SOUTHERN AFRICAN MUSIC RIGHTS ORGANISATION NPC (SAMRO)

LICENCE TERMS AND CONDITIONS

LICENCE TYPE: DDS & DDSR

1. INTRODUCTION

1.1. It is important that You read these Licence Terms and Conditions (hereinafter the "**Licence Conditions**") carefully before accepting them when Applying for or a SAMRO licence. Please take particular note of the clauses typed in bold and/or capital letters.

1.2. **SAMRO WARRANTS THAT:**

1.2.1. It has the necessary approvals, licences and authorities to grant You the Licence in respect of its Repertoire.

1.2.2. For the duration of the Agreement it will comply with all laws applicable to the performance of its obligations in terms of this Agreement.

1.3. **BY SIGNING THE APPLICATION FORM OR ACCEPTING THE LICENCE CONDITIONS TELEPHONICALLY YOU:**

1.3.1. **WARRANT THAT ALL THE INFORMATION THAT YOU PROVIDE TO SAMRO IN RELATION TO THIS AGREEMENT IS COMPLETE, TRUE, CORRECT AND UP TO DATE.** This means that You are obliged to make sure that all information provided to SAMRO is true and correct and that you will not have a claim against SAMRO for the repayment of licence fees which have been calculated based on incorrect information provided by You.

1.3.2. **WARRANT THAT ALL THE INFORMATION THAT ANOTHER PERSON PROVIDES TO SAMRO ON YOUR BEHALF IN RELATION TO THIS AGREEMENT IS TRUE AND CORRECT.** This means that You are obliged to make sure that all information provided to SAMRO by another person acting on your behalf, is true and correct and that you will not have a claim against SAMRO for the repayment of licence fees which have been calculated based on incorrect information provided to SAMRO by another person on your behalf.

1.3.3. **WARRANT THAT YOU ARE DULY AUTHORISED TO ACCEPT THE LICENCE CONDITIONS AND ENTER INTO THE AGREEMENT WITH SAMRO.**

1.3.4. **WARRANT THAT YOU HAVE THE REQUIRED LEGAL STATUS TO ACCEPT THE LICENCE CONDITIONS AND ENTER INTO THE AGREEMENT WITH SAMRO.** This means that you warrant that your legal status or capacity to act is in no way limited.

1.3.5. **WARRANT that You will comply with all laws applicable to the performance of Your obligations**

in terms of this Agreement.

1.3.6. **<u>CONFIRM</u> that You have been provided with a copy of these Licence Conditions;**

1.3.7. **<u>CONFIRM</u> that You had sufficient time to peruse these Licence Conditions before signing the Application at your volition;**

1.3.8. **<u>CONFIRM</u> that You are fully aware of the stipulations contained in these Licence Conditions;**

1.3.9. **<u>CONFIRM</u> that You are fully aware of any exemptions, limitations of liability, acknowledgements or warranties made or contained in the Licence Conditions;**

1.3.10. **<u>CONFIRM</u> that You understand these Licence Conditions; and**

1.3.11. **<u>CONFIRM</u> that You agree and bind Yourself to these Licence Conditions.**

1.4. If it appears that You are a non-existent entity, and/or have not been registered as a juristic person at the relevant registrar's office, as at the date of signature of Your Application Form, **the <u>PERSON ACCEPTING THE LICENCE CONDITIONS WILL BE PERSONALLY LIABLE</u>** in terms of the Agreement, and will be bound by the terms and conditions thereof as if such a person was referred to and incorporated in the Agreement as the Licensee.

1.5. Clause 1.3 means that if and when you sign the Application Form or accept the Licence Conditions telephonically, you bind Yourself to the terms and conditions set out in these Licence Conditions.

1.6. These Licence Conditions, as amended from time to time, together with Your signed Application Form and/or Telephonic Application and acceptance of the Licence Conditions and SAMRO'S Letter of Confirmation of Licence, as the case may be, contain the details, terms, conditions and warranties that form the agreement between You and SAMRO (hereinafter the **"Agreement"**).

1.7. These Licence Conditions are also available on SAMRO's website: www.samro.org.za.

1.8. In this document all references to natural persons shall also refer to juristic persons and vice versa.

1.9. Please take note that the use of SAMRO's Repertoire without the required licence constitutes an infringement of copyright and is an offence in terms of the Copyright Act 98 of 1978, punishable by a fine and/or imprisonment.

1.10. **No term or condition contained in these Licence Conditions shall be interpreted in such a way that it waives or deprives You of any rights which You may have in terms of any applicable laws or to avoid any obligation SAMRO has in terms of any applicable laws or to set aside or override the effect of any provision of such laws or to authorise or do anything that is unlawful in terms of any law.**

2. SAMRO

2.1. The Southern African Music Rights Organisation NPC is a non-profit company duly registered in accordance with the company laws of the Republic of South Africa under registration number 1961/002506/08.

2.2. SAMRO's head office is situated at 20 De Korte Street, Braamfontein, Johannesburg, Gauteng, South Africa**.**

2.3. SAMRO, authorised by written deeds of assignment, controls in the Territory, amongst others, the performing rights in the Works of Music of its Members and of the Members of the Affiliated Societies.

3. DEFINITIONS

3.1. In these Licence Conditions:

3.1.1. **"Affiliated Society/ies"** means any persons that are Collecting Societies (or which perform a role similar to Collecting Societies) in jurisdictions outside South Africa with which SAMRO is for the time being affiliated. A list of Affiliated Societies appears on SAMRO's website and is amended from time to time.

3.1.2. **"Applying"** means Your signature of a SAMRO licence Application Form or Your telephonic acceptance of the Licence Conditions and the word **"Application"** will be construed accordingly.

3.1.3. **"Collecting Society/ies"** means a society for the protection of intellectual property or collection of royalties and similar consideration for the use of any intellectual property rights in any jurisdiction(s) in the World (including any 'collecting society' established under the Copyright Act 98 of 1978, as amended).

3.1.4. **"Day"** unless otherwise indicated means business days excluding weekend and public holidays.

3.1.5. **"Diffusion Service"** means any telecommunication service of transmissions consisting of sounds, images, signs or signals, which take place over wires or other paths provided by material substance and intended for reception by specific members of the public.

3.1.6. **"Gross Annual Revenue"** means revenue received by the operation of the diffusion service from subscribers to such service and persons or companies whose advertisements are carried in the Diffusion Service.

3.1.7. **"General Amendment"** means an amendment made by SAMRO, from time to time, to these Licence Conditions, on notice to You.

3.1.8. **"Licence Conditions"** means the licence terms and conditions contained in this document, as amended from time to time, such terms and conditions being freely available to You on SAMRO's website at www.samro.org.za or on request to SAMRO.

3.1.9. **"Licence Year"** means a period of 12 (twelve) calendar months commencing on the Validity Date or any anniversary of the Validity Date during the subsistence of the Agreement.

3.1.10. **"Members"** means the companies, organisations, persons and entities who are, during the term of the Agreement, members of SAMRO (including the members of the Affiliated Societies), and who have licensed, assigned and/or mandated the licensing of the Performance of Works of Music owned and/or controlled by them to SAMRO and/or the Affiliated Societies, as the case may be.

3.1.11. **"Performance"** has the meaning ascribed to it in the Copyright Act 98 of 1978, as amended from time to time, and the words **"Perform"** and **"Performed"** and **"Performing"** will have the same meaning.

3.1.12. **"Personal Information"** has the meaning ascribed to it in the Protection of Personal Information Act 4 of 2013, as amended from time to time.

3.1.13. **"Premises"** shall mean each and every premises under Your control and at which Works of Music are Performed as envisaged in these Licence Conditions.

3.1.14. **"SAMRO's Repertoire"** and/or **"Repertoire"**, means all Works of Music of SAMRO's Members in

respect of which SAMRO holds rights of Performance, including the Works of Music of the Members of the Affiliated Societies. A list of all SAMRO's Members, as updated from time to time, is available on SAMRO's website.

3.1.15. **"Tariff Amendment"** means an amendment made by SAMRO, from time to time, to the tariff provided for in these Licence Conditions, on notice to You.

3.1.16. **"Territory"** means the Republic of South Africa, the Kingdom of Lesotho, the Kingdom of Swaziland and any other jurisdiction in which SAMRO is operational from time to time directly and not through an Affiliated Society.

3.1.17. **"Work of Music"** means the whole or a part of a musical work or of a musical work in combination with lyrics, words or any other literary work written for the purpose of accompanying the music, such as a song.

4. GRANT OF LICENCE

4.1. These Licence Conditions applies to Diffusion Services defined in the Copyright Act, Act No 98 of 1978 (as amended) (SAMRO licence type **DDS & DSR**).

4.2. SAMRO, subject to You complying with the terms of the Agreement and subject to You paying the licence fee, grants to You the licence to Perform or permit to be Performed any of the Works of Music for the time being in SAMRO's Repertoire and for the time being in the Repertoire of the Affiliated Societies at the Premises listed in your Application for a SAMRO licence and updated by you as and when the Licence Conditions so require (hereinafter the **"Premises"**).

4.3. The licence granted to You by SAMRO in accordance with clause 4.2 above is a 'blanket licence'. You are therefore entitled to, at the Premises and during the period that the Agreement is in force, Perform any of the Works of Music in SAMRO's Repertoire. The licence fee payable by You is payable irrespective of whether You elect to Perform SAMRO's Repertoire or not.

5. CONDITIONS

5.1. If the Premises are temporarily or permanently used for any Performances or entertainment different in number or type from those forming the basis upon which this licence has been granted to You by SAMRO, the licence granted in terms of the Agreement will not extend to or be deemed to authorise such different Performances or entertainment.

5.2. **Without limiting the generality of clause 4.2 above, the licence granted to You in terms of the Agreement will <u>not extend to</u> or authorise:**

5.2.1. the Performance in their entirety of oratorios and other choral works or of excerpts therefrom which excerpts are of more than 20 minutes duration;

5.2.2. the Performance of ballets, or dramatico-musical works such as operas, musical plays, revues or pantomimes in so far as they consist of material written expressly therefor;

5.2.3. the Performance of any excerpt from any Work of Music if accompanied by dramatic action, dumb show, costume, scenic accessories, or other visual representation of the same work;

5.2.4. the Performance of any Work of Music accompanied by any words other than those (if any) published or otherwise associated therewith by the copyright owner; any such work in any altered or rearranged form, or with such costume or action as to produce parodied or burlesque effects; or any such work adapted to a dramatic form;

5.2.5. the Performance (except by means of duly authorised records and/or radio or television receiving sets) of vocal excerpts from dramatico-musical works as aforesaid if the right of such Performance is forbidden or reserved by the copyright owner;

5.2.6. the Performance of Works of Music from beyond the boundaries of the Premises; and/or

5.2.7. the recording of any Work of Music or any portion thereof.

6. PAYMENT OF LICENCE FEES

6.1. In consideration for the rights granted to You in terms of clause 4 above, You must pay to SAMRO an annual licence fee calculated in accordance with the SAMRO **Tariff DDS & DDSR**, as amended from time to time (hereinafter the **"Licence Fee"**).

6.2. In terms of the SAMRO **Tariff DDS & DDSR**, the Licence Fee is calculated based on the Gross Annual Revenue.

6.3. **The Licence Fees are calculated as follows:**

6.3.1. **5 % (one percent) of the Gross Annual Revenue.**

6.3.2. **The Licence Fee payable is subject to a minimum fee per receiving apparatus per annum of R89.37.**

6.4. **The Licence Fee payable by You is based on the information provided by You to SAMRO. YOU WARRANT THAT ALL INFORMATION YOU PROVIDE TO SAMRO IS TRUE AND CORRECT.** The information that you are obliged to provide and upon which your licence fees is calculated is listed in clause 9 below and is provided to SAMRO in your Application Form and/or on the form attached as **Annexure A ("Licence Parameter Return")**.

6.5. The Licence Fee will be reviewed and adjusted as and when the Agreement so requires.

6.6. The Licence Fee is payable by You annually in advance within 30 days (including weekends and public holidays) of the date of invoice. SAMRO will deliver the invoice to the address reflected in Your Application Form in any manner envisaged in clause 24 below.

6.7. If any increased Licence Fee becomes payable as a result of an amendment to SAMRO's Tariffs, You must forthwith pay the amended Licence Fee from the date on which such amended Tariff becomes effective. SAMRO will provide You with 3 (three) months' prior written notice of any amendment to the SAMRO Tariff and/or Licence Fee.

6.8. If any increased Licence Fee becomes payable as a result of a change in the manner and extent of the Performance or usage of SAMRO's Repertoire, You must forthwith pay the proper proportion of such increased fee from the date of such change in the manner or extent of Performance of music.

6.9. If the amended Licence Fee is less than that which You previously paid, the pro-rata balance in respect thereof will be set off as a credit against the Licence Fee payable for the next ensuing year or, at Your option, refunded to You by SAMRO.

6.10. SAMRO will have the right, at any time during the subsistence of the Agreement, to reassess the Licence Fee payable by You and the basis upon which the Licence Fee is payable.

7. ENTRY UPON THE PREMISES

You must allow representatives of SAMRO to inspect the Premises, at any time during office hours, for the purposes of checking the particulars upon which the Licence Fee payable by You is assessed, as well as Your compliance with these Licence Conditions.

8. DURATION, COMMENCEMENT AND PLACE

8.1. Subject to You paying the Licence Fee, the licence granted to You by SAMRO will commence on the date referred to in SAMRO's Letter of Confirmation as the date from when the licence is valid (the **"Validity Date"**).

8.2. By dispatching to You SAMRO's Letter of Confirmation of Licence, SAMRO confirms in writing that it has accepted Your Application for a licence.

8.3. **The licence granted to You will continue in force for an indefinite period or until terminated by either You or SAMRO in accordance with the terms contained herein.**

8.4. This Agreement is deemed to be concluded in at SAMRO's physical address recorded in clause 24 below.

8.5. The Agreement is binding on You and SAMRO unless and until it is terminated by You or SAMRO in accordance with these Licence Conditions.

9. LICENCE FEE PARAMETERS

9.1. You must upon submitting Your Application Form, and thereafter within 30 days of the last day of each Licence Year, and for purposes of calculating the Licence Fee payable by You, provide SAMRO with a Licence Parameter Return (form attached as **Annexure A**) containing the following information:

9.1.1. An annual Statement of Gross Revenue, during the calendar year preceding the date of Your Application or during the preceding Licence Year, as the case may be, certified as correct by Your Auditors or Accountants or in a manner acceptable to SAMRO.

10. FAILURE TO MEET REPORTING OBLIGATIONS

10.1. Should You fail to furnish the Licence Parameter Return referred to in clause 9.1 above within the required time period:

10.1.1. SAMRO will be entitled to invoice You based on the licence parameters upon which the preceding invoice was based plus fifteen percent.

10.1.2. The provisions of clauses 10.1.1 and 10.1.2 above will not absolve You of Your obligation to provide SAMRO with Your Licence Parameter Returns and SAMRO will not be precluded from demanding delivery of the said returns.

10.1.3. In the event that the Licence Fee payable based on the Licence Parameter Return is greater than the Licence Fee payable in terms of clause 10.1.1 and 10.1.2 above, You will be liable for the difference between the two amounts, together with interest on such difference.

11. MUSIC USAGE RETURN

11.1. You must, for the duration of the Agreement and on a quarterly basis (every three months), submit to SAMRO the information set out below regarding each and every Work of Music Performed at the Premises (the **"Information"**).

11.2. The Information must be delivered to SAMRO by way of post and/or e-mail, within 30 (thirty) days (including weekends and public holidays) of the last day of each quarter.

11.3. The Information must be recorded by You on specific forms (**"Music Usage Returns"**) which are attached as **Annexure B** hereto and available from SAMRO in electronic form. Each Music Usage Return must be signed by You and must contain at least the following information:

11.3.1. the name of the Work of Music;

11.3.2. the name(s) of each composer;

11.3.3. the name(s) of the arranger;

11.3.4. the name(s) of the performer;

11.3.5. the name(s) of the publisher; and

11.3.6. the number of times each Work of Music was Performed.

11.4. SAMRO requires the information set out in clause 11.3 above in order to allocate the funds it collects to its Members in accordance with its system of distribution. You acknowledge that failure to comply with Your reporting obligations as set out in this clause 11 could result in SAMRO's Members not being remunerated for the Performance of their Works of Music.

11.5. In the event that you fail to provide SAMRO with Your Music Usage Return in accordance with clauses 11.1, 11.2 and 11.3 above, SAMRO may at its discretion secure the services of a third party to collate and prepare the Music Usage Return for You. You will be liable for all the costs associated with the collation and preparation of the Music Usage Return by such third party.

11.6. In view of the fact that this is a 'blanket licence', it is specifically recorded that the information required to be submitted by You in terms of this clause 11 does not in any way have a bearing on or relate to the quantum or calculation of the Licence Fee payable by You to SAMRO.

12. TERMINATION

12.1. Either You or SAMRO may terminate the Agreement and in so doing terminate the licence granted to You in clause 4 above by providing the other with 3 (three) months' prior written notice.

12.2. In the event that You terminate the Agreement in terms of clause 12.1 above, You will remain liable for any and all amounts payable to SAMRO for the licence granted to You in terms hereof up to and including the date of termination of the Agreement.

12.3. **Upon the termination of this contract by either You or SAMRO, You will no longer have the authority to Perform SAMRO's Repertoire. Please take note that the Performance of SAMRO's Repertoire without the required licence constitutes an infringement of copyright and is an offence in terms of the Copyright Act 98 of 1978, punishable by a fine and/or imprisonment.**

13. CHANGE IN LICENCE PARAMETERS

13.1. Notwithstanding, and in addition to, Your obligation to provide SAMRO with Music Usage Returns, and for purposes of allowing SAMRO to adjust the Licence Fee payable by You, You must also notify SAMRO in writing of:

13.1.1. any additions to or deletions from the list of Premises included in your Application for a SAMRO licence, as updated by You;

13.1.2. any change of the address of the Premises;

13.1.3. any change of the name of the Premises;

13.1.4. any change of the Premises for which the licence has been granted;

13.1.5. any change in the manner or extent of the Performance of music, as described in Your Application Form.

13.1.6. any change in the ownership of Your business and/or the Premises; and/or

13.1.7. any change in the trading name(s) of Your business and/or the Premises; and

13.1.8. the date of any of the changes referred to in this clause 13.

13.2. This notice must be given in writing to SAMRO and sent by registered post and/or email within 14 (fourteen) days of such change.

13.3. You recognise and acknowledge that, should You fail to furnish SAMRO with the information set out in clause 13.1 above, this will have a detrimental effect on SAMRO's Members, resulting in SAMRO's Members not receiving the compensation to which they are entitled.

14. TARIFF AMENDMENTS

14.1. Subject to your right to terminate this Agreement, provided for in clause 12 above, SAMRO may at its own discretion amend its Tariff at any time.

14.2. Any Tariff Amendment will take effect 3 (three) months after the date upon which SAMRO notifies You by way of a Tariff Amendment Notice, of the amendment to the Tariff.

14.3. You must, within 14 (fourteen) days of being requested in writing to do so, furnish SAMRO with any and all information required for the assessment of Licence Fees payable by virtue of any Tariff Amendment.

15. GENERAL AMENDMENTS

15.1. Subject to your right to terminate this Agreement provided for in clause 12 above, SAMRO may at its own discretion, amend these Licence Conditions at any time.

15.2. You agree to be bound by any and all General Amendments from the date specified in the General Amendment Notice.

15.3. Notwithstanding clause 15.1 above You agree that SAMRO may, at its own discretion and without notice, amend any errors which are self evident errors including but without limitation spelling, punctuation, reference, grammar or similar or any other defect that does not materially affect the meaning and intent of these Licence Conditions.

16. CONSUMER PRICE INDEX ADJUSTMENTS

16.1. The Licence Fee payable by You will be adjusted automatically each year, on 1 July, in accordance with the official Consumer Price Index (CPI) as published by Statistics South Africa.

16.2. The notice periods provided for in clause 14 above in respect of Tariff Amendments will not apply to amendments to the tariffs relating to CPI adjustments.

17. VALUE ADDED TAX

17.1. You must pay to SAMRO, in addition to the Licence Fee due under any Tariff, a sum in respect of Value Added Tax calculated at the relevant statutory rate in respect of such Licence Fee.

17.2. SAMRO will provide You with an Original Tax Invoice in relation to the fee payable.

18. INTEREST ON OVERDUE AMOUNTS

18.1. Any Licence Fee which is payable by You in terms of the Agreement and which remains unpaid for a period in excess of 30 (thirty) days from the date of the invoice, will attract interest at the current legal rate, calculated in accordance with the interest rate prescribed by the Minister of Justice in accordance with the Prescribed Rate of Interest Act 55 of 1975, as amended.

18.2. Such interest will be calculated monthly in advance and is payable by You to SAMRO on demand.

19. PERSONAL INFORMATION

19.1. Subject to any applicable laws, You authorise SAMRO to:

19.1.1. use any personal information that we may have in relation to You for the purposes of:

19.1.1.1. processing Your Application;

19.1.1.2. executing and administering the Agreement;

19.1.1.3. calculating Your Licence Fees;

19.1.1.4. collecting Your Licence Fees;

19.1.1.5. informing You of any SAMRO news and information or information relating to the Agreement;

19.1.1.6. informing You of any amendment, Tariff amendment or General Amendment to this Agreement.

19.1.2. access your Personal Information from credit bureaux relating to your payment profile for purposes of financial risk assessment, fraud prevention and debtor tracing and that we may disclose the necessary Personal Information to any such credit bureaux.

19.1.3. obtain, capture store, process, analyse and use Your personal information for SAMRO marketing purposes in relation to SAMRO's business of managing its Repertoire.

19.1.4. divulge Your Licence status to any third party. By this SAMRO means that it may divulge to any third party whether or not you are licensed by SAMRO and the licence type that you are or were licensed for.

19.1.5. retain Your Personal Information referred to in this clause for as long as we are required to do so in terms of applicable laws or in order to exercise or protect any of our rights under this Agreement.

19.1.6. disclose Your Personal Information:

19.1.6.1. to SAMRO's duly appointed agents, representatives or service providers in order to attend to the items listed in clauses 19.1.1 to 19.1.3 and to conduct our business as a collecting society.

19.1.6.2. if and to the extent that we are required to do so, to comply with any applicable law.

19.2. SAMRO is obliged to take all necessary and reasonable steps to protect your Personal Information.

20. COMMUNICATION BETWEEN YOU AND SAMRO

20.1. Subject to any applicable laws, You authorise SAMRO to communicate with You by means of telephone, e-mail, fax, text or any mobile phone messaging services to Your mobile device, laptop and/or computer.

20.2. Subject to any applicable laws, You authorise SAMRO to use such communication methods to:

20.2.1. market or promote our services and those of our suppliers and/or clients and/or members and/or affiliates;

20.2.2. inform you about matters relating to SAMRO, its members and affiliates and changes relating to these matters.

20.2.3. provide you with information that SAMRO believes may be of particular interest or relevance to You or this Agreement.

20.2.4. advise you of the status of your account and/or any amounts owing by You to SAMRO.

20.2.5. remind you of forthcoming dates on which payment of your licence fees or returns may be due; and

20.2.6. notify you of any General Amendment or Tariff Amendment.

21. BREACH

21.1. Should either You or SAMRO (the **"defaulting party"**) breach any of the provisions of the Agreement and the breach is material or the defaulting party fails to remedy that breach within 14 (fourteen) Business Days after receipt of a written notice from the non-defaulting party, requiring it to remedy that breach, the non-defaulting party will be entitled, without prejudice to any remedies which it may otherwise have in terms of the Agreement or at law, to immediately terminate the Agreement on the occurrence of the material breach or on the expiry of the 14 (fourteen) Business Day period as the case may be.

21.2. You or SAMRO may, without prejudice to any other rights herein, at any time and by giving 14 (fourteen) days written notice, forthwith terminate the Agreement if:

21.2.1. either You or SAMRO have any reason to reasonably believe that either of you or anyone employed by either of you or acting on your behalf, whether with or without your knowledge, engages in a fraudulent practice in connection with the Agreement; or

21.2.2. either You or SAMRO commits an act of insolvency, or initiates business rescue proceedings, or is placed under a provisional or final winding up, or reaches a compromise with creditors.

21.3. The termination of the Agreement, for whatever reason, will not affect the rights of either You or SAMRO which may have accrued as at the date of termination and will further not affect any rights which specifically or by their nature survive the termination of the Agreement or any rights in law, including but not limited to the right to claim damages, specific performance or an interdict.

22. LEGAL COSTS

If either You or SAMRO institutes legal action against the other for breach of the Agreement, then the party in breach will be liable for all legal costs arising from such legal action, calculated on the attorney-and-own-client scale, the costs of Counsel on brief at the higher scale, and the costs of tracing the party in breach's whereabouts, as well as Value Added Tax, calculated at the current statutory rate on these legal costs, as well as all other costs and expenses incurred resulting from or related to such legal proceedings.

23. CONFIDENTIALITY

23.1. You and SAMRO must keep confidential and not disclose to any person, without the prior written consent of the other the details of the Agreement, the details of negotiations leading to the formulation of the Agreement and any information whatsoever handed over to You and SAMRO during the course of negotiations, as well as details of any transactions or agreements contemplated in the Agreement (the "Confidential Information").

23.2. You and SAMRO agree to keep all Confidential Information confidential and to disclose it only to the officers, directors, employees, consultants, Affiliated Societies and professional advisors who:

23.2.1. have a need to know (and then only to the extent that it is necessary);

23.2.2. are made aware that the Confidential Information should be kept confidential;

23.2.3. are aware of the disclosing party's undertaking in relation to the information in terms of the Agreement; and

23.2.4. have been directed by the disclosing party to keep the Confidential Information confidential and have undertaken to keep the Confidential Information confidential.

23.3. The obligations of You and SAMRO in relation to the maintenance and non-disclosure of Confidential Information in terms of the Agreement do not extend to information that:

23.3.1. is disclosed to the receiving party in terms of the Agreement but at the time of such disclosure was known to be in the lawful possession or control of that party and not subject to an obligation of confidentiality;

23.3.2. is or becomes public knowledge, otherwise then pursuant to a breach of the Agreement by the party disclosing such Confidential Information;

23.3.3. is required by the provisions of any law, statute or regulation or during any court proceedings or by the rules and regulations of any recognised stock exchange to be disclosed and the party required to make the disclosure has taken all reasonable steps to oppose or prevent the disclosure where applicable or to limit, as far as reasonably possible, the extent of such disclosure and has consulted with the other party prior to making such disclosure; or

23.3.4. is required to be disclosed by a party to any of its respective group of companies or any employees of such group of companies to the extent that it is necessary for the proper performance by that party

of its obligations as set out in the Agreement.

24. DOMICILIA CITANDI ET EXECUTANDI

24.1. You and SAMRO choose the following postal, fax number and email address for any written notice with regards to the Agreement:

24.1.1. SAMRO: PO Box 31609
Braamfontein
Johannesburg
Email: licensing@samro.org.za
Fax: 086 682 0270
Attention: Licensing Administrator

24.1.2. You: the physical address submitted in Your Application Form.

24.2. You and SAMRO choose the following physical address respectively, at which documents in legal proceedings with regards to the Agreement may be served (your *domicilia citandi et executandi*):

24.2.1. SAMRO: 20 De Korte Street
Braamfontein
Johannesburg
2017
Tel: 011 712 8000
Fax: 086 682 0270

24.2.2. You: the physical address submitted in Your Application Form.

24.3. Notice will be deemed to have been duly given:

24.3.1. 10 (ten) days after posting, if posted by registered post to either Your or SAMRO's postal address;

24.3.2. on delivery, if delivered to either Your or SAMRO's physical address;

24.3.3. if sent by fax to the fax number, on the day of successful transmission thereof. Any facsimile sent outside of such normal business hours will be presumed to have been received on the following day.

24.3.4. if sent by e-mail to the e-mail address, on the day of successful transmission thereof, unless and until the contrary is proved by the addressee.

24.4. Either You or SAMRO may change your addresses and details mentioned herein above to any other postal or physical address in the Republic of South Africa, by giving notice in writing to the other of your intention to do so.

24.5. Notwithstanding what is set out herein above, neither You nor SAMRO will:

24.5.1. be entitled to commence legal proceedings by delivery of any notices by way of email or fax; and

24.5.2. be entitled to change your *domicilia* by way of correspondence sent by email or fax.

25. GOOD FAITH

25.1. You and SAMRO agree to act in the utmost good faith in respect of your obligations towards each other in terms of the Agreement.

25.2. You and SAMRO undertake at all times to do and procure the doing of all such things, to perform all such acts and to take all such steps open to you and necessary for or incidental to the putting into effect or maintaining of the terms, conditions and import of the Agreement.

26. CESSION, ASSIGNMENT AND TRANSFER

You will not be entitled to cede, assign or transfer any of Your rights, title or interest in the Agreement without SAMRO's consent, which consent must not be unreasonably withheld.

27. APPLICABLE LAW

The Agreement will be interpreted and governed in accordance with the law of the Republic of South Africa.

28. INDULGENCES

No relaxation or indulgence which may be granted by either You or SAMRO to the other will be construed as a waiver by either of you of any of your rights arising out of the Agreement, nor will it in any way prejudice either Your or SAMRO's rights or preclude You and SAMRO from exercising any of your rights in the future.

29. ENTIRE AGREEMENT

The Agreement contains the entire agreement between You and SAMRO in regard to the subject matter thereof and supersedes any previous agreement between You and SAMRO, whether tacit, oral or written in respect of Diffusion Services defined in the Copyright Act, Act No 98 of 1978 (as amended), under the DDS & DDSR licence type.

30. WARRANTIES AND REPRESENTATION

Neither You nor SAMRO will be bound by any express or implied term, representation, warranty, promise or the like, not recorded herein.

31. VARIATION, CANCELLATION AND WAIVER

No addition to, variation, waiver of any right or consensual cancellation of the Agreement will be of any effect unless in writing and signed by or on behalf of You and SAMRO.

32. SEVERABILITY

32.1. The terms of this agreement shall be deemed to be, in respect of each part, entire, separate, severable and separately enforceable in the widest sense from the rest of the agreement.

32.2. Should any provision of this agreement be found by any competent court to be defective or unenforceable for any reason whatsoever, the remaining provisions of this Agreement shall continue to be of full force and effect.

33. RELATIONSHIP OF THE PARTIES

The Agreement does not constitute You or SAMRO to be the agent of the other nor create a partnership, joint venture or similar relationship between You and SAMRO.