

## 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 the Repertoire:

“**Application Form**” means the application form that the Licensee submits to SAMPRA to be licensed to use the Repertoire at the Named Premises;

“**Authorised Signatory of SAMPRA**” means a director or head of department of SAMPRA, whose authority shall not be required to be proven;

“**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 hear 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);

“**Cost Estimate**” means a document that SAMPRA will issue to the Licensee upon receiving the Application Form or when submitting the renewal notice contemplated in clause 6.1.1 below advising the Licence Fee;

“**CPI**” means the average headline consumer price index as published by Statistics South Africa (or its successor in title) for the period 1 October of the previous year to 30 September of the following year;

“**Excluded Track**” means a track notified by SAMPRA to the Licensee in accordance with Clause 7.1;

“**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 the Licence Fee;

“**Initial Period**” means the period commencing on date the Licence is initially granted ending on the date indicated in the Licence Certificate;

“**License**” means the non-exclusive licence granted in terms herein to the Licensee upon payment of the Licence Fee to use the Repertoire and the terms, depending on the context, shall also mean the document that evidences the Licence;

“**License Agreement**” means the Application Form upon acceptance by SAMPRA together with these Communicating to the Public Terms and Conditions;

“**License Certificate**” means the document that SAMPRA issues to the Licensee upon payment of the Licence Fee indicating, inter alia, the Licence Period;

“**License Fee**” means the fee for the Licence as specified in the Cost Estimate and invoiced by SAMPRA;

“**License Period**” means the period of one calendar year being either the Initial Licence Period or a Renewal Period;

“**Licensee**” means the licensee named in the Application Form;

“**Members**” means the persons, firms, companies or entities who are members of SAMPRA in whom copyright in Sound Recordings that make up the Repertoire from time to time vests;

“**Named Premises**” means the Commercial Site/s notified to SAMPRA in the Application Form by the Licensee and any other Commercial Site that may be notified by the Licensee to SAMPRA from time to time;

“**Quarter**” means the period of three consecutive months starting on 1 January, 1 April, 1 July and 1 October, as the case may be;

“**Playlist**” means a list detailing the title, the names of the recording artists/performers and the record label/company, and the number of times each sound recording was played at a Commercial Site;

“**Record**” means any disc, tape, gramophone record, computer disk or other device or mechanism used for the storage of sound or on which sounds, or data or signals representing sounds, are embodied or represented so as to be capable of being automatically reproduced or performed therefrom;

“**Relevant Tariff**” means the relevant SAMPRA communicating to the public tariff or tariffs applicable to the Licence from time to time;

“**Renewal Period**” means individual successive periods of twelve (12) months’ commencing from the expiry of the initial Period;

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

“**SAMPRA**” means South African Music Performance Rights Association NPC;

“**Sound Recording**” means a sound recording (as defined in the Copyright Act, 98 of 1978 (as amended)) 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 The Licence granted by SAMPRA to the Licensee is subject to these 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 Agreement unless accepted by SAMPRA in writing.

2.2 Where the provisions of the Licence Certificate conflict with any provision of these Communicating to the Public Terms and Conditions, these Communicating to the Public Terms and Conditions shall prevail.

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

2.4 These 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 or cleared by the relevant Collecting Society.

### 3. GRANT OF LICENCE

3.1 The Licence Agreement shall come into effect when SAMPRA issues a Cost Estimate.

3.2 From the effective date of the Licence Agreement, SAMPRA grants the Licensee a non-exclusive Licence subject to these Communicating to the Public Terms and Conditions;

3.3 The Licence for the Initial Period shall only take effect when SAMPRA receives the Licence Fee.

3.4 Unless and until full payment of the Licence Fee, whether for the Initial Period or a Renewal Period 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 use of Sound Recordings at the Named Premises shall remain unlicensed.

### 4. LICENCE FEE

4.1 The Licensee shall pay the Licence fee reflected in the Cost Estimate and invoiced for each Licence Period by the due date reflected in the invoice.

4.2 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.

4.3 SAMPRA may apply any sums paid by or on behalf of the Licensee to SAMPRA against any amounts owed by the Licensee to SAMPRA.

4.4 The Licence Fee is calculated according to the Relevant Tariff and based on the information supplied to SAMPRA by the Licensee, either in the Application Form or prior to any Renewal Period. The Licensee warrants that the information given to SAMPRA is correct in all material respects at the time of providing the information. In the event that the information is inaccurate in a material respect, and:

4.4.1 the Licence Fee charged is understated, SAMPRA shall have the right to adjust the Licence Fee and the Licensee shall be obliged to pay the adjusted Licence Fee on demand; and

4.4.2 if the Licence Fee is overstated, SAMPRA shall have no obligation to refund any money already paid or issue a credit note.

4.5 If there is any change in circumstances that causes or will cause any of the information to become inaccurate to any material extent during the Licence Period and/or if there is any change in the information provided by the Licensee to SAMPRA, including but not limited to any change of usage of Sound Recordings at the business premises, address, the ownership of the Licensee’s business, or the trading name of the Named Premises, the Licensee must notify SAMPRA promptly in writing of such changes. Sufficient proof as may be required by SAMPRA must be submitted together with the notification of the change. If the change in circumstances is such that the Licensee requires amendment and/or any additional SAMPRA licence is required, the Licensee must 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. **It is however especially recorded that any change in the number of Named Premises or the area within Named Premises where Sound Recordings are audible to members of the public (including employees), provided the information thereto is correct at the date of application or renewal, shall only be required to be notified to SAMPRA in terms of section 6.3. Equally, no refund shall be given to the Licensee should any change in respect of which the Licence Fee is determined change during the Licence Period including cessation of business operations.**

4.6 No changes to an invoice will be done after acceptance of the Cost Estimate.

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

4.8 **If any payment due to SAMPRA is not received 2 (two) months after the date of invoice, interest at the rate that the Standard Bank of South Africa Limited’s prime overdraft rate in force from time to time shall be payable by the Licensee on the sum due calculated at an annual rate from due date(s) until the**

date(s) of actual payment.

- 4.9 All licensees will be afforded an early settlement discount of 2,5% of the total invoice amount (incl. VAT), on condition that the License Fee is paid in full within 30 (thirty) calendar days from the date of invoice and that either the relevant SAMPRA invoice number or SAMPRA account number are correctly quoted for SAMPRA's records when payment is effected.

## 5. DURATION OF LICENCE

The Licence shall be for the Licence Period indicated in the Licence Certificate

## 6. RENEWAL

- 6.1 Unless the Licensee provides written notice (given at any time prior to the expiry of a Licence Period) to SAMPRA electing not to renew the Licence for a further period, the Licence shall automatically be renewed for further periods of 12 (twelve) calendar months provided that:

- 6.1.1. No later than 45 (forty-five) days prior to the expiry of a Licence Period, SAMPRA shall send to the Licensee a renewal notice setting out, at a minimum, such updated information to be provided by the Licensee and reasonably required by SAMPRA for purposes of preparing a Cost Estimate in respect of a Renewal Period;
- 6.1.2 within 30 (thirty) days of receipt of a renewal notice issued by SAMPRA, the Licensee shall provide to SAMPRA all such updated information as may be reasonably requested by SAMPRA in such renewal notice; and
- 6.1.3 should the Licensee not provide SAMPRA with the information contemplated in Clause 6.1.1, SAMPRA will be entitled to assume that there are no changes and will determine the Licence Fee for the Renewal Period on the same basis as the current Licence Period; and

- 6.2 For avoidance of doubt, these Communicating to the Public Terms and Conditions will apply in full to each Renewal Period.

## 7. RESERVATION OF RIGHTS

- 7.1 All rights in the Sound Recordings that are owned or controlled by the Members and not expressly licensed to the Licensee under the Licence are expressly reserved.
- 7.2 Nothing contained in the Licence, the Communication to the Public Terms and conditions, and the Relevant Tariff shall be construed as:
- 7.2.1 permitting the Licensee to do anything in relation to the Sound Recording unless it is expressly permitted by the Licence; or
- 7.2.2 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.
- 7.3 SAMPRA may, at its sole discretion, from time to time, revise the tariff which shall become effective on date of renewal of the licence.

## 8. THE LICENSEE'S OBLIGATION TO SAMPRA

- 8.1 The Licensee hereby undertakes:
- 8.1.1 not to engage in or authorize or permit any other person to engage in the communication to the public of any Sound Recording other than as permitted under the Licence;
- 8.1.2 not to make or authorize or permit or encourage any other person to make any unauthorized copy of any Sound Recording;
- 8.1.3 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;
- 8.1.4 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;
- 8.1.5 to inform SAMPRA of any changes in accordance with Clause 4.4; and
- 8.1.6 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.
- 8.2 The Licensee warrants that all information given to SAMPRA is accurate and not misleading to any material extent. The Licensee acknowledges that he/she was provided with a Cost Estimate of the Licence Fee due, based on the information supplied to SAMPRA. 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 nor issue a credit note to the Licensee.
- 8.3 Submit Playlists on request or as provided in these Communication to the Public terms and Conditions.
- 8.4 Unless indicated otherwise by the Licensee, SAMPRA will assume that the Licensee uses the Sound Recordings for an average period of 8 hours per day.

- 8.5 If communication to the public of sound recordings occurs by means of radio, the Licensee shall provide the name of the radio station.

## 9. SAMPRA'S OBLIGATION TO THE LICENSEE

- 9.1 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 the Repertoire from time to time.
- 9.2 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.

## 10. MUSIC USAGE REPORTING

- 10.1 The Licensee shall no later than 30 (thirty) days of each Quarter, submit in electronic format, a Playlist for the preceding Quarter.
- 10.2 Where a Licence relates to a live event, the Licensee shall:
- 10.2.1 submit to SAMPRA, within 30 (thirty) of the event, the Playlist and any other information SAMPRA may reasonably request;
- 10.2.2 issue SAMPRA sufficient number of passes to enable its representatives to obtain information relating to usage of Sound Recordings at the event. It is specifically recorded that the issuance of the passes shall not in any way absolve the Licensee from its obligation under 8.3.
- 10.3 The Licence Fee is calculated on a number that comprises of revenue, number of events, attendance figures, number of staff and/or other accounting information, the Licensee shall be obliged to provide the information whenever SAMPRA requests the information and shall keep the record pertaining to that information for a period of 5 (five) years after the expiry of the relevant Licence Period.

## 11. INSPECTION

- 11.1 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:
- 11.1.1 determine if the Information is accurate; and/or
- 11.1.2 ascertain whether the Communicating to the Public Terms and Conditions have been complied with; and/or
- 11.1.3 ascertain whether SAMPRA's rights in the Sound Recordings are being infringed or otherwise prejudiced.
- 11.2 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.
- 11.3 SAMPRA (and/or any other party reasonably authorized by SAMPRA including without limitation agents, professional advisors and experts appointed by SAMPRA) shall have the right of free entry into and upon the Named Premises during all times that Sound Recordings are being communicated to the public.
- 11.4 In the event that SAMPRA establishes that:
- 11.4.1 the information that the Licensee has supplied is not accurate; and/or
- 11.4.2 the Licensee is not complying with the Communicating to the Public Terms and Conditions; and/ or
- 11.4.3 there is infringement in the use of the Sound Recordings and/or prejudicial usage of the Sound Recordings,
- SAMPRA shall be entitled to summarily terminate the Licence (in which event the Licensee shall forthwith cease to use the Sound recordings in Named Premises or any of its places of business covered by the Licence) and claim damages against the Licensee.

## 12. BREACH

- A breach shall be committed if the Licensee or SAMPRA:
- 12.1 breaches any material term of this Communicating to the Public Terms and Conditions and fails to remedy such breach within 10 (ten) days after receipt of written notice from the other party;
- 12.2 commits any act of insolvency;
- 12.3 endeavours to compromise generally with its creditors or does or causes anything to be done which may prejudice the other party's rights hereunder or at all;
- 12.4 allows any judgement against it to remain unsettled for more than 10 (ten) days without taking immediate steps to have rescinded and successfully prosecuting the application for rescission to its final end; or
- 12.5 is placed in liquidation or under judicial management, whether provisionally or finally, the other party may, without prejudice to any other right which it may have against the party, cancel the Licence.

### 13. TERMINATION

13.1 The Licence will automatically terminate:

- 13.1.1 on the expiry of the Licence Period;
- 13.1.2 if the Licensee is in breach of any of the Communicating to the Public Terms and Conditions; or
- 13.1.3 if a 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.

13.2 Termination of the Licence will not affect any rights accrued to the date of termination.

### 14. NOTICES

- 14.1 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 electronic mail 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 (in the case of the Licensee) or such other address as a party may specify by notice in writing to the other.
- 14.2 In the absence of evidence of earlier receipt, any notice or other communication shall be deemed to have been duly given:
  - 14.2.1 if delivered personally, when left at the address referred to above; and
  - 14.2.2 if sent by registered mail, 5 (five) days after posting it; and
  - 14.2.3 if sent by electronic mail, on completion of transmission.

### 15. DATA PROTECTION

- 15.1 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, enforcing its rights and to research and analyse 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.
- 15.2 SAMPRA may also exchange Information with other collecting societies for the purpose of establishing whether further copyright licences are required to be procured.
- 15.3 The Licensee warrants that, to the extent required in law, it will obtain the consent of any individual whose personal data is submitted to SAMPRA before submission of that data.

### 16. JURISDICTION

- 16.1 For the purpose of all and any proceedings under this agreement the parties hereby consent to the jurisdiction of the magistrate's court having territorial jurisdiction, notwithstanding that such proceedings are otherwise beyond its jurisdiction: Provided that each party shall have the right, at its sole discretion, to institute proceedings in any other competent court.
- 16.2 This clause shall be deemed to constitute the required written consent conferring jurisdiction upon the court in terms of section 45 of the Magistrates' Courts Act (Act 34 of 1944).

### 17. COSTS

If SAMPRA should take any legal action against the Licensee and be successful therein, SAMPRA shall be entitled to all legal costs on an attorney-and-own-client scale, the cost of counsel on brief/the increased scale, and the cost of tracing the Licensee's whereabouts, including VAT and collection commission where applicable.

### 18. MISCELLANEOUS

- 18.1 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.
- 18.2 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.
- 18.3 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.
- 18.4 No relaxation of the terms of this agreement and no indulgence which one party may grant to the other, will in any way operate as an estoppel against the former party or be deemed to be a waiver of his rights, or in any other way limit, alter, or prejudice those rights.
- 18.5 The Communicating to the Public Terms and Conditions shall not constitute any form of partnership or joint venture between the Licensee and SAMPRA.
- 18.6 If any provision (or part thereof) of the Communicating to the Public Terms and 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.

- 18.7 The clause headings in the Communicating to the Public Terms and Conditions are for information only and do not form part of them.
- 18.8 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.
- 18.9 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.
- 18.10 The Licensee irrevocably waives any right it may have to seek a remedy for:
  - 18.10.1 any representation which has not become a term of the Licence; and
  - 18.10.2 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 representation was made or such warranty or undertaking was given fraudulently.
- 18.11 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.