



APRA
AMCOS

NARROWCAST RADIO BROADCASTERS AMCOS AGREEMENT

Enquiries 1300 852 388 narrowcasters@apra.com.au www.apraamcos.com.au

AGREEMENT made on

_____ date

Between AUSTRALASIAN MECHANICAL COPYRIGHT OWNERS SOCIETY LIMITED A.C.N. 001 678 851 a company duly incorporated in New South Wales, having its registered office at 16 Mountain Street, Ultimo NSW 2007 ("AMCOS")

And

_____ company name

_____ ABN or ACN

_____ address

_____ phone

_____ email

which is (tick applicable box)

- an unincorporated association
- an incorporated association
- a co-operative;
- a company duly incorporated in the State/Territory of _____

RECITALS

- A. AMCOS controls for Australia and New Zealand the:
- (a) right of reproduction for broadcasting purposes of the musical works and associated lyrics; and
- (b) right of reproduction for broadcasting purposes and right of broadcast of the sound recordings comprised in the production music libraries, controlled by those music publishers listed in Schedule A and those mechanical right societies listed in Schedule B.
- B. The Licensed Party is the provider of a subscription / open narrowcast radio service as defined in the Broadcasting Services Act, 1992.
- C. The Licensed Party wishes to obtain a licence from AMCOS to enable it to perform the activities referred to in A(a) and (b) above in relation to any and all musical works and production music sound recordings within the AMCOS repertoire.
- D. AMCOS has agreed to grant a licence to the Licensed Party subject to the following terms.

AGREEMENTS

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:-

"ACMA" means the Australian Communications and Media Authority;

"Act" means the Broadcasting Services Act 1992;

"Approved Purpose" means radio broadcast from within and received within the Territory;

"Broadcast" has the meaning assigned to it under the Copyright Act 1968;

"Commissioned" means the Licensed Party enters into an agreement with an independent production company under which the independent production company makes a Program or Sponsorship Announcement and the Licensed Party has the exclusive right to broadcast the Program or Sponsorship Announcement;

"Licence Fee" means the annual amount payable by the Licensed Party in accordance with clause 4.1;

"Licence Year" means a period of twelve months commencing on 1 July and ending on 30 June during the term of this Agreement provided that where the date of this Agreement is not 1 July, the first licence year is the period commencing on the date of this Agreement and ending on the next 30 June;

"Production Music Library" means any of the catalogues of audio

recordings, containing one or more Production Music Recordings, as listed in Schedule;

"Production Music Recordings" means those sound recordings and underlying musical works which comprise the Production Music Libraries listed in Schedule C and in respect of which AMCOS is entitled to grant the non-exclusive licence referred to in clause 2;

"Production Music Sound Recording" means any sound recording comprised in the Production Music Libraries;

"Program" includes a Commissioned program and a program made by the Licensed Party;

"Record" means a disc, tape, paper or other device in which sounds are embodied;

"Sound Recording" means the aggregate of the sounds embodied in a Record;

"Sponsorship Announcement" means any matter made or Commissioned by the Licensed Party which draws the attention of the public, or a segment thereof, to a product, service, person, organisation, or line of conduct in a manner which appears to be intended to promote or oppose, directly or indirectly, that product, service, person, organisation or line of conduct and includes a Station Promotion;

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- “Station Promotion”** means any promotional matter made or Commissioned by the Licensed Party and which is made primarily for the purpose of promoting or identifying the service of the Licensed Party; **“Territory”** means Australia; and **“Works within the AMCOS Repertoire”** means any and all musical works, including any associated lyrics, of the Music Publishers and Mechanical Right Societies and in respect of which AMCOS is entitled to grant the non-exclusive licence referred to in clause 2 but excludes Production Music Recordings.
- 1.2 Unless the context otherwise requires a word which denotes:
- the singular denotes the plural and vice versa; and
 - a person includes an individual, a body corporate and a government.
- 1.3 Unless the context otherwise requires a reference to:
- any legislation includes any regulation or instrument made under it and where amended, re-enacted or replaced means that amended, re-enacted or replacement legislation; and
 - a thing or amount is a reference to the whole and each part of it.
- 2 GRANT OF RIGHTS**
- 2.1 AMCOS grants a non-exclusive licence to the Licensed Party to reproduce in the Territory for the Approved Purpose:
- any Production Music Recording in the form of a Record (including without limitation reproduction into a Sponsorship Announcement); and
 - any Works within the AMCOS Repertoire in the form of a Record provided that such work is not reproduced into a Sponsorship Announcement;
- and to retain such Records for an unlimited period of time.
- 2.2 AMCOS grants a non-exclusive licence to the Licensed Party to Broadcast any Production Music Sound Recording for the Approved Purpose.
- 3 LIMITATIONS ON THE LICENCE**
- 3.1 All rights, other than the rights expressly licensed under this Agreement, are reserved. In particular this Agreement does not extend to:
- the reproduction of any Works within the AMCOS Repertoire in association with a Sponsorship Announcement;
 - the reproduction of any Works within the AMCOS Repertoire in association with lyrics or words other than those approved by the copyright owner;
 - the making of an adaptation or arrangement of any Works within the AMCOS Repertoire or a Production Music Recording; or
 - the Broadcast of any Works within the AMCOS Repertoire.
- 3.2 The Licensed Party must:
- only distribute Records made under this Agreement to other radio stations on terms which provide that the provision of the Records does not confer any licence to reproduce or broadcast the musical works embodied on the Records or Production Music Sound Recording; and
 - within 7 days after request from AMCOS, provide such details of Records distributed under clause 3.2(a) as AMCOS may reasonably request.
- 3.3 The Licensed Party must not Broadcast any Record containing Works within the AMCOS Repertoire or a Production Music Sound Recording which has been supplied to the Licensed Party by any person for the purpose of Broadcasting where AMCOS has notified the Licensed Party in writing that such Record is an infringing copy. Furthermore the Licensed Party agrees to destroy any Record or reproduction of such Record which is the subject of such notification from AMCOS.
- 3.4 AMCOS may from time to time during the term of this Agreement by notice to the Licensed Party:
- amend Schedules A, B or C by deleting from or adding to the Schedules, such amendment to take effect on receipt of the notification by the Licensed Party. The Licensed Party and AMCOS agree that upon such notification, Schedules A, B or C are amended in accordance with the said notification; or
 - advise that a musical work or sound recording is no longer within the control of AMCOS, such notification to take effect on receipt of the notice by the Licensed Party.
- 4 LICENCE FEE**
- 4.1 Subject to clauses 4.2 and 4.3, the amount payable by the Licensed Party to AMCOS for the non-exclusive licence granted in accordance with clause 2 for each Licence Year will be calculated in accordance with the following formula:
licence fee = \$387 x (March CPI ÷ CPI March 2013)
- “March CPI” is the All Groups Consumer Price Index Number for the eight capital cities published by the Australian Bureau of Statistics, or any price index substituted for it by the Australian Bureau of Statistics or any other Australian government body (“the Index”) for the immediately preceding March quarter.
“CPI March 2013” is the Index for the March 2013 quarter calculated with reference to the same base year as the March CPI.
- 4.2 If the first Licence Year is less than 12 months, the Licence Fee for that Licence Year will be calculated on a prorata basis so that that Licence Fee is only paid for those days included in that Licence Year.
- 4.3 If the Licence Fee for any Licence Year includes a fraction of a dollar then:
- where that fraction is less than one-half of a dollar, that fraction will be disregarded; and
 - where that fraction is greater than or equal to one-half of a dollar, that fraction will be deemed to be a whole dollar so that the Licence Fee is rounded up to the next whole dollar.
- 4.4 On the date of this Agreement the Licensed Party must pay to AMCOS the Licence Fee for the first Licence Year.
- 4.5 Within 14 days of the commencement of each Licence Year (except the first Licence Year), the Licensed Party must pay to AMCOS the Licence Fee for that Licence Year.
- 5 CHANGE IN CALL SIGNS**
- Where a Licensed Party changes its nominated call sign from that which is contained in this Agreement, it must within thirty (30) days from the date of change notify AMCOS of the new call sign.
- 6 TERM OF LICENCE**
- This Agreement commences on the date of this Agreement and, unless terminated earlier in accordance with clause 7 continues until either party gives the other party three months’ notice of its termination.
- 7 BREACH AND TERMINATION**
- 7.1 Where the Licensed Party fails to pay the fees under the terms of clause 4, AMCOS may terminate this Agreement upon giving seven (7) days’ notice to the Licensed Party. AMCOS reserves the right to pursue all legal remedies, including, but not limited to, those under the Copyright Act 1968.
- 7.2 Where the Licensed Party breaches any other term of this Agreement, which breach, if capable of remedy is not remedied within fourteen (14) days from the date of notice from AMCOS, AMCOS may terminate this Agreement upon giving fourteen (14) days’ notice to the Licensed Party. AMCOS reserves the right to pursue all legal remedies.
- 7.3 Without prejudice to any other rights or remedies, AMCOS may terminate this Agreement by notice if:
- the Licensed Party is wound up or has a petition presented against it for its winding up;
 - a receiver or receiver and manager is appointed to take over all or part of the Licensed Party’s assets or undertakings;
 - a meeting of the creditors or members of the Licensed Party is held to consider the implementation of a scheme of arrangement or the appointment of an official manager to the Licensed Party; or
 - the Licensed Party commits an act of bankruptcy as specified under the Bankruptcy Act 1966.
- 8 NOTICES**
- 8.1 All notices required to be given under this Agreement must be in writing and sent to the address as set out in this Agreement or to such other address as any party may notify in writing from time to time.
- 8.2 Notice may be served by hand delivery, post or facsimile. Notices served by hand or facsimile are deemed to have been received on the day of sending. Notices sent by post are deemed to have been received on the third business day after sending.
- 9 GOVERNMENT DUTIES AND TAXES**
- The Licensee must pay to AMCOS at the same time as any Licence Fee is paid an amount on account of stamp duties and taxes, including any goods and services tax, arising in respect of this agreement.
- 10 PROPER LAW**
- This Agreement shall be construed in accordance with the laws of New South Wales and the parties agree to submit to the non exclusive jurisdiction of the Courts of that State.

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SIGNED AS AN AGREEMENT

Signed for and on behalf of **Australasian Mechanical Copyright Owners Society Limited** in the presence of:

Signature of authorised person

Witness

Name of authorised person (print)

Name of Witness (print)

Office held

Signed for and on behalf of the **Licensed Party** in the presence of:

Signature of authorised person

Witness

Name of authorised person (print)

Name of Witness (print)

Office held