

**CODE OF CONDUCT
OF
THE RECORDING INDUSTRY OF SOUTH AFRICA NPC**

A NON-PROFIT COMPANY WITH MEMBERS

REGISTRATION NUMBER: 1995/005158/08

Adopted by the Members of the Association of the South African Music Industry (ASAMI) in General Meeting on the 20th of November 1995 and incorporated herein the name change from ASAMI to The Recording Industry of South Africa (RiSA)

(The definitions in the Rules of the Recording Industry of South Africa are deemed to be included herein)

1. FAIR DEALINGS WITH CREATIVE ARTISTS

1.1 Without in any way limiting the rights which Members may grant by agreement to Artists under contract, Members shall procure, as a minimum, that Artist's under contract to Members shall have the right to perform as a background vocalist or background instrumentalist as the case may be for the purpose of making audio recordings for other parties subject to prior consultation with the Member concerned and to the conditions that:

1.1.1 the artist has then fulfilled all material obligations in terms of his contract with such Member, and the engagement does not interfere with the continuing prompt performance of the artist's obligations to the Member;

1.1.2 the artist will not render a solo or "step-out performance" and the musical style of the recording will not be substantially similar to the characteristic musical style of recordings made by the artist for such Member such that the average listener would mistake the recording to be that of the artist; and

1.1.3 the artist's name may only be used in conjunction with a courtesy credit to such Member on the relevant material used for such records,

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(Association Incorporated Under Section 21)
Reg. No. 1995/005158/08

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in the same position as the credits accorded to other side artists and identical in type, size, prominence and all other respects. Neither the artist's name, nor likeness nor any biographical material may be used in any other manner in connection with such recordings . Without limiting the foregoing, the artist's name and/or likeness shall not be used on the front cover of LPs, cassettes, compact discs or any other carrier on which reproductions of the recordings are featured, on sleeves or labels, inlays or booklets or in any stickers, advertising, publicity or other forms of exploitation, without such Members written approval, which may be withheld in its absolute discretion.

- 1.2 A Member shall, within a reasonable time, make available to any artist or producer, or the agent of any such person, all relevant information evidencing contractual rights and obligations between the Member and such person, including sight of original documents and copies of such documents, together with copies of relevant sales report, royalty statements and payment statements arising from the contractual relationship between the Member and such person. The Member's obligations in this regard shall continue for a reasonable period of time after the termination of any such contract and notwithstanding the agreed termination of any such contract.
- 1.3 A Member shall not negotiate for, or consent to the termination of a contract with any artist or producer solely on condition that such person shall be released from further obligations under such contract in return for agreeing to forfeit the right to claim from the Member accrued royalties or royalties from any future sales of already recorded works. It is recorded that this clause 1.3 shall in no way detract from the right of a Member to recoup against royalties and future royalties any or all monies owed by an artist or producer to such Member.
- 1.4 In the absence of any cause beyond the reasonable control of a Member, a Member shall make payment of royalties due to any artist or producer on or before due date in terms of any written contract. Every such payment shall be accompanied by a written statement which clearly specifies the manner in which royalties have been calculated and which separately, lists and clearly explains the nature and amount of any deductions which have been made. If, in any case, the value of such deductions exceeds the value of royalties due to such person, a Member shall nevertheless prepare a detailed statement of royalties earned and of all deductions against which such royalties have been

set off and shall make such statement available to such person on or before the date on which royalties fell due for payment in terms of the written contract between them.

- 1.5 A Member shall be obliged, when entering into a performance or creative service contract with any artist or producer to comply with such minimum standards and conditions in regard to such type of contract as may have been agreed upon by RISA and by any body which RISA has recognised as being representative of the interest of such category of persons, if such person is in fact a Member of such recognised body.
- 1.6 A Member shall not enter into a contract with any artist or producer:
 - 1.6.1 which restricts the right of such person to be represented by any manager, agent or adviser, whether such person acts in a formal or informal capacity and irrespective of whether such person holds any apparent qualification so to act;
 - 1.6.2 which restricts the right of such person to inspect and audit, at such person's own cost and expense, the Member's records to the extent necessary to establish the accuracy of such person's royalty statements and all documents relevant to the calculation of royalties and other payments due to, or due by, such person;
 - 1.6.3 which gives or purports to give the Member a unilateral right to impose as a penalty the termination of the contract subject to the forfeiture of royalties;
 - 1.6.4 which gives or purports to give the Member a unilateral or arbitrary right to alter or amend the provisions of such contract to the actual or potential prejudice of such person;
 - 1.6.5 limits or alters the extent of such person's right to continue to receive royalties at any time after the contract has ended in respect of the sale or any other form of exploitation of recordings or performances made or performed during the term of the contract;
 - 1.6.6 which requires or purports to require such person to render performances or other services under such contract in an unreasonable manner or in the unfettered discretion of the Member without regard to the reasonable rights, interests and requirements of such person;

1.6.7 which gives or purports to give to the Member the arbitrary right to allocate production expenses incurred by the Member in respect of such person's performance under the contract against royalties which would otherwise be payable under such contract to such person, it being recorded that the effect of this clause will in no way preclude agreement between the Member and such person, either before, during or after the recording process, for the recoupment of production expenses; and/or

1.6.8 which purports other than in a separate and properly described publishing contract to give to the Member a right or an option to claim the compulsory assignment by such person to the Member or to any party of musical works created by such person other than musical works which are actually recorded by such person in terms of such contract and which are thereafter embodied in a commercial recording which is released and made available for sale by the Member to the general public.

2. PARALLEL IMPORTS

A Member shall not, knowingly, import into South Africa, or sell, any product in breach of the valid contractual rights any other Member. In this Code of Conduct "product" shall include an album in any format or one or more individual tracks, however compiled, and in any format.

3. PIRATE MANUFACTURING

3.1 A Member shall not knowingly manufacture product in South Africa for any third party which, if it were sold in South Africa, would be sold in breach of the valid contractual rights of any other party, whether or not a Member of RISA.

3.2 A Member shall not enter into a contract for the manufacture of product with or by any party who has not been registered by RISA as an approved manufacturer and who has not agreed to permit RISA or an appropriate body anywhere in the world recognised for such purpose by RISA to monitor and inspect such manufacturer's plant, warehouse and general operating systems.

3.3 A Member shall not manufacture or distribute any product manufactured in South Africa which does not bear such mark or logo as shall be approved and required by RISA from time to time.

4. INDUCEMENT IN RESPECT OF BROADCASTING

- 4.1 A Member shall not make payment of any remuneration or give any material gift or other benefit to any person who is directly or indirectly employed by any media whether in a full-time, part-time, occasional or freelance capacity, without notifying the employer of such person, or the proprietor of all media with which such person is associated, and RISA, as to the fact and amount or nature of such payment, gift or benefit, and as to the nature of the service to be rendered, if any, by such person, or as to any other cause of the making or giving of the payment, gift or benefit;
- 4.2 Save as aforesaid, a member shall not make payment to any person of any form of remuneration, or give any form of gift or benefit to any person, as direct or indirect inducement to, or reward for, broadcasting or causing the broadcasting of any material in musical, promotional, advertising or editorial form.
- 4.3 A member shall not, under any circumstances, make payment to any person of any remuneration, or give any form of gift or benefit to any person, as a direct or indirect inducement to, or reward for, not broadcasting or causing the non-broadcasting of any material in musical, promotional, advertising or editorial form.

5. PIRACY

A Member shall not knowingly be directly or indirectly involved in the manufacture, sale or distribution of any product in breach of the contractual or other legal rights of any third party including any Member, artist, producer, composer publisher or arranger to whom a royalty on the manufacture, sale or distribution of any such product is payable.

6. FALSIFICATION OF CHARTS AND SALES ACHIEVEMENT CERTIFICATIONS

A Member shall not, directly or indirectly, provide false or misleading information to RISA or to any third party regarding the sale of products.

7. COPYRIGHT

Every Member shall -

- 7.1 refrain from practicing any conduct which knowingly infringes the copyright held by any Member;
- 7.2 immediately bring to RISA's attention all instances of infringement of copyright held by Members;
- 7.3 be willing to act as a plaintiff/applicant/complainant in any proceedings which RISA might bring against infringers of copyright and to provide all documentation, evidence and the like requested by RISA for the purposes of such proceedings;
- 7.4 mark their tapes, compact discs etc, in the manner prescribed by RISA to facilitate proof of copyright and title thereto;
- 7.5 take any and all reasonable steps to obtain all documentation such as licence agreements, assignments of copyright and the like, in respect of sound recordings distributed by them, where such documentation is required by RISA for the purposes of litigation or criminal proceedings;
- 7.6 on notice from the RISA Executive Committee (after consultation with Members) to refrain from trading with any retailers or any other third parties against whom RISA may be taking legal action or against whom legal proceedings might be pending;
- 7.7 procure that where the titles of tracks are exhibited on the album packaging of cover version product, the name/s of the relevant performing artist/s are similarly displayed.

8. FAIR COMPETITION

A Member shall not enter into, or enforce, any contract or arrangement with one or more third parties which has the effect of denying or substantially limiting access at competitive prices to any other party to manufacturing, warehousing, selling or distribution services or facilities within the industry and within South Africa.

9. GENERAL

In addition, but subject to the specific clauses of this Code of Conduct, including suspensive conditions and implementation dates, no Member shall:

- 9.1 for any corrupt, dishonest or unlawful purpose in connection with the Industry give, offer, or promise, whether directly or indirectly, any inducement, reward or bribe of whatever nature, to anybody whomsoever;
- 9.2 accept any inducement, reward or bribe;
- 9.3 mislead, intimidate or interfere with any Member or official involved in the Industry;
- 9.4 commit, or incite or conspire with anybody to commit any corrupt, fraudulent, dishonest or prohibited practice in relation to the Industry; or
- 9.5 behave or conduct himself in such a manner which has or might have the effect of discrediting the Industry or which does or might bring into disrepute the good name of RISA, any Members of any committee or any official of RISA.

10. IMPLEMENTATION

The code is deemed to be fully effective.