

LICENCE APPLICATION CINEMA



CLIENT NO. _____

APRA
AMCOS

Customer enquiries 1300 852 388 licence@apra.com.au www.apraamcos.com.au

Please complete the relevant section(s), sign and return to: Locked Bag 5000, Strawberry Hills NSW 2012 or fax (02) 8103 4445 .

I/We the undersigned apply for a licence from APRA AMCOS which, subject to the terms set out on this and the following pages, authorises the performance in public of Works within APRA AMCOS's repertoire at the locations set out in the Schedule by means of the exhibition of cinematograph films.

Annual Rates

Please detail the name, address and annual Gross Box Office Receipts (estimate where actual figures are not available) for all cinemas to be licensed under this agreement. Please attach an additional schedule where required.

Amounts stated on this application are inclusive of 10% GST

Cinema Name		Cinema Address
1		
2		
3		
4		
5		
Total Gross Box Office Receipts (exclusive of GST):		\$ _____
Multiplied by 0.462% (0.42% plus GST)		x .00462
Equals your Licence Fee		\$ _____

This Licence agreement will commence and renew on 1 July each year until terminated

If figures specified above are for a period of less than 12 months, please specify that period: _____ to _____

* The minimum fee only is subject to yearly increase in accordance with the Consumer Price Index after 1 July 2008 (see clause 3.2)

THIS SECTION MUST BE COMPLETED IN BLOCK CAPITALS AND SIGNED

I acknowledge that I have read the terms attached to this application and agree to be bound by those terms should my application be accepted.

Name of Applicant

COMPANY / PARTNERSHIP / SOLE TRADER / INCORPORATED

Applicants ACN

Applicants ABN

The ACN and/or ABN (if you have one) must match the name of the Applicant. ABN and Trust details not required if ACN provided. If you are a Partnership please set out above name of all principals behind the partnership, trading as the name of the partner.

Do you operate through a Trust?

Yes No

If yes:

NAME OF TRUST

ABN

The Trust ABN must correspond with the name of the Trust. The entity/company behind the Trust must be entered against Name of Applicant above "As Trustee For (ATF)".

Name of Business

PREMISES / TRADING NAME

Address

ADDRESS

POSTCODE

Address for Correspondence

ADDRESS

POSTCODE

MOBILE

Date on which music usage commenced

EMAIL

PHONE

COMMENCEMENT DATE

FAX

MR/MRS/MISS/MS GIVEN NAME(S)

SURNAME

Position of Person Signing

DIRECTOR / PROPRIETOR / AUTHORISED REPRESENTATIVE

Signed by/on behalf of the Applicant

SIGNATURE

DATE

This application form will only constitute a Licence Agreement when the Applicant receives a signed agreement from APRA AMCOS. APRA AMCOS may refuse to grant a Licence Agreement or may return it to you for corrections where the information contained in this application is incorrect or incomplete.

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1. SCOPE OF LICENCE

- 1.1 APRA AMCOS grants the Applicant a licence to perform in public Works within APRA AMCOS's repertoire at the Locations by means of:
- the exhibition of cinematograph films; and
 - background recorded music in all public areas of the cinema.
- 1.2 The licence in clause 1.1 does not include or authorise:
- the communication to or the public reception of any performance beyond the precincts of the Locations; or
 - unless performed by means of cinematograph film:
 - the performance of Grand Right Works in their entirety;
 - the performance in whole or in part of any musical work in a Dramatic Context;
 - the performance in whole or in part of any music and associated words composed or used for ballet if accompanied by a visual representation of that ballet;
 - the performance of any choral work of more than 20 minutes' duration in its entirety;
 - the performance of any music and associated words so as to burlesque or parody the work;
 - the performance of any musical work with new or substituted lyrics, or any lyrics which have been notified by APRA AMCOS as prohibited;
 - the performance of any sound recording; or
 - any other right not expressly granted under this agreement.

2. DURATION OF AGREEMENT

This agreement commences on the Commencement Date and after the expiry of the Initial Period continues for successive 1 year periods until terminated in accordance with clause 10.

3. CALCULATION OF AMOUNT PAYABLE

- 3.1 The Applicant must pay APRA AMCOS, for each Licence Year, an amount equal to the greater of:
- the amount calculated in accordance with the formula specified on the front of this agreement; or
 - the minimum annual fee current for that Licence Year
- 3.2 On 1 July each year after 2008, the GST exclusive minimum annual fee will be calculated by increasing the current GST exclusive minimum annual fee by the percentage increase in the Consumer Price Index between the last 2 September Quarters.

4. SUPPLY OF INFORMATION

- 4.1 At least 14 days prior to 1 October in each Licence Year APRA AMCOS must provide to the Applicant in the form of a reassessment notice, notice of the Applicant's obligations to provide APRA AMCOS with the information referred to in clause 4.2.
- 4.2 On or before 1 October in each Licence Period the Applicant must notify APRA AMCOS of the Gross Box Office Receipts during the preceding Licence Period, for each Location.
- 4.3 The Applicant must notify APRA AMCOS within 28 days of any change to the particulars set out in the Application.
- 4.4 APRA AMCOS must during and after the term of this agreement treat as confidential the Applicant's Gross Box Office Receipts, except that APRA AMCOS may disclose the information to its auditors and other professional advisers.
- 4.5 The Applicant acknowledges that the Gross Box Office Receipts are used to calculate the Licence Fee, and that a Provisional Licence Fee (which when paid will be deducted from the Licence Fee in respect of the relevant Licence Period) will be payable pending receipt by APRA AMCOS of the information referred to in clause 4.2.

5. PAYMENT

- 5.1 In each Licence Period, APRA AMCOS will calculate the Licence Fee and issue an invoice to the Applicant:
- on receipt of the information in accordance with clause 4.2; or
 - on 1 October; or
 - in respect of the Initial Period on acceptance of the Application, as the case may be, for half the Provisional Licence Fee plus the balance of the Licence Fee for the previous Licence Period if applicable; and
- (b) on 1 April, for half the Provisional Licence Fee.
- 5.2 If the Applicant fails to comply with clause 4.2, APRA AMCOS will issue invoices on 1 October and 1 April in the Licence Period for respective amounts equal to half of APRA AMCOS's reasonable estimate of the Licence Fee for the Licence Period, pending receipt of the information referred to in clause 4.2.
- 5.3 If the Licence Fee in any Licence Period exceeds the Provisional Licence Fee paid in respect of that Licence Period the Applicant must pay APRA AMCOS the difference within 14 days after the date of an invoice from APRA AMCOS for the amount.
- 5.4 If the Provisional Licence Fee paid in respect of a Licence Period exceeds the Licence Fee in respect of that Licence Period, APRA AMCOS must at the Applicant's option and within 14 days of receipt of the information in accordance with clause 4.2 either credit or refund the amount of the difference to the Applicant.
- 5.5 At any time on receipt of the information referred to in clause 4.2 or under clause 7, APRA AMCOS may issue an invoice for Licence Fees payable under this agreement.
- 5.6 The Applicant must pay any invoice issued by APRA AMCOS under this agreement within 14 days of the date of the invoice.

6. RECORDS

- 6.1 The Applicant must keep accurate books of account and other records in sufficient detail to ensure that all amounts payable to APRA AMCOS under this agreement can be properly ascertained.
- 6.2 The Applicant must keep a record of the title of all films screened at each of the Locations during each Licence Period during the term of this agreement. These records must be kept for a period of 2 years after the end of the relevant Licence Period.

7. VERIFICATION

APRA AMCOS shall:

- be entitled, upon not less than one month's notice to the Applicant, to require from the Applicant audited verification of the Applicant's accounting and other records for the purposes of verifying any information provided to it under clause 4.2 and 6.2, with the costs of such an audit to be borne by APRA AMCOS unless there is disclosed by the audit an under-payment by the Applicant of not less than 5% of the fees payable in respect of the period to which the audit relates in which case such reasonable costs are to be borne by the Applicant;
- treat as strictly confidential all information relating to the Applicant's net box office receipts supplied to APRA AMCOS by the Applicant or its auditors under the provision of clauses 4.2 and 7, and shall not use or disclose or authorise the use or disclosure of such information to any person, firm or company without the prior written consent of the Applicant.

8. INDEMNITY

Subject to the Applicant complying with its obligations under this agreement, APRA AMCOS indemnifies the Applicant against all damages, losses, costs and expenses incurred by

the Applicant arising out of any successful claim which may be made against it in respect of the performance in public of a Work within APRA AMCOS's repertoire or represented by APRA AMCOS to be within its repertoire within the terms of this agreement

provided that the Applicant:

- notifies APRA AMCOS of the claim as soon as possible; and
- permits APRA AMCOS to conduct the defence to the claim in the name of the Applicant.

9. WORKS NOT IN REPERTOIRE

- APRA AMCOS must notify the Applicant if it becomes aware that copyright musical works contained in a Cinematograph Film being or to be performed in public by the Applicant are not within APRA AMCOS's repertoire by reason of a relevant source licence.
- If at any time during the Term of this agreement there is a material reduction in APRA AMCOS's repertoire with respect to the performance in public of musical works by the Applicant, APRA AMCOS must notify the Applicant and must negotiate with the Applicant as to reasonable alternative licensing terms.

10. TERMINATION

- 10.1 Either party may terminate this agreement by giving to the other party at least 1 month's notice of termination effective on the next 30 June.
- 10.2 Either party may terminate this agreement by giving 30 days' notice to the other party if that other party:
- fails to pay any sum due under this agreement within 30 days after the due date;
 - breaches any other material term of this agreement and fails to remedy the breach within 21 days after being requested in writing to do so by the party not in breach;
 - being a corporation, goes into liquidation, has a receiver or receiver and manager appointed to it or any part of its assets, enters into a scheme of arrangement with creditors or suffers any other form of external administration; or
 - being an individual, commits any act of bankruptcy or enters into a scheme of arrangement with creditors.

11. DEFINITIONS

In this agreement:

Application means the Application form attached to this agreement and completed by the Applicant;

Cinematograph Film has the same meaning as in the Copyright Act 1968;

Commencement Date means the first day of the calendar month closest to the date on which music use commenced, as set out in the Application;

Consumer Price Index means the Index of that title All Groups Sydney published by the Australian Bureau of Census and Statistics or any authority substituted by Statute, related to the base year 1989-90 equals 100, and **September Quarter** means quarter year ending 30 September;

Dramatic Context means the performance of musical works:

- in conjunction with a presentation on the live stage that has a storyline and one or more narrators or characters; or
- as a Ballet;

Grand Right Work means an opera, operetta, musical play, revue or pantomime insofar as it consists of words and music written expressly for it;

Gross Box Office Receipts means the total amount paid for admission to screenings of Cinematograph Films at all Locations (including the value of all tickets sold or redeemed), excluding government taxes or other charges;

Initial Period means the period commencing on the Commencement Date and ending on the next 30 June;

Licence Fee in any Licence Period means the amount calculated in accordance with clause 3;

Licence Period means the Initial Period or a Licence Year, as the case may be;

Licence Year means any 12 month period ending on the 30th June during the term of this agreement;

Location means the cinema premises listed in the Application;

Provisional Licence Fee in the Initial Period means an amount equal to the percentage of the Applicant's estimated Gross Box Office Receipts in accordance with the formula specified on the front of this agreement, and in any Licence Year means an amount equal to the Licence Fee for the immediately preceding Licence Period; and

Works within APRA AMCOS's repertoire means all musical works, including any words normally associated with those works by the copyright owner for Australia, the right of public performance of which is owned or controlled by APRA AMCOS for Australia.

12. DISPUTE RESOLUTION

If any dispute arises out of or in connection with this agreement, either party may submit that dispute to APRA AMCOS' alternative dispute resolution mechanism. Information about the mechanism can be obtained from APRA AMCOS

13. NOTICES

13.1 A notice under this agreement must be in writing and may be given to a party by:

- delivering it to the address of the party;
- sending it by pre-paid post to the address of the party; or
- sending it by facsimile to the facsimile number of the party, and the notice will be deemed to have been received by the party on receipt.

13.2 A facsimile is deemed to have been received on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the party.

14. MISCELLANEOUS

14.1 No waiver by APRA AMCOS of any breach of any provision of this agreement operates as a waiver of another breach of the same or of any other provision of this agreement.

14.2 This agreement is personal to the Applicant. The Applicant is not entitled to assign any of its rights without APRA AMCOS's prior written consent.

14.3 This agreement may only be varied by the written agreement of the parties.

14.4 APRA AMCOS agrees that it will not seek to vary any material term of this scheme until after 30 June 2016.

14.5 The Applicant must pay to APRA AMCOS within 14 days after the date of an invoice issued by APRA AMCOS an amount on account of stamp duties and taxes, arising in respect of this agreement.

14.6 This agreement must be construed in accordance with the laws in force in the State of New South Wales and the parties agree to submit to the jurisdiction of New South Wales Courts.

15. PRIVACY NOTICE

The information you are providing may be personal information under the Privacy Act. Information collected is only for the business purposes of APRA AMCOS and will not be disclosed to any third parties except in accordance with the privacy policy of APRA AMCOS. The privacy policy can be obtained from APRA AMCOS

OFFICE USE ONLY

SIGNED AS AGREED BY APRA AMCOS

APRA AMCOS accepts the application and grants a licence on the terms set out in this Licence Agreement. For and on behalf of APRA AMCOS by its duly authorised officer:

SIGNATURE

DATE

CLIENT NO.

GST EXCLUSIVE FEE

RECEIVED

PREMISES TYPE CODE