

ESTABLISHMENT SURVEY SEM LICENSING AGREEMENT

between

BROADCAST RESEARCH COUNCIL OF SOUTH AFRICA NPC

("BRC")

And

PUBLISHER RESEARCH COUNCIL NPC

("PRC")

And

_____ **[please put in full company name]** _____(PTY) LTD.
("THE LICENSEE")

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1. Definitions and Interpretation

1.1 In this Agreement, the following words shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings and other words derived from the same origins as such words (that is, cognate words) shall bear corresponding meanings:

1.1.1 "Agreement" means this agreement as amended from time to time in terms of clause 9.6;

1.1.2 "BRC" means the Broadcast Research Council of South Africa NPC, a non-profit company registered in terms of the Companies Act with registration number 2015/099994/08;

1.1.3 "Business Day" means any day other than a Saturday, Sunday or gazetted national public holiday in South Africa;

1.1.4 "Companies Act" means the Companies Act, 71 of 2008, as amended;

1.1.5 "CPIX" means the consumer price index excluding interest on mortgage bonds, for metropolitan areas (Base 2000 – 100) published from time to time by Statistics SA in Statistical Release PO 141.1; provided that if such index ceases to be published or the Parties agree (or failing agreement, it is determined by the arbitrator in terms of clause 8) that such index is no longer representative, then from that date when the index was last published, the Parties shall use such other index as agreed or, failing agreement, as determined by the arbitrator, as being a fair and reasonable replacement index;

1.1.6 "Day" means any day including a Saturday, Sunday or gazetted national public holiday in South Africa;

- 1.1.7 "Effective Date" means _____ 2017 notwithstanding the date of signature of this Agreement by the party signing last in time or notwithstanding any other clause in this Agreement;
- 1.1.8 "The Establishment Survey SEM" means the Establishment Survey SEM™ (Trade Mark Pending) which is the Socio-Economic Measurement scoring system developed by the BRC and the PRC in terms of the Establishment Survey conducted by a service provider contracted to the BRC and to PRC from time to time;
- 1.1.9 "Intellectual Property" means any and all rights, title and interest in any know-how (not in the public domain), invention (whether or not patented); design, goodwill, trade name, trademark (whether or not registered, or any material in which copyright subsists (whether or not registered), and all other identical or similar intellectual property as may exist anywhere in the world and any applications for registration of such in intellectual property;
- 1.1.10 "Licensee" means _____ **[please put in full company name]** (Pty) Ltd, registered in terms of the Companies Act, with registration number _____; **[please put in registration number]**
- 1.1.11 "Office Hours" means 09h00 to 17h00 on any Business Day;
- 1.1.12 "Parties" means the parties to this Agreement, being the BRC, PRC and the Licensee;
- 1.1.13 "PRC" means the Publisher Research Council, a not for profit company with members duly registered in terms of the Companies Act, with registration number 2016/519577/08.

- 1.1.14 "Prime Rate" means the rate of interest (nominal annual compounded Monthly in arrears) from time to time published by Nedbank as its prime overdraft lending rate (a certificate from any manager of that bank, whose appointment or authority need not be proved, as to the prime rate at any time and the usual way in which it is calculated and compounded at such time shall, in the absence of manifest or clerical error, be final and binding on the Parties);
- 1.1.15 "Rand" or "R" means the South African Rand, the lawful currency of South Africa;
- 1.1.16 Signature Date means the date of signature of this Agreement or the date on which the last party to sign this Agreement did so if the Parties did not so sign on the same date;
- 1.1.17 "South Africa" means the Republic of South Africa; and
- 1.1.18 "VAT" means value-added tax levied in terms of the Value-added Tax Act, 89 of 1991, as amended.
- 1.2 In this Agreement:
- 1.2.1 references to a statutory provision include any subordinate legislation made from time to time under that provision and include that provision as modified or re-enacted from time to time;
- 1.2.2 words importing the masculine gender include the feminine and neuter genders and vice versa; the singular includes the plural and *vice versa*; and natural persons include artificial persons and *vice versa*;
- 1.2.3 references to a "person" include a natural person, company, close corporation or any other juristic person or other corporate entity, a charity, trust, partnership, joint venture, syndicate, or any other association of persons;
- 1.2.4 references to a "subsidiary" or a "holding company" shall be references to a subsidiary or holding company as defined in the Companies Act;

- 1.2.5 if a definition imposes substantive rights and obligations on a Party, such rights and obligations shall be given effect to and shall be enforceable, notwithstanding that they are contained in a definition;
- 1.2.6 any definition, wherever it appears in this Agreement, shall bear the same meaning and apply throughout this Agreement unless otherwise stated or inconsistent with the context in which it appears;
- 1.2.7 if there is any conflict between any definitions in this Agreement then, for purposes of interpreting any clause of the Agreement, the definition appearing in that clause or paragraph shall prevail over any other conflicting definition appearing elsewhere in the Agreement;
- 1.2.8 where any number of days is prescribed, those days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which event the last day shall be the succeeding Business Day;
- 1.2.9 where the day upon or by which any act is required to be performed is not a Business Day, the Parties shall be deemed to have intended such act to be performed upon or by the succeeding Business Day;
- 1.2.10 any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated as having not been written (ie *pro non scripto*) and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction;
- 1.2.11 the use of any expression covering a process available under South African law (such as but not limited to a winding-up) shall, if any of the Parties is subject to the law of any other jurisdiction, be interpreted in relation to that Party as including any equivalent or analogous proceeding under the law of such other jurisdiction;
- 1.2.12 references to any amount shall mean that amount exclusive of VAT, unless the amount expressly includes VAT; and
- 1.2.13 the rule of construction that if general words or terms are used in association with specific words or terms which are a species of a particular

genus or class, the meaning of the general words or terms shall be restricted to that same class (ie the *eiusdem generis* rule) shall not apply, and whenever the word "*including*" is used followed by specific examples, such examples shall not be interpreted so as to limit the meaning of any word or term to the same genus or class as the examples given.

1.3 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement which are expressly provided to operate after any such expiration or termination, or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the relevant provisions themselves do not provide for this.

1.4 The rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply.

2. Introduction and Recordal:

2.1 The BRC owns 68.2% (SIXTY EIGHT POINT TWO PERCENT) and PRC owns 31.8% (THIRTY ONE POINT EIGHT PERCENT), respectively, of all right, title and interest in and to the Intellectual Property, including without limitation, copyright and trademarks, if any, in respect of the Establishment Survey SEM.

2.2 The Parties wish to enter into this Agreement in order to regulate the acquisition and use by the Licensee of the Establishment Survey SEM on the terms set out herein.

3. Acquisition and Use of the Establishment Survey SEM by the Licensee:

3.1 Subject to the provisions of this Agreement, the BRC and PRC agree to licence their Intellectual Property in the Establishment Survey SEM on a non-exclusive basis to the Licensee in return for which the Licensee agrees to pay the Licence Fee contained in clause 4 of this agreement, to the BRC which agrees to on-pay the pro-rata portion of the Licence Fee due to PRC to PRC, namely 31.8% [THIRTY ONE PONIT EIGHT PERCENT] thereof.

3.2 Once the parties have signed this Agreement, the Licensee will be given access to the Establishment Survey SEM's segmentation scoring system.

3.3 The Licensee shall not, without the prior written consent of the BRC and PRC, directly or indirectly pass on, transfer, publish or sell any Establishment Survey SEM or extracts from the Establishment Survey SEM or scoring system

information, derived from or distilled from the Establishment Survey SEM to any person.

3.4 The BRC's and PRC's Intellectual Property in the Establishment Survey SEM shall at all times remain vested in the BRC and PRC and any reproduction of the Establishment Survey SEM and/or its scoring system shall be credited to the BRC and PRC provided that nothing in this paragraph shall prevent the use of the Establishment Survey SEM by the Licensee in accordance with the terms of this Agreement.

4. The BRC/PRC SEM Licence Fee

4.1 The Establishment Survey SEM licence fee payable by the Licensee to the BRC for the non-exclusive Intellectual Property licence in respect of the Establishment Survey SEM referred to in clause 3 is R_____, exclusive of VAT, and is payable on the Effective Date or the first Business Day thereafter.

4.2 The licence fee referred to in clause 4.1 is to be paid into the BRC's bank account, the details of which account are:

Bank: ABSA
Branch Code: 632005
Account Name: BROADCAST RESEARCH COUNCIL OF SOUTH AFRICA
Account Number: 4086629648

Please use the following
payment reference: [Fill in]

4.3 The parties agree that the BRC will provide the PRC with a statement reflecting a licence fee received by it and the pro-rata amount to be paid over to the PRC upon receipt of the necessary PRC invoice therefor within one week of receipt of the licence fee.

5. Duration

This agreement, subject to the provisions of clause 7 and 8, shall come into effect upon the Effective Date and shall continue indefinitely.

6. Confidentiality

- 6.1 Each Party shall keep confidential and will not disclose to any person the details of this Agreement, the details of the negotiations leading to this Agreement and the information handed over to such Party during such negotiations or in terms of this Agreement, as well as the details of all the transactions or agreements contemplated in this Agreement ("Confidential Information").
- 6.2 The Parties agree to keep all Confidential Information confidential and to disclose it only to their officers, directors, employees, consultants, financiers and professional advisors who:
- 6.2.1 have a need to know (and then only to the extent that each such a person has a need to know);
 - 6.2.2 are aware that the Confidential Information should be kept confidential;
 - 6.2.3 are aware of the disclosing party's obligations in relation to such Confidential Information in terms of this Agreement; and
 - 6.2.4 have been directed by the disclosing party to keep the Confidential Information confidential and have undertaken to keep the Confidential Information confidential.
- 6.3 The obligations of the Parties in relation to the maintenance and non-disclosure of Confidential Information in terms of this Agreement do not extend to information that:
- 6.3.1 is disclosed to the receiving party in terms of this Agreement but at the time of such disclosure such information is in the lawful possession or control of that Party;
 - 6.3.2 is not subject to an obligation of confidentiality;
 - 6.3.3 is or becomes public knowledge, otherwise than pursuant to a breach of this Agreement by the Party who disclosed such Confidential Information; or
 - 6.3.4 is required by the provisions of any law, statute or regulation, or during any court proceedings, or other rules or regulations of any recognised stock exchange to be disclosed.

7. Breach

If a Party breaches any material provision or term of this Agreement and fails to remedy such breach within seven days of receipt of written notice requiring it to do so (or, if it is not reasonably possible to remedy the breach within seven days, within such further period as may be reasonable in the circumstances provided that the Party in breach furnishes evidence within the period of seven days, reasonably satisfactory to the other Party, that it has taken whatever steps are available to it to commence remedying the breach), then the aggrieved Party shall be entitled, without notice, in addition to any other remedy available to it at law or under this Agreement, including obtaining an interdict, to cancel this agreement or to claim specific performance of any obligation whether or not the due date for performances arrived, in either event without prejudice to the aggrieved party's right to claim damages.

8. Arbitration

8.1 separate, divisible agreement

This clause is a separate, divisible agreement from the rest of this Agreement and shall:

8.1.1 not be or become void, voidable or unenforceable by reason only of any alleged misrepresentation, mistake, duress, undue influence, impossibility (initial or supervening), illegality, immorality, absence of consensus, lack of authority or other cause relating in substance to the rest of the Agreement and not to this clause. The Parties intend that any such issue shall at all times be and remain subject to arbitration in terms of this clause;

8.1.2 remain in effect even if the Agreement terminates or is cancelled.

8.2 disputes subject to arbitration

Any dispute arising out of or in connection with this Agreement, including after termination or cancellation of the Agreement shall be decided by arbitration. The arbitration shall be governed by the Arbitration Act, 1965, or any replacement Act and shall take place in accordance with the Commercial Arbitration Rules of the Arbitration Foundation of Southern Africa.

8.3 application to court for urgent interim relief

Nothing contained in this clause 8 shall prohibit a Party from approaching any court of competent jurisdiction for urgent interim relief pending determination of the dispute by arbitration.

9. Miscellaneous matters

9.1 postal address

9.1.1 Any written notice in connection with this Agreement may be addressed:

9.1.1.1 in the case of BRC to:

address : The BRC
P.O. Box 411962
Craighall
2014
email : clare@brcsa.org.za

and marked for the attention of: CEO – BRC

9.1.1.2 in the case of PRC to:

address : Unit 8
Burnside Office Park
410 Jan Smuts Avenue
Craighall
email : peter@prc.za.com

and marked for the attention of: General Manager – PRC

9.1.1.3 in the case of the Licensee to:-

address : _____
_____ **[please fill in]**

email :

and marked for the attention of [Please fill in]

- 9.1.2 The notice shall be deemed to have been duly given:
- 9.1.2.1 5 Business Days after posting (14 Business Days if the address is not in the Republic of South Africa), if posted by registered post (airmail, if available) to the Party's address in terms of sub-clause 15.1.1;
- 9.1.2.2 on delivery, if delivered to the Party's physical address in terms of either sub-clause 9.1.1 or sub-clause 9.2.1 before 17h00 on a Business Day, or if delivered on a Business Day but after 17h00 on that Business Day or on any day other than a Business Day, it will be deemed to have been given at 08h30 on the first Business Day after it was delivered;
- 9.1.2.3 on despatch, if sent to the Party's then e-mail address before 17h00 on a Business Day or if sent on a Business Day but after 17h00 on that Business Day, or on any day other than a Business Day, it will be deemed to have been given at 08h30 on the first Business Day after it was sent;

unless the addressor is aware, at the time the notice would otherwise be deemed to have been given, that the notice is unlikely to have been received by the addressee through no act or omission of the addressee.

- 9.1.3 A Party may change that Party's address or e-mail address for this purpose by notice in writing to the other Party, such change to be effective only on and with effect from the 7th Business Day after the giving of such notice.
- 9.1.4 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Party shall be an adequate written notice or communication to that Party notwithstanding that it was not sent to or delivered at that Party's chosen address in 9.1.1

9.2 address for service of legal documents

- 9.2.1 The Parties choose the following physical addresses at which documents in legal proceedings in connection with this Agreement may be served (ie their *domicilia citandi et executandi*):

- 9.2.1.1 in the case of the BRC to:

address : 88 11th Street
Parkmore

Sandton

9.2.1.2 in the case of PRC to:

address : Unit 8
Burnside Office Park
410 Jan Smuts Avenue
Craighall

9.2.1.3 in the case of the Licensee to:-

address : _____
_____ **[please fill in]**

9.2.2 A Party may change that Party's address for this purpose to another physical address in the Republic of South Africa by notice in writing to the other Party such change to be effective only on and with effect from the 7th Business Day after the giving of such notice.

9.2.3 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Party shall be an adequate service of such written notice or communication to that Party notwithstanding that it was not sent to or delivered or served at that Party's chosen *domicilium citandi et executandi*.

9.3 entire contract

This Agreement contains all the provisions agreed on by the Parties with regard to the subject matter of the Agreement and supersedes and novates in its entirety any previous understandings or agreements between the Parties in respect thereof, and the Parties waive the right to rely on any alleged provision not expressly contained in this Agreement.

9.4 no stipulation for the benefit of a third person

Save as is expressly provided for in this Agreement, no provision of this Agreement constitutes a stipulation for the benefit of a third person (ie a *stipulatio alteri*) which, if accepted by the person, would bind any Party in favour of that person.

9.5 no representations

A Party may not rely on any representation which allegedly induced that Party to enter into this Agreement, unless the representation is recorded in this Agreement.

9.6 variation, cancellation and waiver

No contract varying, adding to, deleting from or cancelling this Agreement, and no waiver of any right under this Agreement, shall be effective unless reduced to writing and signed by or on behalf of the Parties.

9.7 indulgences

The grant of any indulgence, extension of time or relaxation of any provision by a Party under this Agreement shall not constitute a waiver of any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future right of the grantor.

9.8 cession and assignment

A Party may not cede any or all of that Party's rights or assign any or all of that Party's obligations under this Agreement without the prior written consent of the other Party.

9.9 applicable law

This Agreement is to be governed, interpreted and implemented in accordance with the laws of the Republic of South Africa.

9.10 jurisdiction of South African courts

The Parties consent to the non-exclusive jurisdiction of the South Gauteng High Court, Johannesburg for any proceedings arising out of or in connection with this Agreement.

9.11 costs

9.11.1 Each Party shall bear that Party's own legal costs and disbursements of and incidental to the negotiation, preparation, settling, signing and implementation of this Agreement.

9.11.2 Any costs, including all legal costs on an attorney and own client basis and VAT, incurred by a Party arising out of or in connection with a breach by another Party shall be borne by the Party in breach.

9.12 signature in counterparts

This Agreement may be executed in counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same agreement.

9.13 independent advice

Each of the Parties hereby respectively agrees and acknowledges that:

9.13.1 it has been free to secure independent legal advice as to the nature and effect of each provision of this Agreement and that it has either taken such independent legal advice or has dispensed with the necessity of doing so; and

9.13.2 each provision of this Agreement (and each provision of the Annexes) is fair and reasonable in all the circumstances and is part of the overall intention of the Parties in connection with this Agreement.

9.14 good faith

The Parties shall at all times act in good faith towards each other and shall not bring any of the other Parties into disrepute.

9.15 co-operation

Each of the Parties undertakes at all times to do all such things, perform all such acts and take all such steps, and to procure the doing of all such things, within its power and control, as may be open to it and necessary for and incidental to the putting into effect or maintenance of the terms, conditions and import of this Agreement.

Signed at _____ on _____ 2017

Witnesses: _____ for the BRC

1 _____

2 _____ duly authorised and warranting such authority

Signed at _____ on _____ 2017

Witnesses: _____ for the PRC

1 _____

2 _____ duly authorised and warranting such authority

Signed at _____ on _____ 2017

Witnesses: _____ for the Licensee

1 _____

2 _____ duly authorised and warranting such authority