

**DISTRIBUTION AGREEMENT**

BETWEEN

**TURNUP MUSIC (PTY) LTD**  
**(Registration No 2015/09143/07)**

**("TurnUp Music")**

AND

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**(Registration/Identity No.:**

**("the Content Provider")**

**BACKGROUND**

- A. The Content Provider owns the intellectual property rights in the Content as defined herein, and wishes to expand its distribution network through the supply of such Content to TurnUp Music.
- B. TurnUp Music having an established and extensive network of customers via the WeChat platform wishes to secure a distribution arrangement with the Content Provider to supply the Content to Customers in the Territory on a non-exclusive basis.
- C. TurnUp Music wishes to synchronise such content on various television programs in the Territory, which synchronisation shall be done on a zero rating basis.

The parties are prepared to enter into an arrangement with each other as per the terms and conditions set out herein.

The parties hereto hereby agree as follows:

**1. DEFINITIONS**

- 1.1 In this Agreement: -
  - 1.1.1 clause headings are for convenience only and shall not be used in their interpretation unless the context indicates a contrary intention;
  - 1.1.2 unless the context indicates a contrary intention, any expression which includes:
    - 1.1.2.1 any gender includes the other genders;
    - 1.1.2.2 a natural person includes an artificial person and vice versa; and
  - 1.1.3 the singular includes the plural and *vice versa*.
- 1.2 The definitions set out below have the following meanings unless the context in which they appear clearly indicates a contrary intention:
  - 1.2.1 “**Agreement**” means this Distribution Agreement together with any schedules and/or annexures hereto, and in the event of any conflict between this Agreement and the schedules and/or annexures, the provisions of this Agreement shall prevail;
  - 1.2.2 “**Customers**” means cellular service operators, content suppliers, distributors of content, corporate clients, aggregators and any other

persons who obtain the Content for use, selling, distributing, transmitting or otherwise exploiting through any electronic, cellular or digital means whatsoever and, save for as is set out herein, in any media whether now known or hereinafter devised;

- 1.2.3 “**Content**” includes the Content which may be specifically set out in any Content Schedule attached hereto, as well as all sound recordings, videos, artistic works (including photographs, images and artwork) and or phonorecord Content that is owned or controlled by the Content Provider, or which is acquired by the Content Provider and includes associated metadata including, as the case may be, the title of each master recording and the name(s) of the featured artist whose performance is embodied therein and/or the title of each cinematographic film and all associated details thereof as well as all details relating to the authors and/or owners of the Content as the case may be;
- 1.2.4 “**Effective Date**” means the date on which the last party to this Agreement signs it;
- 1.2.5 “**the Initial Period**” means the period of 3 (three) years commencing on the Effective Date or the date on which the Content Provider delivers Content to Connect, whichever is the later;
- 1.2.6 “**Sound Recording**” means a sound recording as defined in the Copyright Act No. 98 of 1978 (the “**Copyright Act**”);
- 1.2.7 “**synchronise**” means the process of playing an existing composition and/or Sound Recording in conjunction with a moving picture of any kind including but not limited to: films, television series, advertisements, documentaries, websites, social media. “**synchronisation**” and “**synchronising**” shall have a corresponding meaning;
- 1.2.8 “**Term**” means the Initial Period together with any renewal period;
- 1.2.9 “**Territory**” means worldwide;
- 1.2.10 “**VAT**” means value added tax, as per the Value Added Tax Act, No. 89 of 1991 (as amended) (the “**VAT Act**”) or any similar tax which is imposed in place of or in addition to such tax; and
- 1.2.11 “**Video**” shall mean a cinematographic film as defined in the Copyright Act.

## **2 TERM**

- 2.1 Subject to clauses 2.2 and 2.3 below, this Agreement will commence on the Effective Date and continue for the Initial Period unless terminated in accordance with the provisions of this Agreement.
- 2.2 The parties agree that after the expiration of the Initial Period, the Content Provider grants TurnUp Music an option to extend the term of the Agreement for a further 3 (three) year period on the terms contained herein.
- 2.3 The option in terms of clause 2.2 above shall be deemed to have been exercised automatically unless TurnUp Music provides the Content Provider with 30 (thirty) days written notice of its intention not to exercise the option.

## **3 DISTRIBUTION**

- 3.1 During the Term, throughout the Territory, and subject to the terms and conditions contained herein, the Content Provider grants TurnUp Music the right to distribute, sell or otherwise generally exploit all the Content Provider's Content in any means and in any media whether now known or hereinafter devised, save where otherwise is specified in this Agreement.
- 3.2 The exercise of such right granted to TurnUp Music shall include but shall not be limited to the hosting, encoding, reproducing, displaying, exhibiting, synchronising and transmitting of Content to Customers located in the Territory.
- 3.3 Notwithstanding the foregoing, the right granted by the Content Provider to TurnUp Music does not extend to the physical distribution of vinyl records, cassettes, CD's and DVD's through normal retail channels, which rights are reserved by the Content Provider.
- 3.4 TurnUp Music and its Customers shall have the right to use album/cinematographic film artwork and artists'/actors' names (as the case may be) as well as photographs, likenesses, images, logos, biographical and other promotional material for advertising, promoting, marketing of the Content and other publicity purposes.
- 3.5 The Content Provider is obliged to inform TurnUp Music in writing of any restrictions relating to the Content and the intended exploitation thereof. By signing this Agreement, the Content Provider warrants that it is under no disability or restriction, whether contractual or otherwise, from granting TurnUp Music all of the rights as contained in this Agreement, without any limitation or restriction. Should any artist-related, territorial or other contractual restriction

arise which will prevent the Content Provider from providing all of the rights to TurnUp Music as recorded in this Agreement, the Content Provider shall immediately notify TurnUp Music of such restriction in writing.

- 3.6 Subject to the limited circumstance envisaged in clause 4.3 below, the Content Provider shall not have the right to withhold and/or to withdraw any Content from TurnUp Music and/or to restrict the distribution of the Content to any Customer.
- 3.7 In consideration for each sound recording sold or otherwise distributed to Customers, TurnUp Music shall pay to the Content Provider 70% (seventy per cent) of all TurnUp Music's gross receipts, less VAT or other applicable sales tax and less mechanical licence fees, actually received by TurnUp Music from Customers relating to the distribution and general exploitation of the Sound Recording. TurnUp Music shall have the right to recoup from amounts payable to the Content Provider all reasonable out-of-pocket encoding expenses incurred by TurnUp Music in connection with each Sound Recording.
- 3.8 Insofar as the exploitation of any other Content is concerned (as the case may be) including but not limited to needle time revenue, TurnUp Music shall pay to the Content Provider 70% (seventy per cent) of all TurnUp Music's gross receipts, less VAT or other applicable sales tax, actually received by TurnUp Music from Customers relating to the distribution and general exploitation of the Content.
- 3.9 In relation to clauses 3.7 and 3.8 above, TurnUp Music shall have the right to recoup from amounts payable to the Content Provider all reasonable out-of-pocket encoding expenses incurred by TurnUp Music in connection with the Content which is distributed and or exploited.

#### **4 OBLIGATIONS OF TURN UP MUSIC**

- 4.1 TurnUp Music shall be responsible for:
  - 4.1.1 soliciting and servicing the Customers,
  - 4.1.2 securing the encoding of the Content in a format(s) required by Customers;
  - 4.1.3 processing the delivery of the Content to Customers, and
  - 4.1.4 collecting any amounts due from Customers.
- 4.2 TurnUp Music shall not edit or alter the Content other than is necessary for the encoding of the Content into the required format for its Customers and for enhancing the Content in terms of clause 5.5 below.

- 4.3 If the Content Provider becomes legally obliged to cease allowing the exploitation of the Content in any way and consequently requires that the Content be removed from any platform on which it exists, TurnUp Music shall instruct its Customers, within 7 (seven) days from receiving written notification from the Content Provider, to remove the Content from the platforms on which such Content is contained. Notwithstanding what is set out herein, TurnUp Music shall not be liable to the Content Provider for any claims, harm, loss or damage which the Content Provider might suffer as a result of TurnUp Music's Customers failing to comply with TurnUp Music's instruction in any way and for any reason whatsoever.
- 4.4 Notwithstanding TurnUp Music's compliance with any written notification in terms of clause 4.3 above, all of TurnUp Music's rights in terms of this Agreement, including any rights relating to any breach by the Content Provider of any warranty made by the Content Provider herein, shall remain strictly reserved.

## **5 OBLIGATIONS OF THE CONTENT PROVIDER**

- 5.1 In connection with the exploitation of the Content contemplated herein, the Content Provider shall be solely responsible for:
- 5.1.1 all record royalties due to artists, producers and other persons who performed in the making of the Content and any other persons who are entitled to any royalties, fees or other amounts in relation to the exploitation of the Content. The Content Provider hereby indemnifies TurnUp Music and holds it harmless against any claims which may be brought against TurnUp Music and against any harm, loss or damage which TurnUp Music may suffer as a result of the Content Provider failing to adhere to its obligations in terms of this clause;
  - 5.1.2 promptly upon TurnUp Music 's request, furnish Content to TurnUp Music in the form of MP3 files on a hard drive or as otherwise specified in the Delivery Schedule attached hereto (as the case may be);
  - 5.1.3 promptly upon TurnUp Music's written request, furnish the Content to TurnUp Music without charge in the form of digital files together with accurate metadata at the highest resolution cover art available. If digital files are not available, the Content Provider shall deliver to TurnUp Music compact discs of the Content, without any additional charge.

- 5.1.4 ensure that the files which are delivered to TurnUp Music are of a sufficiently high quality for the purpose of TurnUp Music and/or its Customers exploiting the Content in terms of this Agreement. Should the Content, in the sole opinion of TurnUp Music, not be of a sufficiently high quality, TurnUp Music reserves the right to enhance and/or improve the quality of the Content so as to make it of a sufficiently high quality. The costs of such enhancement/improvement shall be recoupable by TurnUp Music from any amounts payable to the Content Provider in terms of this Agreement.
- 5.2 Notwithstanding what is set out above, the Content Provider shall not have the right to withhold, withdraw and/or restrict the distribution of any Content from TurnUp Music and/or TurnUp Music's Customers.
- 5.3 All costs associated with the delivery of the Content to TurnUp Music shall be for the Content Provider's account.

## **6 OTHER REPRESENTATIONS, WARRANTIES AND INDEMNITIES**

- 6.1 The Content Provider warrants and represents that:
  - 6.1.1 it has the right and authority to enter into this Agreement and to grant to TurnUp Music all the rights specified herein;
  - 6.1.2 all of the Content, artwork, metadata, videos and any other materials furnished by the Content Provider to TurnUp Music or relating to the Content are owned or controlled by the Content Provider;
  - 6.1.3 TurnUp Music shall have the right to exploit all of the Content, artwork, metadata, videos and any other materials furnished by the Content Provider in all manner hereunder free from adverse claims and without any obligation to make any payment of any nature to any person or entity, other than the amounts due to the Content Provider as set out herein;
  - 6.1.4 it has and will maintain sufficient right and title in the Content so as to grant the rights granted herein;
  - 6.1.5 it is not aware of any pending, threatened or current claims, suits or actions in connection with the Content being distributed by TurnUp Music to Customers pursuant to this Agreement;
  - 6.1.6 the exercise by TurnUp Music of its right to exploit the Content pursuant to the terms of this Agreement (and subject to TurnUp Music complying with the terms of this Agreement) will not infringe the intellectual property

rights of any third party or result in any delict, injury, damage or harm to any third party; and

- 6.1.7 it has cleared all synchronisation rights for broadcast usage of the Sound Recordings at no charge to TurnUp Music.
- 6.2 TurnUp Music warrants and represents that it has the right and authority to enter into this Agreement and that the conduct of its distribution activities complies with all applicable laws.
- 6.3 Each party (“**the indemnifying party**”) shall defend and indemnify the other party (including its directors, members, officers, employees and other representatives) (“**the indemnified party**”) against any third party claims, expenses, losses, harm or damages, including reasonable attorneys' fees and litigation expenses which the indemnified party might suffer as a result of the indemnifying party breaching any warranty contained in this Agreement. The indemnified party shall give the indemnifying party prompt notice of any claim. The indemnifying party shall defend the indemnified party at the indemnifying party's expense with counsel approved by the indemnified party in writing (which approval shall not be unreasonably withheld).

## **7 ACCOUNTING**

- 7.1 TurnUp Music shall account to the Content Provider on a quarterly basis, 60 (sixty) days in arrears, accompanied by payment of any amounts due, after receipt of accounting and payment from its Customers. When submitting quarterly reports, TurnUp Music shall provide the Content Provider with full details of any and all Content sold on a product-by-product, artist-by-artist, track-by-track basis and / or item-by-item basis (as the case may be).
- 7.2 Such accounting shall include the gross receipts received by TurnUp Music from all its Customers on an integrated basis, the distribution fee of TurnUp Music, and the net amount due to the Content Provider, in terms of this Agreement.
- 7.3 TurnUp Music agrees to keep true and accurate records, files and books of accounts containing all the data required to fully calculate and verify the Content sold or otherwise supplied and the amounts payable by TurnUp Music to the Content Provider
- 7.4 The Content Provider shall have the right to audit the books and records of TurnUp Music to verify the accuracy of such statements once in each year, at the



Content Provider's expense, at the place where TurnUp Music maintains such records, during the normal business hours of TurnUp Music and on at least 20 (twenty) days' prior written notice. Any objection relating to any accounting statement, or any lawsuit arising therefrom, must be made (and any lawsuit commenced), no later than 1 (one) year after the date the statement is rendered and the Content Provider hereby waives any longer statute of limitations that may be permitted by law.

## **8 INTELLECUAL PROPERTY**

- 8.1 All intellectual property rights in the Content are and shall remain the exclusive property of the Content Provider, and where relevant, of the third party supplier to the Content Provider. Unless otherwise agreed upon in writing, TurnUp Music shall not have any right, title or interest therein except as expressly set forth in this Agreement.
- 8.2 TurnUp Music acknowledges the Content Provider's valid title to each of the trade marks used by it in connection with its Content.
- 8.3 TurnUp Music undertakes not to take any action that might or would invalidate or put in dispute the Content Provider's title to the trade marks used by it.
- 8.4 The Content Provider shall not be entitled to use any of TurnUp Music's trade marks or works, including but not limited to its name and logos, save without the prior written consent of TurnUp Music.

## **9 BREACH**

Should either party breach this Agreement, the party who is not in breach may request the party in breach to remedy the breach within 14 (fourteen) days by giving it written notice to do so. Should the breach not be remedied timeously, the party who is not in breach may cancel this agreement forthwith without prejudice to any of the rights which it may have in law.

## 10 DISPUTES

This clause is a separate, divisible agreement from the rest of this Agreement.

- 10.1 Should any dispute, disagreement or claim arise between the parties (“**the dispute**”) concerning this Agreement, the parties shall try to resolve the dispute by negotiation. This entails that one party invites the other party in writing to meet and attempt to resolve the dispute within 3 (three) days from the date of the written invitation.
- 10.2 If the dispute has not been resolved by such negotiation, as referred to in clause 10.1, the parties shall submit the dispute to the Arbitration Foundation of Southern Africa (“**AFSA**”) for immediate administered mediation, upon the terms set out by the AFSA Secretariat. Failing such resolution, the dispute shall be resolved in accordance with the rules of AFSA by an arbitrator appointed by AFSA.
- 10.3 The arbitration shall be held in Johannesburg and the parties shall endeavour to ensure that it is completed within 30 (thirty) days after appointment of an arbitrator.
- 10.4 Each of the parties hereby irrevocably agrees that the decision of the arbitrator in the arbitration proceedings:
- 10.4.1 shall be final and binding on each of them;
  - 10.4.2 will be carried into effect; and
  - 10.4.3 be made an order of any court to whose jurisdiction the parties are subject.
- 10.5 Notwithstanding anything contained in this Agreement to the contrary, this Agreement shall continue in force and both parties shall continue to perform their respective obligations and to exercise their respective rights despite the referral by either party of a dispute to arbitration in terms of clause 10.2 of this Agreement.
- 10.6 Notwithstanding the provisions of this clause 10, a party shall not be prohibited from obtaining urgent relief from a court of competent jurisdiction pending finalisation of any dispute referred to arbitration.

## 11 TERMINATION

- 11.1 Without prejudice to any right or remedy of either party (“**the aggrieved party**”) for a breach of this Agreement, the aggrieved party shall have the right to terminate this Agreement by sending the other party (“**the defaulting party**”) written notice, in the event that:
- 11.1.1 the defaulting party is liquidated, enters into an agreement of compromise with its creditors or is placed under administration;
- 11.1.2 the defaulting party breaches any material provision of this Agreement and does not remedy the breach (assuming that such breach is capable of being remedied) within a period of 14 (fourteen) days after receiving written notice from the aggrieved party requiring the defaulting party to do so.
- 11.2 Pursuant to 1 (one) year having lapsed of the Initial Period, TurnUp Music may terminate this Agreement for any cause whatsoever provided it provide 30 (thirty) days written notice to the Content Provider.
- 11.3 Upon termination of the Agreement for any reason whatsoever, including the expiry of the Term of this Agreement:
- 11.3.1 TurnUp Music will have 30 (thirty) days from the date this Agreement is terminated to continue to supply the Content to Customers, after which time TurnUp Music must cease to promote, market, distribute sell or exploit the Content; and
- 11.3.2 TurnUp Music shall inform Customers that they have 6 (six) months from the date of termination of this Agreement to cease exploitation of the Content already supplied by TurnUp Music.
- 11.4 Provisions contained in this Agreement, that are expressed or by their sense and context are intended to survive the expiration or termination of this Agreement, shall so survive termination of this Agreement.

## **12 GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa and the parties consent to the jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg or the Johannesburg Magistrates' Court, as the case may be, for the resolution of any litigation between the parties.

## **13 GENERAL PROVISIONS**

- 13.1 The parties shall cooperate in implementing any applicable parental advisory labels to the Content. It is understood that the Content Provider shall furnish to TurnUp Music both the labelled and "edited" versions of all Content. The Content Provider shall notify TurnUp Music of any Content which is explicit and/or which warrants a parental advisory warning and/or which has been classified or labelled to not be suitable for any and/or all persons in any territory throughout the world.
- 13.2 Save for what is set out below, neither Party shall be liable to the other for any indirect, incidental, special, consequential, punitive or delictual damages of any nature or kind whatsoever, including but not limited to lost profits, in connection with or arising out of the use of the Content, even if the other Party has been advised of the possibility of such damages save for where either party breaches any warranty contained in this agreement and/or where either party has indemnified the other party in terms of this agreement.
- 13.3 This Agreement constitutes the whole agreement between the parties as to the subject-matter hereof and no agreement, representations or warranties between the parties other than those set out herein are binding on the parties.
- 13.4 This Agreement does not create a partnership or agency arrangement between the parties.
- 13.5 This agreement shall be binding on the Content Provider as well as its successors in title.
- 13.6 No addition to or variation of, consensual cancellation or novation of this Agreement and no waiver of any right arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by both the parties or their duly authorised representatives.

- 13.7 Each party agrees to do all things necessary or desirable to give full effect to any part of this Agreement including if necessary the execution of any notice or document if reasonably required to do so by the other party.
- 13.8 Neither party is liable for any delay or failure to perform their respective obligations under this Agreement to the extent that the delay or failure is due to a cause beyond that party's reasonable control (including but not limited to industrial strikes, severance of internet cables, fire or flooding) providing the party affected advises the other party of the basis of its inability to perform its obligations within 7 (seven) days of the commencement of the act affecting its ability to perform its obligations in terms of this Agreement.
- 13.9 No latitude, extension of time or other indulgence which may be given or allowed by either party to the other party in respect of the performance of any obligation hereunder or enforcement of any right arising from this agreement and no single or partial exercise of any right by any party shall under any circumstances be construed to be an implied consent by such party or operate as a waiver or a novation of, or otherwise affect any of that party's rights in terms of or arising from this agreement or estop such party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

#### **14 NOTICES**

- 14.1 The parties choose as their *domicilium citandi et executandi* their respective addresses set out in this clause for all purposes arising out of or in connection with this Agreement at which addresses all the processes and notices arising out of or in connection with this Agreement, its breach or termination may validly be served upon or delivered to the parties.
- 14.2 For the purpose of this Agreement the parties' respective addresses shall be:

##### **TurnUp Music**

Physical address: 272 Kent Avenue, Randburg, 2194

Email: [steveh@endemolshine.co.za](mailto:steveh@endemolshine.co.za)

Fax No.: \_\_\_\_\_

Attention: Steve Harris

**The Content Provider:**

Physical Address: \_\_\_\_\_

Email: \_\_\_\_\_

Fax No.: \_\_\_\_\_

Attention: \_\_\_\_\_

or at such other address, not being a post office box or *poste restante*, of which the party concerned may notify the other in writing.

- 14.3 Any notice given in terms of the Agreement shall be in writing and shall:
- 14.3.1 if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;
  - 14.3.2 if posted by prepaid registered post be deemed to have been received by the addressee on the 8th (eighth) business day following the date of such posting;
  - 14.3.3 if given by telegram be deemed to have been received by the addressee 2 (two) business days after despatch;
  - 14.3.4 if transmitted by facsimile or e-mail be deemed to have been received by the addressee 1 (one) business days after despatch;
- 14.4 Notwithstanding anything to the contrary contained in this agreement, a written notice or communication actually received by 1 (one) of the parties from the other including by way of facsimile transmission shall be adequate written notice or communication to such party.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers thereunto duly authorised.

For: TurnUp Music (Pty) Ltd

By: \_\_\_\_\_

The Authorised Signatory

Date of signature hereof:

\_\_\_\_\_

For: \_\_\_\_\_

Signature: \_\_\_\_\_

The Authorised Signatory

Print Name/title of signatory: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Contact Person: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

Date of signature hereof:

\_\_\_\_\_

## Catalogue / Recording Delivery Instructions

### DELIVERY REQUIREMENTS

-Finished mixed & mastered CD

OR

-MP3 files

- If MP3, the specs are as follows:
  - 320kbps
  - 44.1kHz
  - stereo
- If MP3, the MP3 files need to be full quality, uncompressed MP3

-CD cover artwork

- Artwork needs to be in jpeg format:
  - 1400px X 1400px
  - 300dpi
  - RGB colour
  - Please try get artwork rather than publicity shots

-Artist images, submitted digitally [648 x 648 pixels, JPG format, at least 72 dpi], via CD-ROM or email.

-Completed metadata form (attached)

All deliveries must contain an excel sheet stating the **Artist, Track, Song Duration, Genre, Label and ISRC Code.**