

**EISTEDDFOD & COMPETITION**

Customer Enquiries 1300 852 388 eisteddfods@apra.com.au www.apraamcos.com.au

Please complete the relevant section(s), sign and return to: Locked Bag 5000, Strawberry Hills NSW 2012, fax (02) 8103 4445 or email to eisteddfods@apra.com.au. I/We apply for a licence which, subject to the terms set out in this document, authorises the performance in public of APRA Works and PPCA Sound Recordings, and the reproduction of AMCOS Works and ARIA Sound Recordings, at an annual Eisteddfod or Competition under the authority of operator of that Eisteddfod or Competition.

**Annual Rates**

Eisteddfodau or Competitions where either the ticket price to attend or fee for a Solo Entry into a single Division exceeds \$40 (including GST) will not be eligible for this licence.

| Licence Year  | Entry Rate  |
|---|---|
| Commencing on 1 January 2018                                      | \$0.99 (including GST)  |
| Commencing on 1 January 2019                                      | \$1.34 (including GST)  |
| Commencing on 1 January 2020                                      | \$1.71 (including GST)  |
| Commencing on 1 January 2021 and for each Licence Year thereafter | The Entry Rate for the immediately preceding Licence Year, increased by the percentage CPI increase between the preceding two September Quarters. |

**AMOUNTS STATED ON THIS APPLICATION ARE INCLUSIVE OF 10% GST.**

\* Licence fees are payable annually except where the total licence fee is more than \$500, in which case invoices will be issued quarterly, unless otherwise agreed. Regional Based Eisteddfodau and Competitions are eligible for a fee reduction of 10% per entry.

**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.

**Legal name of Business or Organisation (Applicant)**

Note: If you operate through a Trust the Applicant must be the Trustee of that Trust

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**

PREMISES / TRADING NAME

**Address**

ADDRESS

POSTCODE

**Address for Correspondence**

ADDRESS

POSTCODE

MOBILE

**Date on which music usage commenced**

EMAIL

PHONE

DATE

FAX

**Annual number of Entries**

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 (on behalf of the Licensors). APRA AMCOS (on behalf of the Licensors) 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.

**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:

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

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## TERMS & CONDITIONS

### PARTIES

**AUSTRALASIAN MECHANICAL COPYRIGHT OWNERS SOCIETY LIMITED** ACN 001 678 851 of 16 Mountain Street, Ultimo, New South Wales (**AMCOS**)

**AUSTRALASIAN PERFORMING RIGHT ASSOCIATION LIMITED** ABN 42 000 016 099 of 16 Mountain Street, Ultimo, New South Wales (**APRA**)

**AUSTRALIAN RECORDING INDUSTRY ASSOCIATION LIMITED** ACN 002 692 944 of Level 4, 11-17 Buckingham Street, Surry Hills, New South Wales (**ARIA**)

**PHONOGRAPHIC PERFORMANCE COMPANY OF AUSTRALIA LIMITED** ACN 000 680 704 of Level 4, 11-17 Buckingham Street, Surry Hills, New South Wales (**PPCA**) (Licensors)

### THE PARTY SPECIFIED ON THE FRONT OF THIS AGREEMENT (Licensee)

### BACKGROUND

- A. AMCOS is the exclusive licensee in the Territory of the right to reproduce the AMCOS Works in certain circumstances.
- B. APRA owns or controls for the Territory the exclusive right of public performance and communication in relation to the APRA Works.
- C. ARIA is a trade association and is the non-exclusive licensee of certain reproduction rights in the ARIA Sound Recordings.
- D. PPCA is a performing right collecting society and is the non-exclusive licensee of certain public performance, communication and broadcast rights in the PPCA Sound Recordings.
- E. The Licensee operates Eisteddfodau and Competitions and has requested a licence so that it can reproduce AMCOS Works and ARIA Sound Recordings and perform APRA Works and PPCA Sound Recordings for the Purpose.
- F. The Licensors agree to grant a licence to the Licensee, on the terms contained in this agreement.

### AGREEMENTS

#### 1. Definitions and interpretation

##### 1.1 Definitions

Where commencing with a capital letter:

**Act** means the *Copyright Act 1968*;

**Adjudicator** means a person judging an Eisteddfod licensed under this Agreement;

**Adjudicator Recording** means a copy of an Eisteddfod performance on Physical Media provided to Entrants for their private or domestic listening or viewing and which includes verbal feedback from the Adjudicator on that Entrant's performance;

**Advertisement** means any production that is an announcement designed to attract the attention of the public or any part of it to a product, service, person, organisation or line of conduct including community service announcements and infomercials;

**AMCOS Works** means all Works in respect of which AMCOS is entitled to administer the right of reproduction, or represents to the Licensee that it is entitled to grant the licence in clause 2.1;

**Applicable Division** means a Division of an Eisteddfod or a Competition that contains performances of musical works and/or Sound recordings, but is not a Division that is comprised entirely of Public Domain Works and Public Domain Sound Recordings;

**APRA AMCOS** means APRA and AMCOS;

**APRA Works** means all Works in respect of which the rights of public performance and communication to the public are owned or controlled by APRA for the purposes of this agreement;

**ARIA Sound Recordings** means all sound recordings for which ARIA has the authority to grant the licence in clause 2.1;

**Broadcast** has the same meaning as in the Act;

**Choral Work** means an oratorio or other work written to be sung by a choir or other group of singers, with or without any instrumental accompaniment, of more than 20 minutes' duration in its entirety;

**Commencement Date** means 1 January 2018;

**Communicate** has the same meaning as in the Act;

**Competition** means a competitive event involving, but not limited to, dance, calisthenics or cheerleading, where participants are charged a fee to enter, but excludes competitive events where either the ticket price to attend, or fee for entry by an individual performer into a single Division exceeds \$40 (including GST);

**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** in that respect means the quarter year ending 30 September;

**Division** means a separate and identifiable segment within an Eisteddfod or Competition, with each Division comprising, for instance, Entries of a similar type, standard, age group or theme;

**Dramatic Context** means the performance of musical works:

- (a) in conjunction with a presentation on the live stage that has a

- (b) storyline and one or more narrators or characters; or as a Ballet;

**Eisteddfod** means a competitive arts festival which includes music that is organised and presented by the Licensee, but excludes eisteddfodau where either the ticket price to attend, or fee for entry by an individual performer into a single Division, exceeds \$40 (including GST);

**Entry** means each performer or group of performers who have been accepted to perform a single performance of an Applicable Division, with multiple performances by the same entrant comprising multiple Entries and performances of the same act over multiple Eisteddfodau, Competitions, Divisions or days comprising multiple Entries;

**Entry Rate** means the relevant rate set out in clause 3.1.4;

**Grand Right Work** means an opera, operetta, musical play, review or pantomime to the extent that it consists of musical works and associated lyrics written expressly for it;

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999*;

**Licence Fee** means the fees payable by the Licensee and calculated in accordance with clause 3.1;

**Licence Year** means any period of 12 consecutive months commencing on 1 January during the Term, provided that where this agreement terminates on a date other than 31 December, the last Licence Year will end on the date of termination;

**Physical Media** means physical media on which music can be transported and/or played, including CDs, DVDs, USBs, smart phones, tablet computers etc.;

**PPCA Sound Recording** means all Sound Recordings for which PPCA has the authority to grant the licence in clause 2.1;

**Public Domain Sound Recording** means a Sound Recording that is not protected by copyright;

**Public Domain Work** means a musical work and any associated literary work (including an arrangement of a Work) that is not protected by copyright;

**Purpose** means the purpose of staging performances by entrants at Eisteddfodau or Competitions in the Territory;

**Regional Based** means an Eisteddfod or Competition held outside the "Major Cities", as defined by the Australian Statistical Geography Standard Remoteness Areas Map ([apraamcos.com.au/remotemap](http://apraamcos.com.au/remotemap));

**Sound Recording** has the same meaning as in the Act;

**Term** means the period set out in clause 7;

**Territory** means Australia; and

**Work** means a musical work and any literary work normally associated with it by the owner of the copyright in the Territory.

##### 1.2 Presumptions of interpretation

1.2.1 Unless the context otherwise requires:

- (a) a word which denotes the singular denotes the plural and vice versa;
- (b) any other agreement or document where amended or replaced means that agreement as amended or replaced;
- (c) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meaning given in the Act;
- (d) a reference to a thing or an amount is a reference to the whole and each part of it; and
- (e) a person includes an individual, a body corporate, and a government.

1.2.2 In this agreement:

- (a) clause headings are for convenience only and do not affect interpretation; and
- (b) "includes" is not a word of limitation.

## 2. Grant of Licence

### 2.1 Licence

2.1.1 Subject to the terms set out in this agreement, the Licensors grant the Licensee a licence to:

- (a) perform in public APRA Works;
- (b) perform in public PPCA Sound Recordings; and
- (c) reproduce ARIA Sound Recordings and AMCOS Works on Physical Media, for the Purpose.



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2.1.2 Subject to the terms set out in this agreement, the Licensors further grant the Licensee a licence to authorise Adjudicators to reproduce ARIA Sound Recordings and AMCOS Works in an Adjudicator Recording.

## 2.2 Exclusions

The rights granted under this agreement do not include the right to:

- (a) reproduce any cinematograph film or any literary, dramatic or artistic work (including the lyrics associated with musical works);
- (b) reproduce any musical work by way of photocopying or similar reproduction methods;
- (c) reproduce any Work or Sound Recording into an Advertisement;
- (d) make any arrangement, debasement or variation of any Work;
- (e) mix, re-mix, sample, segue or debase any Sound Recording;
- (f) reproduce any Sound Recording other than ARIA Sound Recordings;
- (g) Communicate any Work or Sound Recording;
- (h) Perform any APRA Work in a Dramatic Context;
- (i) perform Works or Sound Recordings in public other than as part of an Eisteddfod;
- (j) perform a Grand Right Work, a Choral Work (being a Choral Work of more than 20 minutes duration) in its entirety or any ballet; or do any other act not expressly licensed under this agreement.

## 3. Licence Fee and GST

### 3.1 Licence Fee

- 3.1.1 In consideration of the licence granted in clause 2.1, the Licensee must pay in accordance with clause 3.4 the Licence Fee for each Licence Year.
- 3.1.2 The Licence Fee for each Licence Year is the relevant Entry Rate for the Licence Year multiplied by the number of Entries for all Eisteddfodau and/or Competitions (as relevant) in the 12 month period prior to the start of the Licence Year.
- 3.1.3 For the purposes of clause 3.1.2, the Entry Rate in respect of each Licence Year, as applicable, is as follows:

| Licence Year  | Entry Rate   | Entry Rate<br>(Regional Based) |
|---|--|--------------------------------|
| Starting on 1 January 2018                                      | \$0.99   | \$0.89                         |
| Starting on 1 January 2019                                      | \$1.34   | \$1.20                         |
| Starting on 1 January 2020                                      | \$1.71   | \$1.54                         |
| Starting on 1 January 2021 and for each Licence Year thereafter | The Entry Rate for the immediately preceding Licence Year will be increased by the percentage CPI increase between the preceding two September Quarters. |                                |

### 3.2 GST

- 3.2.1 Unless otherwise indicated, amounts stated in this agreement include GST. In relation to any GST payable for a taxable supply by a Licensor under this agreement, the Licensee must pay the GST subject to APRA AMCOS providing a tax invoice.
- 3.2.2 Terms used in this agreement that are defined in the GST Act have the same meaning as in the GST Act.

### 3.3 Invoices

After receiving the report referred to in clause 6.2, APRA AMCOS will issue a single invoice on behalf of the Licensors stating the Licence Fee and any GST payable.

### 3.4 Payment

- 3.4.1 The Licensee must pay each invoice issued in accordance with this agreement within 21 days of the date of the invoice.
- 3.4.2 APRA AMCOS will receive the Licence Fee for each Licence Year on behalf of the Licensors.

## 4. Warranty

The Licensors warrant to the Licensee that they are authorised to enter into this agreement and to grant the licence in clause 2.1.

## 5. Notifications

### 5.1 Excluded repertoire

- 5.1.1 APRA AMCOS may from time to time notify the Licensee of AMCOS Works or APRA Works that are to be deleted from the scope of this agreement and such variation will take effect 60 days after such notification.
- 5.1.2 ARIA or PPCA may from time to time amend or vary the list of ARIA Sound Recordings or PPCA Sound Recordings covered by this agreement. The variation will take effect as and from the date on which it is posted on the ARIA website ([www.aria.com.au](http://www.aria.com.au)) or the PPCA website ([www.pcca.com.au](http://www.pcca.com.au)).

### 5.2 Non Controlled APRA AMCOS Works

- 5.2.1 If during the Term APRA AMCOS no longer control the rights the subject of this agreement in respect of all of the APRA Works and/or AMCOS Works the copyright in which is owned by a single corporate entity (**Non Controlled APRA AMCOS Works**), APRA AMCOS must promptly notify the Licensee.

- 5.2.2 If APRA AMCOS give notice under clause 5.2.1 then APRA AMCOS will discuss with the Licensee in good faith whether the Licence Fees require any adjustment, having regard to the extent that the removal of Non Controlled APRA AMCOS Works affects the Licensee.

- 5.2.3 Any failure to agree under clause 5.2.2 must be dealt with in accordance with clause 9.

## 6. Record keeping, annual report and audit

### 6.1 Record keeping

- 6.1.1 The Licensee must and warrants that it will keep proper records sufficient to enable the Licensors to calculate the Licence Fees payable and to make distributions to their respective members, including accounting records which must be maintained to a standard sufficient to enable an audit trail to be established.
- 6.1.2 The Licensee acknowledges that if it intends to claim that any Eisteddfod included Public Domain Works, it will be required to keep detailed records of all musical works and arrangements for the purpose of verifying the calculation of Licence Fees.

### 6.2 Annual report

By 15 May of each Licence Year the Licensee must provide to APRA AMCOS (on behalf of the Licensors) a report that sets out:

- (a) the name of each Eisteddfod or Competition staged by the Licensee; and
- (b) the number of Entries for each Eisteddfod or Competition, for the 12 month period prior to the start of that Licence Year.

### 6.3 Audit

- 6.3.1 AMCOS may on 30 days' written notice, appoint a nationally recognised third party accountant or auditor not being the auditor of a competitor of the Licensee, not currently engaged in another audit of the Licensee other than for AMCOS, and not compensated on a contingency fee basis to examine the Licensee's relevant records at a reasonable time at the Licensee's principal place of business or another mutually agreed location to determine:
  - (a) the correctness of any report or payment under this agreement; or
  - (b) in the case of a failure by the Licensee to provide information in accordance with this agreement, to obtain the information required to be provided,
 and for this purpose is entitled to access all of the Licensee's relevant records or relevant records under the Licensee's control, wherever held.
- 6.3.2 AMCOS must pay the cost of any examination, except that the Licensee must pay the reasonable cost of the examination if the examination:
  - (a) establishes that the amounts payable under this agreement were understated by more than 7.5%; or
  - (b) is undertaken under clause 6.3.1(b),
 and must also pay any amount determined by the examination to be payable under this agreement within 21 days of receipt of an invoice from AMCOS, subject to the dispute resolution mechanism of clause 9 if the parties do not agree as to the results of the examination.

## 7. Term

### 7.1 Initial Period

This agreement commences with effect from the Commencement Date and, subject to earlier termination in accordance with clause 8, continues until 31 December (**Initial Period**).

### 7.2 Subsequent periods

Unless terminated at the end of the Initial Period by either party on 3 months' written notice, this agreement will continue for successive 12-month periods unless terminated earlier in accordance with clause 8.

## 8. Termination

### 8.1 Default

AMCOS (on behalf of the Licensors) may immediately terminate this agreement if the Licensee:

- (a) breaches any material term of this agreement and fails to remedy the breach within 14 days after receiving notification to do so by any of the Licensors; or
- (b) 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.

### 8.2 Convenience

- 8.2.1 During the Initial Period, a party may terminate this agreement on 3 months' notice, effective no earlier than the end of the Initial Period.
- 8.2.2 After the Initial Period, a party may terminate this agreement on 3 months' notice to the other parties.

### 8.3 Effect of termination

On termination of this agreement the Licensee must immediately stop exercising its rights under this agreement.

### 8.4 Last Licence Year

If this agreement is terminated with effect after the Initial Period, the Licensee must provide the report referred to in clause 6.2 to APRA AMCOS (on behalf of the Licensors) prior to the effective date of termination.



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## 9. Dispute resolution

### 9.1 Disputes

- 9.1.1 The parties must, during and after the term of this agreement, without delay and in good faith, attempt to resolve any dispute which arises out of or in connection with this agreement prior to commencing any proceedings, but failure to do so will not be deemed a breach of this agreement entitling any party to terminate.
- 9.1.2 Without limiting clause 9.1.1, where the provisions of this agreement would be manifestly unfair to a party, including because the Licensee has obtained direct licences from a copyright owner, the parties must attempt to resolve any issue between them by negotiation in good faith.
- 9.1.3 A party wishing to resolve a dispute must notify the other parties of the existence of the dispute and must identify the nature of the dispute in writing. If a dispute under this agreement has not been resolved between the parties within 30 days after notice of the dispute has been given, a party may require the dispute to be referred to the dispute resolution procedure offered by APRA in accordance with the terms of its authorisations under the *Competition and Consumer Act 2010* or such other dispute resolution mechanism as agreed between the parties.
- 9.1.4 The existence of a dispute or the commencement of proceedings does not affect the obligation of the parties to continue to perform their obligations under this agreement.

### 9.2 Copyright Tribunal

Nothing in this clause 9 affects the right of any party to seek a determination from the Copyright Tribunal of Australia in relation to the subject matter of this agreement.

## 10. Miscellaneous

### 10.1 Entire agreement

This agreement embodies the entire understanding and agreement between the parties as to its subject matter. All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this agreement are merged in and superseded by this agreement.

### 10.2 Amendment

Other than as set out in this agreement, this agreement may only be varied by the written agreement of all parties.

### 10.3 Assignment

A party may not assign or sublicense any of its rights or novate any of its obligations under this agreement without the prior written consent of the other party.

## 10.4 Severability

If any provision of this agreement is held to be unenforceable, all other provisions continue in full force and effect.

## 10.5 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.

## 10.6 Governing law

This agreement is governed by and construed in accordance with the laws in force in the State of New South Wales and the parties agree to submit to the exclusive jurisdiction of the courts of that State.

## 10.7 No waiver

No waiver by the Licensee, AMCOS, APRA, ARIA or PPCA of any breach of any provision of this agreement shall operate as a waiver of another breach of the same or of any other provision of this agreement.

## 10.8 Notices

- 10.8.1 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 addressee.
- 10.8.2 A notice is to be regarded as given:
- if delivered in writing to the street address of the addressee, at the time of delivery;
  - if sent by post to the street address of the addressee, on the 3rd day after posting; or
  - if sent by facsimile to the facsimile number of the addressee, at the time transmission is completed.
- 10.8.3 Proof of the sending of a notice by facsimile and the time of completion of transmission may be established by 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.

OFFICE USE ONLY

### SIGNED AS AGREED BY APRA AMCOS

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

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
CLIENT NO.

\_\_\_\_\_  
GST EXCLUSIVE FEE

\_\_\_\_\_  
RECEIVED

\_\_\_\_\_  
PREMISES TYPE CODE