

## **Sawubona Music Jam Participation Requirements**

The following requirements for participation will apply to Sawubona Music Jam:

**The aim of Sawubona Music Jam is to set seventeen (17) prescribed song lyrics about South Africa to music, in order to produce a 'Songs Of Good Hope' CD and to organize a 'Songs Of Good Hope' concert tour. The profits achieved from selling the CD and from the concerts will be used to support the Corporate Social Responsibility Projects of IBM South Africa and also the township projects of Non-Governmental Organisations (NGOs). Only natural persons will be allowed to participate. Any individual who decides to provide a musical composition on the basis of the 17 song lyrics for 'Sawubona Music Jam' and/or to arrange any existing compositions (remix) will be considered as a 'Participant' as defined in these Participation Requirements.**

### **2. Use of the Sound Recording / Rights to the Sound Recording**

The Participant will make the composition and/or a remix available to IBM, as well as the licenses granting its use for the aims of Sawubona Music Jam. Each Participant will be free to use these compositions for his/her own purposes, provided that IBM has agreed to this. The use of compositions of other Participants in Sawubona Music Jam for third-party purposes shall not be permitted.

Each Participant guarantees to IBM that he/she will not breach the above terms. Any breach of the above terms will make the individual concerned liable for damages, in particular within the meaning of copyright law (§§ 97 ff. UrhG [*German copyright law*]). IBM reserves the right to file a criminal complaint against the Participant concerned, in particular, on account of any illicit exploitation of copyright-protected works (§ 106 UrhG) and to enforce damages against the respective Participant.

### **3. Transfer of Rights**

3.1. The rights in songs or remixes of songs and intermediate products produced by the Participant concerned by using the above sound recording (hereinafter referred to individually and collectively as the 'Contracted Recordings') will be transferred to the Company on the basis of the terms specified below:

The Participant will transfer to the Company the exclusive and transferable right to use the compositions/remixes - without any restriction in terms of time and space - for the production of the 'Songs of Good Hope' CD, for the concert tour and with regard to all the related all press activities, such as TV and radio broadcasts, in any type or manner and with any technical equipment, without any restriction and free from any third-party rights.

The transfer of rights will encompass all ancillary copyrights and/or claims, including the rights or claims of the Participant, as provided in §§ 73 ff UrhG (German copyright law), as well as any rights and/or claims of a sound carrier manufacturer, as provided in §§ 85,, 86 UrhG, and any other rights of the contributors involved in the Contracted Recordings by the respective Participant. In particular, the exclusive right to use or have used the Contracted Recordings in analog or digital form of reproduction and interactive formats on (image)/sound carriers of any technical type (for example, LP, MC, DAT, single, maxi single, compact disc, digital compact cassette, mini disc, card disc, DVD audio, SACD, diskettes, etc., as well as movies and TV films, image/sound carriers, such as laser disc, CD video,

DVD video, CD interactive, CD plus or enhanced CD, CD-ROMs, CD-ROM XA, digital versatile disc, DVD video, DVD-ROM) will be transferred. In particular, the right to perform public presentation (cinema, etc.), radio and TV broadcast - including any claim based on this right -, and the right to use the Contracted Recordings via cable systems/databases by means of digital or analog electronic delivery or distribution, for example, via telephone, ISDN or other cable networks, online databases and websites (such as the Internet), and the dubbing right (in films, video clips, etc.), the right of lending and renting, and the right to create derivative works or short versions, and the legal claim based on such a right, will also be transferred at the same time.

In addition, the right to use or have used the names of Participants or the artist's name within the framework of the use of the Contracted Recordings and to use or have used such names in 'M Commerce' (carrying out transactions by means of mobile telecommunications networks [such as mobile phones, palmtops, PDAs], and, for example, the creation and distribution or accessibility of single-tone or multi-tone ring tones as an imitated or real tone, MMS, SMS).

3.2. The Contracted Recordings and the material related to them (such as band material, floppy discs) are deemed as the exclusive property of IBM without any restriction.

3.3. A panel will decide whether the Contracted Recordings will be published and/or used and it will also decide on the type, manner and scope of exploitation of the Contracted Recordings.

3.4. The Participant will guarantee that he/she has acquired the rights transferred to IBM, that he/she is entitled to dispose of such transferred rights, that he/she will not be prevented from participating in Sawubona Music Jam by any other commitments, and that the Contracted Recordings will not infringe any copyright/ancillary copyrights of third parties, and will indemnify, defend and hold IBM harmless from any related third-party claims.

3.5. It is hereby stipulated that title to the sound carriers will not be transferred to Participants, for the sake of clarification.

#### **4. Limitation of Liability**

4.1. IBM will not guarantee that the sound recording offered will conform to the requirements of the Participant or will be available at any time, without interruption, in a timely manner, secure and error-free. IBM will not assume any warranty that the hardware and software used for the sound recording offered will function error-free at any time, or that any defects in the hardware or software will be corrected.

4.2. The Company will only be liable for any loss of data as consequential damage resulting from a defect - except to the extent that the Company has been responsible for such damage as provided in sections 5.2 and 5.3, as well as section 5.5 - if the Participant has carried out data backup in a suitable form at regular intervals as required for the respective use of such data, that is, no less than once a day, so that this data can be restored with reasonable effort.

4.3. Liability for any other damage is hereby excluded, in particular for any loss of data or hardware malfunctions caused by the incompatibility of the components available on the Participant's PC system with the new hardware or software, or hardware or software that needs to be altered or modified, or for system malfunctions that may be caused by any existing incorrect configurations or by legacy disruptive drivers that have not been deleted completely.

## 5. General

IBM may transfer this Agreement, in whole or in part, to third parties. This Agreement is subject to German law. To the extent that this is permissible under the law, the place of performance and the exclusive place of jurisdiction is the registered office of IBM Deutschland. No oral agreements have been made. Any amendments or supplements to this Agreement must be made in writing; this requirement of the written form will also apply if this requirement is waived. In the event that any provision of this Agreement is deemed as ineffective, the remaining provisions of the Agreement will nevertheless remain in full force and effect. The Parties will replace the ineffective provisions by appropriate effective provisions in such a case.

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