

PUBLIC PERFORMANCE LICENCE APPLICATION

FITNESS CENTRES AND INSTRUCTORS



CLIENT NO. _____

APRA
AMCOS

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

This is an application for a licence to publicly perform, communicate and reproduce music at your Fitness Centre, or if you are an independent Fitness & Wellbeing Instructor who operates in one or more locations other than a Fitness Centre (for example, you are an instructor who offers fitness or wellbeing classes at a number of community halls in your locality, or you are a personal trainer and you run outdoor boot camp or Crossfit fitness classes). A Fitness Centre means a commercial premises whose facilities are designed for the purpose of physical exercise and/ or Fitness Classes.

All figures are quoted inclusive of GST. For other uses of music not covered under this licence, such as music in Recreation and Leisure Centres or music in fitness facilities available in Hotels, Motels and other Accommodation, read our Licensing Guides at apraamcos.com.au/liguides for advice on your licensing requirements.

PART A: Your Music Use

Please complete the sections below describing your use of music, sign the form where required and send it by email to licence@apra.com.au or by mail to Locked Bag 5000, Strawberry Hills, NSW 2012. We will assess the information you have provided, send you a copy signed by us, and invoice you on a provisional basis for the first year's licence fee, which will be reassessed annually (licence fees will continue to be assessed and invoiced on a provisional basis through the term of your licence with us). Although licence fees are payable annually in advance, our current policy, unless you request less frequent invoicing, is that where the total licence fee is in excess of \$500 we will invoice quarterly in advance.

Background Music means music that is performed and communicated as background music throughout your Fitness Centre or by your business if you are a Fitness & Wellbeing Instructor, including on cardio machines, background music systems, radio and television screens, and excludes music in Fitness Classes and Virtual Fitness Classes.

Fitness Class means a structured form of exercise conducted in a class environment on a commercial basis whether at a Fitness Centre or by your business if you are a Fitness & Wellbeing Instructor, which:

- is directed by a fitness instructor (regardless of whether it is conducted by an on-staff or freelance instructor); and
- is included in a published time-table or advance notification to potential participants; and
- includes but is not limited to the following category of structured exercise class: freelance or pre-choreographed group fitness (including Les Mills, BTS, Radical and Zumba) circuit, dance, cycle/spin, flexibility/stretching/abdominal, yoga, Pilates or aqua; and
- is not a Virtual Fitness Class.

Music on Devices means the permanent or temporary reproduction of music on mp3 players, smartphones, tablets and similar devices for providing Background Music, Music in Fitness Classes and Music On Hold (including music stored in the cloud) at the Fitness Centre or by your business if you are a Fitness & Wellbeing Instructor.

Music On Hold means music used on your telephone on hold system, whether sourced from radio or a recorded source, and including music you may have already licensed for use in an advertisement for your Fitness Centre or by your business if you are a Fitness & Wellbeing Instructor (contact APRA AMCOS if you believe your on hold music is royalty free).

Virtual Fitness Class means a structured form of exercise conducted on a commercial basis at a Fitness Centre or by your business if you are a Fitness & Wellbeing Instructor, which is directed by a fitness instructor in a video presentation and performed using a pre-recorded medium, such as a DVD or online video stream, where there is no tuition from a live, in-class instructor.

How do you use music?

Licenses must choose Tariff A or B at the commencement of each Licence Year, and that tariff will be applied for that whole Licence Year.

I use Music in my Fitness Classes		Price (inc GST)	No. of Fitness Classes
1.	TARIFF A	The number of Fitness Classes that will be held at your Fitness Centre, or if you are a Fitness & Wellbeing Instructor, by your business other than Fitness Classes which occur in Fitness Centres, in the 12 months following the Commencement Date.	\$2.69 per Fitness Class
	TARIFF B	The number of Fitness Classes with 10 or fewer participants that will be held at your Fitness Centre, or if you are a Fitness & Wellbeing Instructor, by your business other than Fitness Classes which occur in Fitness Centres, in the 12 months following the Commencement Date.	\$1.62 per Fitness Class
		The number of Fitness Classes with more than 10 participants that will be held at your Fitness Centre, or if you are a Fitness & Wellbeing Instructor, by your business other than Fitness Classes which occur in Fitness Centres, in the 12 months following the Commencement Date.	\$3.77 per Fitness Class

I use Background Music	Price (inc GST)	No. of Members at Commencement Date	No. of Members at Anniversary Date
2.	\$0.88 per Member. Subject to a minimum annual fee of \$202.49.		
For the first Licence Year complete both boxes and we'll calculate the average for you.			

I use Music in Virtual Fitness Classes		Price (inc GST)	<input type="checkbox"/> Yes	<input type="checkbox"/> No
3.	Please advise if you offer Virtual Fitness Classes at your Fitness Centre or by your business if you are a Fitness & Wellbeing Instructor	\$0.1157 per Member. Subject to a minimum annual fee of \$57.85.		
For the first Licence Year your fee will be based on the average calculated above.				

The rates above are current until 30 June 2018 and on 1 July each year the GST exclusive rate will be increased in accordance with CPI (Clause 2.6).

For Background Music and Fitness Classes provide your estimate of the maximum number of tracks you will copy onto one device

a. I use Music on Devices for Background Music or Fitness Classes		Price (inc GST)	Tariff Selection
4.	Up to 500 tracks	\$156.08	<input type="checkbox"/>
	Up to 1000 tracks	\$260.11	<input type="checkbox"/>
b. I use Music on Devices for Music on Hold		Price (inc GST)	Tariff Selection
	1 to 5 external lines	\$38.94	<input type="checkbox"/>

For more than 5 lines or 1000 tracks please contact APRA AMCOS at apraamcos.com.au.

I use Music on Hold for my telephone on hold system		Price (inc GST)	Tariff Selection
5.	1 to 5 external lines	\$155.75	<input type="checkbox"/>

For more than 5 lines please contact APRA AMCOS at apraamcos.com.au.

The Music on Devices and Music On Hold rates above are current until 30 Nov 2017 and on 1 Dec each year the GST exclusive rate will be increased in accordance with CPI (Clause 2.6).

Each year we may require you to update the information you have provided. Any questions or complaints? Please call our National and State Accounts Team on 1300 852 388 or email licence@apra.com.au. Do you use music that is not covered by this licence? If yes, or if your business changes, stops its music use, or ceases trading at any time contact APRA AMCOS at apraamcos.com.au

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PART B: Your Contact Details - This section must be completed and signed.

Legal name of Business or Organisation (Applicant)

Note: This includes Company, Partnership, Sole Trader and Incorporated Businesses or Organisations

COMPANY / PARTNERSHIP / SOLE TRADER / INCORPORATED

Applicants ACN/ABN

ACN:

ABN:

The ACN and/or ABN (if you have one) must match the name of the Applicant above.

Trading name of Business or Organisation

TRADING NAME

Are you a:

Fitness Centre Fitness Instructor

Website Address

URL

Address

ADDRESS

POSTCODE

Address for Correspondence

ADDRESS

POSTCODE

MOBILE

EMAIL ADDRESS

PHONE

Date on which music usage commenced

COMMENCEMENT DATE

Contact Name

MR/MRS/
MISS/MS

GIVEN NAME(S)

SURNAME

Position of person signing

DIRECTOR / PROPRIETOR / AUTHORISED REPRESENTATIVE

Signed by/on behalf of you

SIGNATURE

DATE

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

Invoicing Options

If your business operates through a Trust and you require your invoice to be made out to the Trust, please supply your Trust Name in the space provided:

Please invoice me Annually Quarterly (only available on annual licence fees of \$500 or more)

PPCA Licence Number

If you also hold a PPCA licence please provide us with your PPCA Licence Number

PPCA LICENCE NO

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PART C: General Terms

1. GRANT OF LICENCE

- 1.1 Subject to these terms, the Australasian Performing Right Association and Australasian Mechanical Copyright Owners Society - (**APRA AMCOS, we, us, our**) grant you a licence to perform and communicate APRA Works and reproduce AMCOS Works as described and based on the information you have provided in Part A.
- 1.2 The licence does not cover:
- public performance of APRA Works outside the Premises (you may need to obtain a separate licence);
 - reproduction of any AMCOS Work in connection with an advertisement;
 - public performance of APRA Works at a promoted music event;
 - live performances of APRA Works with costumes, acting, scenic accessories and scripted dialogue or other dramatic effects; or of any ballet; or of the whole of any choral work longer than 20 minutes; or of an opera, operetta, musical, if the music was written for that show;
 - performance or reproduction of any sound recording (you need to contact the Phonographic Performance Company of Australia Limited or the copyright owner of the recording).
- 1.3 Unless terminated earlier in accordance with Clause 5, this agreement is for an initial period of 1 year from the day which is the first day of a month and nearest the Commencement Date. Unless terminated by either party on at least 1 month's notice effective as at the expiry of the initial period, the agreement continues for successive 1 year periods until terminated by either party on at least 1 month's notice, effective on an anniversary of the expiry of the initial period.

2. LICENCE FEES

- 2.1 While you continue to use APRA Works and/or AMCOS Works, at the start of each Licence Year you must pay us the licence fees in accordance with the formulas specified and using the information provided in Part A.
- 2.2 At the start of each Licence Year we will issue to you an invoice for an amount payable:
- for the First Licence Year, the average will be calculated by adding the number of members at commencement date to the number of members at anniversary date divided by two. This will be a provisional amount, subject to an adjustment (see clause 2.4) at the end of the First Licence Year;
 - for each subsequent Licence Year, by applying the formulas specified in Part A to:
 - the existing information in Part A, where we have not requested an update (see clause 2.3); or
 - any updated information you have provided (see clause 2.3); or
 - our reasonable estimate of the information to be provided in Part A where we have requested an update (see clause 2.3) but you have failed to provide such information or we don't accept the information you have provided.
- 2.3 At the end of the First Licence Year and each Licence Year you will be required to confirm or update the information you have provided in Part A, and we may also require you to update this information from time to time while the agreement is in force.
- 2.4 In the last 3 months of the First Licence Year and each Licence Year, we will reassess your music use in consultation with you. If the amount payable for the Licence Year is more than the provisional amount paid by you for that year, we will send you an invoice for the difference, and you must pay that amount within 14 days after the date of our invoice. If the amount payable for the First Licence Year or each Licence Year is less than the provisional amount paid by you for that year, we must at our option, acting reasonably, either credit or refund the difference to you.
- 2.5 You must pay any invoice issued by us under this agreement within 14 days after the date of the invoice. If you fail to pay any invoice by the due date you must also pay interest at the Agreed Rate on each amount outstanding under this agreement.
- 2.6 If indicated in Part A, the GST exclusive components of the rates specified in the formulas in Part A will be increased annually in accordance with the Consumer Price Index.
- 2.7 If you fail to pay any invoice after we provide notice to you, and we take steps to recover amounts outstanding under this agreement, and we incur expenses or legal costs in doing so, these amounts will be recoverable from you as a debt.

3. INFORMATION

- 3.1 You must notify us within 7 days if your music use materially changes from the information in Part A. If we believe that your music use has materially changed and you have not notified us, we may reasonably estimate the licence fees payable and notify you, and if you disagree with our estimate you may refer the estimate to dispute resolution under clause 7.
- 3.2 If we require you to update the information provided by you in Part A, you must do so within 28 days and we may require that information in the form of a statutory declaration.
- 3.3 You must notify us within 28 days of any change to your details in Part B.
- 3.4 You must provide us with the music use information as set out in Part A. If there is no music use information specified in Part A, you must provide us with information about the music that you use, as reasonably requested by us.
- 3.5 You must keep accurate books of account and other records in sufficient detail to ensure that all amounts payable to us under this agreement can be properly ascertained.
- 3.6 We may on 14 days' notice to you audit or examine your books of account and other records to determine the correctness of any report or payment under this agreement, and you must pay the cost of the examination if the examination establishes that the amounts payable under this agreement were understated by more than 10%.

4. CONFIDENTIALITY

We agree to treat as confidential, during and after the term of this agreement, all information provided by you that can properly be regarded as confidential and is not in the public domain, except that we may disclose the information to our licensing partners, auditors and other professional advisers. Information you provide may be aggregated to provide industry statistics for publication or consultation.

5. TERMINATION

We may immediately terminate this agreement by notice to you if you:

- fail to pay any sum when due under this agreement within 14 days after the due date;
 - breach any other term of this agreement and fail to remedy the breach within 7 days after being requested in writing to do so by us;
 - being a corporation, go into liquidation, have a receiver or receiver and manager appointed to you or any part of your assets, enter into a scheme of arrangement with creditors or suffer any other form of external administration; or
 - being an individual, commit any act of bankruptcy or enter into a scheme of arrangement with creditors.
- 5.3 After 30 June 2018, we may by 1 month's notice to you terminate the licence agreement.

6. DEFINITIONS

Agreed Rate means the RBA lending rate for small businesses as published by the Reserve Bank of Australia (as identified by the RBA's mnemonic FILRSBVOO) plus 2 percentage points, calculated on daily rests from the due date to the date of payment;

AMCOS Works means all musical works, including any words normally associated with those works by the copyright owner for Australia, the right of reproduction of which for the purposes of this agreement are controlled by AMCOS for Australia; **APRA Works** means all musical works, including any words normally associated with those works by the copyright owner for Australia, in which the rights of public performance and communication are controlled by APRA for the purposes of this agreement;

Anniversary Date means each consecutive anniversary of the Commencement Date during the term;

Consumer Price Index (CPI) means the All Groups Consumer Price Index Number for the 8 capital cities published on a quarterly basis by the Australian Bureau of Statistics or any other price index substituted for it by the Australian Bureau of Statistics or any other Australian Government body, and **September Quarter** means quarter year ending 30 September;

First Licence Year means the first Licence Year of the first, and only the first, licence granted by APRA AMCOS for the relevant Fitness Centre in respect of the performance and communication of APRA Works and reproductions of AMCOS Works for the purposes of Background Music and/or Virtual Fitness Classes;

Fitness & Wellbeing Instructor is someone who operates their own business in one or several locations other than a fitness centre.

Fitness Centre means a commercial premises whose facilities are designed for the purpose of physical exercise and/or Fitness Classes;

Licence Year means any 12 month period (or part thereof) commencing on the day which is the first day of a month and nearest the Commencement Date or the anniversary of that date as the case may be;

Member means a person who has entered into an agreement with your Fitness Centre for the principal purpose of using your facilities for physical exercise and/or Fitness Classes;

Music in Fitness Classes means music used in association with a Fitness Class (including music supplied by companies that offer pre choreographed group fitness services); and

Music in Virtual Fitness Classes means music used in association with a Virtual Fitness Class;

7. DISPUTE RESOLUTION

If any dispute arises out of or in connection with this agreement, either party may submit that dispute to the alternative dispute resolution procedure as detailed on our website at www.apraamcos.com.au/feedback-centre/alternative-dispute-resolution.

8. NOTICES

8.1 A notice under this agreement must be in writing and may be given to the addressee by:

- delivering, or sending it by pre-paid post, to the address of the addressee; or
- sending it by email to the email address of the addressee notified by the addressee for this purpose,
- and the notice will be deemed to have been received by the addressee on receipt, or in the case of emails, immediately after dispatch.

9. MISCELLANEOUS

9.1 A waiver under this agreement is not binding on a party unless it is in writing and signed by the party. A waiver is not a waiver of any other right.

9.2 You must not assign any of your rights under this agreement without our prior written consent.

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

9.4 This agreement shall be construed in accordance with the laws in force in New South Wales and the parties agree to submit to the jurisdiction of New South Wales courts.

10. PRIVACY NOTICE

The information you are providing may be personal information under the *Privacy Act 1988*. Information collected is only for our business purposes and will not be disclosed to any third parties except in accordance with our privacy policy. The privacy policy is available on our website at apraamcos.com.au/privacy-policy/.

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