



**APRA
AMCOS**

NARROWCAST RADIO BROADCASTERS APRA AGREEMENT

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

AGREEMENT made this date _____

PARTIES

AUSTRALASIAN PERFORMING RIGHT ASSOCIATION LIMITED ACN 000 016 099 16 Mountain Street, Ultimo in New South Wales ("APRA")

AND

COMPANY NAME (LICENSEE)

ABN OR ACN

WEBSITE URL

ADDRESS

PHONE

EMAIL

BACKGROUND

- A. APRA owns or controls for Australia the exclusive broadcasting rights for a large number of musical works and associated lyrics.
- B. The Licensee is the provider of radio services under the *Broadcasting Services Act 1992* and wishes to obtain from APRA a licence to broadcast Works within APRA's Repertoire.
- C. APRA has agreed to grant such a licence subject to the terms of this agreement.

AGREEMENTS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

1.1.1 Where commencing with a capital letter:

- Agreed Rate** means the benchmark rate published by the National Australia Bank Limited plus 2%, calculated at daily rests;
- Average Music Use** means, for a Licence Year, the AWH divided by the AWT for the previous Licence Year;
- AWH** means the average number of weekly hours of transmission of the Service occupied by the broadcast of musical works;
- AWT** means the average number of weekly hours of transmission of the Service;
- Broadcast** has the same meaning as in the *Broadcasting Services Act 1992*;
- Commencement Date** means the date specified in the Schedule;
- 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 June Quarter means the quarter year ending 30 June;
- Dramatico-musical Work** means a musical work and associated lyrics written expressly for an opera, operetta, musical play, revue or pantomime;
- Gross Earnings** means:
- (a) all monies and the monetary value of all benefits receivable directly or indirectly by the Licensee from all sources in connection with the Service including subscriptions, sponsorship, advertising, grants, public funding, donations and subsidies or, where the transaction is not on arm's length commercial terms, which would have been receivable by the Licensee if the transaction had been on arm's length commercial terms;
- less:
- (b) bad debts written off in the Licence Year; and
 - (c) bona fide payments made by subscribers to the Service for the hire or purchase of receiving equipment;
- Licence Year** means any consecutive period of 12 months commencing on 1 July during the term of this agreement provided that:
- (a) where the date of this agreement is not 1 July, the first Licence

Year is the period from the date of this agreement to the next 30 June; and

- (b) where this agreement does not terminate on 30 June, the last Licence Year is the period from the 1 July preceding the date of termination to the date of termination;

Service means the radio service described in the schedule;

Sound Recording has the same meaning as in the *Copyright Act 1968*; and

Works within APRA'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 vested in APRA for Australia and New Zealand.

- 1.1.2 Where a word or phrase is given a defined meaning another part of speech or grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2 Presumptions of interpretation
- 1.2.1 Unless the context otherwise requires a word which denotes the singular denotes the plural and vice versa.
- 1.2.2 Unless the context otherwise requires a reference to:
 - (a) any legislation includes a regulation or instrument made under it and where amended, re-enacted or replaced means that amended, re-enacted or replacement legislation; and
 - (b) a thing or amount is a reference to the whole and each part of it.
2. LICENCES
- 2.1 Broadcast

APRA grants the Licensee a licence to Broadcast Works within APRA's Repertoire by means of the Service.
- 2.2 Public performance

APRA grants the Licensee a licence to perform in public or authorise the performance in public of Works within APRA's Repertoire provided that:

 - (a) no entrance fee is charged to the public to attend the performance or to attend an entertainment of which the performance forms part; and
 - (b) the whole or a substantial part of the performance is Broadcast by the Licensee by means of the Service.
- 2.3 Limitations on licences

The licences in clauses 2.1 and 2.2 do not include or authorise:

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- (a) the Broadcasting of Dramatico-musical Works in whole;
- (b) the Broadcasting of excerpts from any Dramatico-musical Works if:
- (i) APRA has notified the Licensee in writing that such excerpts are prohibited from Broadcast; or
 - (ii) more than 2 excerpts of the same Dramatico-musical Work are Broadcast in any 3 hour period;
- (c) the Broadcasting for more than 20 minutes of any choral work of more than 20 minutes' duration in its entirety;
- (d) the Broadcasting of any musical work in association with words other than those with which the work has been:
- (i) published; or
 - (ii) issued in the form of records for sale to the public, unless authorised in writing by the copyright owner of the work or by APRA;
- (e) the Broadcasting of any Sound Recordings;
- (f) the making of an adaptation of any musical, literary or dramatic work;
- (g) the giving of a public performance by means of the reception of a Broadcast;
- (h) the Broadcasting of any musical work by means of the internet; or
- (i) any other right not expressly granted under this agreement.
- 3. TERM**
This agreement commences with effect from the Commencement Date and, subject to earlier termination in accordance with clause 11, continues until terminated by either party on at least 3 months' notice terminating on 30 June in the year of the notice.
- 4. CALCULATION OF LICENCE FEES**
- 4.1 Amount**
The Licensee must pay APRA, for each Licence Year, an amount equal to the greater of:
- (a) the amount calculated in accordance with the formula set out in clause 4.2 using the information provided by the Licensee under clause 5 for the previous Licence Year; and
 - (b) the applicable minimum annual fee current for that Licence Year (the minimum annual fees for the 2012 - 2013 Licence Year are set out in the schedule).
- 4.2 Formula**
- 4.2.1** The amount referred to in clause 4.1(a) is the amount calculated in accordance with the following formula:

$$A = RP \times GE$$
 Where: A is the amount referred to in clause 4.1(a);
 RP is the applicable rate payable for the Licensee's Average Music Use being determined in accordance with the table set out in the schedule; and
 GE is, subject to clause 4.2.2, the Gross Earnings for the previous Financial Year.
- 4.2.2** Where the previous Financial Year was less than 12 months, the Gross Earnings for that previous Financial Year will be adjusted for a 12 month period.
- 4.3 CPI**
On 1 December each year, the minimum annual fees will be calculated by increasing the then current minimum annual fees by the percentage increase in the Consumer Price Index between the last two June Quarters.
- 5. SUPPLY OF INFORMATION**
- 5.1 Statements**
The Licensee must, by 1 October each Licence Year, supply APRA with:
- (a) a statement in accordance with clause 5.2 of the Gross Earnings for the previous Licence Year;
 - (b) a copy of its standard subscription agreement and a statement detailing the calculation of the payments made by subscribers to the Service for the hire or purchase of receiving equipment;
 - (c) a statement in the form reasonably specified by APRA setting out:
 - (i) the AWT; and
 - (ii) the AWH,
 during the previous Licence Year;
 - (d) a statement in the form reasonably specified by APRA setting out the music program formats of the Service during the previous Licence Year; and
 - (e) any change in the following information for each transmitter which constitutes the Service:
 - (i) the apparatus licence number;
 - (ii) frequency;
 - (iii) location; and
 - (iv) wattage.
- 5.2 Certification**
The Licensee must provide the statement required under clause 5.1(a) certified by the Licensee's external auditors.
- 5.3 Failure to provide information**
If the Licensee does not comply with clause 5.1, without limiting APRA's rights under this agreement, APRA may, having regard to any matters it considers reasonably appropriate, determine:
- (a) the Licensee's Gross Earnings for the previous Licence Year;
 - (b) the AWT during the previous Licence Year; and
 - (c) the AWH during the previous Licence Year,
- for the purpose of issuing invoices under clause 6.
- 5.4 Other information**
The Licensee must, within 30 days after APRA's request, provide APRA with a return in such form and containing such details as APRA may reasonably specify in respect of all musical works Broadcast on the Service during the period specified in APRA's notice.
- 6. PAYMENTS**
- 6.1 First Licence Year**
- 6.1.1** APRA may issue an invoice for an advance based on a reasonable estimate of the licence fee payable by the Licensee under clause 4 for the first Licence Year.
- 6.1.2** The Licensee must pay any invoice issued by APRA under clause 6.1.1 within 30 days after the date of the invoice.
- 6.1.3** On APRA's receipt of the information under clause 5.1 or, if the Licensee does not comply with clause 5.1, the determination by APRA under clause 5.3, APRA must calculate the licence fee in accordance with clause 4.
- 6.1.4** If the licence fee exceeds the advance paid by the Licensee under clause 6.1.1, the Licensee must pay the excess to APRA within 30 days after the date of the invoice.
- 6.1.5** If the licence fee is less than the advance paid by the Licensee under clause 6.1.1, APRA must, at its option, either refund the amount of difference to the Licensee or credit the difference to the Licensee's account.
- 6.2 Subsequent Licence Years**
- 6.2.1** APRA will issue an invoice for the licence fee for each Licence Year after the first Licence Year calculated in accordance with clause 5.1 using the information supplied by the Licensee under clause 5.1 for the previous Licence Year or, if the Licensee does not comply with clause 5.1, the determination by APRA under clause 5.3.
- 6.2.2** The Licensee must pay any invoice issued by APRA under clause 6.2.1:
- (a) within 30 days after the date of the invoice; or
 - (b) by 30 November of that Licence Year,
- whichever is earlier.
- 6.3 Further payments**
The Licensee must pay all stamp duties and taxes including any goods and services tax arising as a result of or in consequence of this agreement.
- 6.4 Interest**
The Licensee must pay to APRA interest at the Agreed Rate on each amount outstanding under this agreement.
- 7. BOOKS OF ACCOUNT AND EXAMINATION**
- 7.1 Books of account**
The Licensee must keep accurate books of account and other records in sufficient detail to ensure that all amounts payable to APRA under this agreement can be properly ascertained.
- 7.2 Examination**
- 7.2.1** APRA may on 7 days' notice examine the Licensee's books of account and other records:
- (a) to determine the correctness of any report or payment under this agreement; or
 - (b) in the case of a failure by the Licensee to provide statements or information as the case may be in accordance with clause 5.1 or 5.4, to obtain information required to be provided under that clause,
- and for this purpose is entitled to access all records of the Licensee or under its control, wherever held.
- 7.2.2** The Licensee must pay the cost of the examination if the examination:
- (a) establishes that the amounts payable under this agreement were understated by more than 5%; or
 - (b) is undertaken under clause 7.2.1(b).
- 8. CONFIDENTIALITY**
APRA must keep the Licensee's Gross Earnings confidential and only use that information for the purpose of determining the licence fee payable by the Licensee under this agreement.
- 9. INFORMATION ABOUT REPERTOIRE**
APRA must give the Licensee, on request, all such information as APRA can reasonably give concerning works claimed or represented as being Works within APRA's Repertoire provided that such requests are made in respect of named works or works of named writers.
- 10. WARRANTIES AND INDEMNITY**
- 10.1 Warranties**
- 10.1.1** The Licensee warrants the accuracy of the information supplied under clause 5.
- 10.1.2** APRA warrants the accuracy of the analysis of the information supplied by the Licensee under clause 5.1.

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- 10.2 Indemnity
- 10.2.1 Subject to the Licensee complying with clause 10.2.2 and the due observance by the Licensee with the terms of this agreement, APRA indemnifies the Licensee, its servants and agents against all loss, damage, costs, charges and expenses which they may suffer or incur in respect of any successful claim which may be made against them in respect of Broadcasts by the Licensee of Works within APRA's Repertoire within the limitations permitted by this agreement.
- 10.2.2 The Licensee must:
- immediately notify APRA of any such claims; and
 - permit APRA to conduct the defence in the name of the Licensee.
- 11. TERMINATION**
- 11.1 Winding up
APRA may immediately terminate this agreement by notice to the Licensee if the Licensee:
- 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
 - ceases to operate the Service.
- 11.2 Termination for breach
If the Licensee:
- fails to pay any sum due under this agreement within 21 days after the due date; or
 - breaches any other term of this agreement and fails to remedy the breach within 7 days after being requested in writing to do so by APRA,
- APRA may by one month's notice terminate this agreement without prejudice to its right to recover payment of any outstanding monies payable under the provisions of this agreement.
- 12. 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 mechanism approved by the Australian Competition Tribunal constituted under the Trade Practices Act 1974 in the determination in relation to File Nos. 4 and 5 of 1998.
- 13. MISCELLANEOUS**
- 13.1 Assignment
This agreement is personal to the Licensee. The Licensee must not assign any of its rights without the prior written consent of APRA.
- 13.2 Notices
- 13.2.1 A notice under this agreement must be in writing and may be given to the addressee by:
- delivering it to the address of the addressee;
 - sending it by pre-paid registered post to the address of the addressee; or
 - sending it by facsimile to the facsimile number of the addressee, and the notice will be deemed to have been received by the addressee on receipt.
- 13.2.2 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 addressee.
- 13.3 Amendment
This agreement may only be varied by the written agreement of the parties.
- 13.4 Entire agreement
This agreement embodies the entire understanding and agreement between the parties as to the subject matter of this agreement.
- 13.5 Further assurance
Each party must promptly execute all documents and do all things that another party from time to time reasonably requests to effect, perfect or complete this agreement and all transactions incidental to it.
- 13.6 Governing law
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.

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SCHEDULE

Commencement Date

[Being either the date on which the Licensee commenced operations as a radio broadcaster (including a narrowcaster) or, if the Licensee previously operated under an agreement with APRA, the date of expiry of that agreement]

Service

The Service is the radio service operated by the Licensee (as defined in the Broadcasting Services Act 1992) constituted by the following transmitters:

For each transmitter specify its:

- (i) the apparatus licence number; _____
- (ii) frequency; _____
- (iii) location; and _____
- (iv) wattage. _____

Minimum annual fees

The minimum annual fees for the 2014 - 2015 Licence Year based on the Service's transmitter power/ERP (either of a single transmitter or combined transmitters where the programming is identical) are:

Maximum Power (single or combined service)	10 Watts	500 Watts	Greater than 500 Watts
Minimum Annual Fee (excl. GST)	\$233.27	\$401.62	\$802.15

Rates payable

The rates payable according to the Licensee's Average Music Use are:

Average Music Use (percentage of airtime occupied by music)	Rate Payable
0 – 24.99%	0.50%
25.0 – 39.99%	1.25%
40.0 – 59.99%	2.00%
60.0 – 79.99%	2.75%
80.0% plus	3.50%

SIGNED AS AN AGREEMENT

Signed for and on behalf of **Australasian Performing Right Association 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 **Licensee** in the presence of:

_____ Signature of authorised person	_____ Witness
_____ Name of authorised person (print)	_____ Name of Witness (print)
_____ Office held	

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TRANSMITTERS OPERATED BY THE LICENSEE UNDER THE AGREEMENT AS AT 30 JUNE _____

No.	Apparatus Licence Number	Frequency	Watts	Location Served
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
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PART 1: STATEMENT OF ESTIMATED GROSS

EARNINGS FOR THE YEAR ENDED 30TH JUNE _____

Radio Service Owned by: _____
(This should be the same as the company specified on your licence agreement. If different please contact APRA)

On-air Identification: _____

Gross Revenue of Service from all sources	\$
plus Bad debts written off in Last Licence Year and subsequently recovered	+ \$
less Bad debts written off in Licence Year	- \$
less Bona fide payments made by subscribers for the hire or purchase of receiving equipment (only applicable if Licensee is providing a subscription service)	- \$
GROSS EARNINGS (as per Clause 1 of the Agreement)	\$

FIGURES MUST BE CERTIFIED BY THE LICENSEE'S EXTERNAL AUDITOR

Signature of Person Certifying: _____

Name of Person Certifying: _____

Title of Person Certifying: _____

Date _____

"Gross Earnings" means all monies and the monetary value of all benefits receivable directly or indirectly by the Licensee from all sources in connection with the Service including subscriptions, sponsorship, advertising, grants, public funding, donations and subsidies or, where the transaction is not on arm's length commercial terms, which would have been receivable by the Licensee if the transaction had been on arm's length commercial terms;

less

- bad debts written off in the Licence Year; and
- bona fide payments made by subscribers to the Service for the hire or purchase of receiving equipment.

PART 2: STATEMENT OF MUSIC USAGE

FOR THE YEAR ENDED 30TH JUNE _____

Average Weekly Transmission Hours

(for the same period as Gross Earnings provided in Part 1)

HRS	MINS

Average Weekly Hours of Airtime Occupied

by the Broadcast of Music (including featured music, background music, and music in station IDs or news themes)

(for the same period as Gross Earnings provided in Part 2)

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PART 3: PROGRAM FORMAT

FOR THE YEAR ENDED 30TH JUNE _____

Please specify the program format that most closely describes your service during the year to 30 June.

- General (including tourist information services)
- Alternative Music
- Christian Music
- Classical Music
- Country Music
- Dance Music
- Non-english Language
- Background Music Provider
- Other (please specify) _____