

DISTRIBUTION AGREEMENT BETWEEN TURN UP MUSIC (PTY) LTD (Registration No 2015/09143/07) ("TurnUp Music") AND YOU ("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 on various music platforms, wishes to secure a distribution agreement with the Content Provider to supply the Content to Customers in the Territory on a non-exclusive 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 "**Ad Funded Revenue**" means the revenue actually received by TurnUp Music from advertisers for advertisements on the Free Service;
 - 1.2.2 "**Agreement**" means this Distribution Agreement;
 - 1.2.3 "**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;
 - 1.2.4 "**Content**" includes 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;

- 1.2.5 “**Effective Date**” means the date on which this Agreement is accepted electronically by the Content Provider;
- 1.2.6 “**Free Service**” means the service accessed by users at no cost but where advertising is displayed in the service;
- 1.2.7 “**Initial Period**” means the period of 3 (three) years commencing on the Effective Date;
- 1.2.8 “**Sound Recording**” means a sound recording as defined in the Copyright Act No. 98 of 1978 (the “**Copyright Act**”);
- 1.2.9 “**Subscription License Fee**” means the subscription fees received by TurnUp Music from end users of the Subscription Service in the Territory, less VAT or other applicable sales tax and less mechanical licence fees, actually received by TurnUp Music;
- 1.2.10 “**Subscription Service**” means a service where Content is made available to end users paying a fixed recurring fee for access to the Content on an unlimited basis for as long as they pay the fixed recurring fee as and when it is due;
- 1.2.11 “**Term**” means the Initial Period together with the month to month period thereafter;
- 1.2.12 “**Territory**” means worldwide;
- 1.2.13 “**Trial Access Period**” means the 30 (thirty) day period during which the user can access the Subscription Service at no cost to induce trial usage of it.
- 1.2.14 “**Extended Trial Promotional Period**” means a period of 60 (sixty) days during which additional value is offered to the user, from time to time, as a user acquisition driver. The Extended Trial Promotional Period shall generally be applied in conjunction with an additional value offering such as a zero rated data offer. During this period the user can access the Subscription Service at no cost in order to drive retention.
- 1.2.15 “**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
- 1.2.16 “**Video**” shall mean a cinematographic film as defined in the Copyright Act.

2 TERM

- 2.1 This Agreement will commence on the Effective Date and continue for the Initial Period, thereafter it will continue indefinitely on the same terms contained herein on a month to month basis unless terminated in accordance with the provisions of this Agreement.

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, 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:
- a. For **streaming content**, 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.
 - b. For **downloadable content and Ring Back Tones**, 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.
- 3.8 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.
- 3.9 Notwithstanding the foregoing, each end user will be offered a once off Trial Access Period and/or an Extended Trial Promotional Period for the Subscription Service, during which time no amounts are payable for use of the Subscription Service.
- 3.10 Where the Content Provider supplies Content, which is made available to end users at no charge, outside of the user's Trial Access Period and/or an Extended Trial Promotional Period, then TurnUp Music will pay the Content Provider 70% (seventy percent) of TurnUp Music's gross Ad Funded Revenue derived from the Content Providers Content.

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.
- 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.
- 4.5 Because the sale and exploitation of Content is a highly speculative business, TurnUp Music makes no guarantee as to any degree of sales or exploitations, and retains absolute discretion over its sales and exploitation policies. TurnUp Music may decline or cease distribution or monetisation of any or all Content under this Agreement without further liability to the Content Provider, whether entirely or via a particular Customer or country.

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 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.

- 5.1.3 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.

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
- 6.2 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, subject to clause 7.5 and 7.6,

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). Subject to TurnUp Music having received the reports from its Customers.

- 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.
- 7.5 Should the amount due to the Content Provider be less than R500 (Five Hundred Rand) then it shall roll over to the next reporting period until the amount due exceeds R500 (Five Hundred Rand), at which point TurnUp Music will report to and make payment to the Content Provider subject to clause 7.6.
- 7.6 In order for the Content Provider to be paid any amounts due, the Content Provider must supply TurnUp Music with a valid tax invoice as per the requirements of the South African Revenue Service.
- 7.7 Should the Content Provider not have more than R200 due to them per 12 month period, calculated from 1 January to 31 December each year, then the amount that was due shall be forfeited to TurnUp Music and no longer be due to the Content Provider. This is due to maintaining administrative efficiencies.
- 7.8 Should the Content Provider fail to provide a valid invoice within 6 six months of first request to do so, the amount due per that request shall be forfeited to TurnUp Music and no longer be due to the Content Provider. The onus is on the Content Provider to provide and maintain their correct and up to date contact details to TurnUp Music.

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 trademarks

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 trademarks used by it.

8.4 The Content Provider shall not be entitled to use any of TurnUp Music's trademarks 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 Upon termination of the Agreement for any reason whatsoever:
- 11.2.1 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
- 11.2.2 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.
- 11.3 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.
- 11.4 After the Initial Period either party may give other party 30 (thirty) days’ notice to terminate 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 Save for what is set out below, neither Party shall be liable to the other for any indirect, incidental, special, consequential, punitive or 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.
- 13.2 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.
- 13.3 TurnUp Music reserves the right to modify, discontinue or terminate the Services, or modify this Agreement without notice. It is your responsibility to check these terms and conditions

periodically for changes. By continuing to use the Services after TurnUp Music makes and posts any such modification, you agree to be legally bound by any revised terms and conditions, should they occur.

- 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 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.
- 13.7 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.
- 13.8 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 Any notice given in terms of the Agreement shall be in writing and shall be transmitted by e-mail to the following email addresses and be deemed to have been received by the addressee 1 (one) business days after sending:
 - TurnUp Music:** legal@turnupmusic.com
 - The Content Provider:** the email address used at the time of registering and/or providing Content on/via any TurnUp Music websites or applicationsor at such other email address, of which the party concerned may notify the other in writing.
- 14.2 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 email shall be adequate written notice or communication to such party.