in relation to any intended or potential action for breach of copyright.
- 12.2. SAMPra may also exchange Information with other collecting societies for the purpose of establishing whether further copyright licences are required to be procured.
- 12.3. The Licensee warrants that it will obtain the consent of any individual whose personal data is submitted to SAMPra before submission of that data.
13. MISCELLANEOUS
- 13.1. Whenever SAMPra's permission, consent or agreement is required, that consent or agreement must be given in writing in advance and signed by an Authorized Signatory of SAMPra.
- 13.2. No waiver by SAMPra of any breach of any provision of the Communicating to the Public Terms and Conditions shall be deemed to be a waiver of any other breach. No waiver shall be binding or effective unless made in writing by an Authorised Signatory. No single or partial exercise of any right, power, privilege or remedy precludes any other or further exercise of such or any other right, power, privilege or remedy available to SAMPra under the Communicating to the Public Terms and Conditions. The rights, powers, privileges and remedies in the Communicating to the Public Terms and Conditions are cumulative and are not exclusive of each other or of any other rights or remedies otherwise available to SAMPra at law or in equity.
- 13.3. No variation or amendment of the Licence shall bind either party unless agreed to in writing by their respective duly authorized representatives, which in SAMPra's case will be an Authorised Signatory of SAMPra.
- 13.4. The Communicating to the Public Terms and Conditions shall not constitute any form of partnership or joint venture between the Licensee and SAMPra.
- 13.5. If any provision (or part thereof) of the Communicating to the Public Terms or Conditions shall be determined by any court of competent jurisdiction to be void or unenforceable all other provisions (and, if part of the provision is so determined to be void and unenforceable, the remainder of that provision) of the Communicating to the Public Terms and Conditions shall nevertheless continue in full force and effect.
- 13.6. The clause headings in the Communicating to the Public Terms and Conditions are for information only and do not form part of them.
- 13.7. The Licence is personal to the Licensee and the Licensee shall not assign, transfer, charge, hold on trust or sub-licence or purport to assign, transfer, charge, hold on trust or sub-licence the benefit of the Licence or any part of it or interest in it without SAMPra's prior written consent to be given or withheld at its absolute discretion.
- 13.8. A person who is not a party to the Licence has no rights under the Common Law of Contract to enforce any term of the Licence but this does not affect the right or remedy of a third party which exists.
- 13.9. The Licensee irrevocably waives any right it may have to seek a remedy for:
- 13.9.1. any misrepresentation which has not become a term of the Licence; and
- 13.9.2. any breach of warranty or undertaking (other than those contained in the Communicating to the Public Terms and Conditions) whether express or implied, statutory or otherwise; unless such misrepresentation was made or such warranty or undertaking was given fraudulently.
- 13.10. The Licence, the Relevant Tariff and the Communicating to the Public Terms and Conditions are subject to the law and jurisdiction of the Republic of South Africa.