

**APRA|AMCOS MINI ONLINE LICENCE AGREEMENT**

**THIS AGREEMENT IS MADE ON**

**2013**

**PART A**

**AUSTRALASIAN PERFORMING RIGHT ASSOCIATION LIMITED** ABN 42 000 016 099 **(APRA)**  
and  
**AUSTRALASIAN MECHANICAL COPYRIGHT OWNERS SOCIETY LIMITED** ABN 78 001 678  
851 **(AMCOS)**  
both of 16 Mountain Street, Ultimo, New South Wales

**LICENSEE INFORMATION**

**Name of Licensee: sole trader/registered company** .....  
..... **(you)**

**ABN:** .....

**Address:** .....  
.....

**Contact:** .....

**Email Address:** .....

**Phone Number:** .....

**Commencement Date:** .....

**Name of Your Online Service:** .....

**URL:** .....

**Licence Fees:**

Tier A = \$250 | Tier B = \$500 | Tier C = \$1,000  
per Licence Year, or part thereof, for each category of music use, plus GST

### Service type and Usage

Please circle A, B or C for each category of music use that applies to Your Online Service

**On Demand Streaming (Individual Tracks)** Streamed individual Tracks - no interactivity i.e. no playlists.

A	B	C
<150,000 Streams p.a.	<375,000 Streams p.a.	<750,000 Streams p.a.

**On Demand Services:** streamed DJ mixes, Webcast archives, music news programs - no interactivity.  
1 session = 1 User, per hour or part thereof.

A	B	C
<18,000 sessions p.a.	<45,000 sessions p.a.	<90,000 sessions p.a.

**Live Webcasting:** Streamed Webcasts received simultaneously by all Users.  
1 session = 1 User, per hour or part thereof.

A	B	C
<18,000 sessions p.a.	<45,000 sessions p.a.	<90,000 sessions p.a.

**Podcasts (Featured Music):** Podcasts with no more than 80% music use, by duration.

A	B	C
<55,000 Downloads p.a.	<140,000 Downloads p.a.	<300,000 Downloads p.a.

**Podcasts (Minimal Music):** Podcasts with no more than 40% music use, by duration.

A	B	C
<110,000 Downloads p.a.	<280,000 Downloads p.a.	<600,000 Downloads p.a.

**Entertainment/Audio-Visual Streaming Service** Streamed general a/v entertainment content with < 50% music use.  
1 session = 1 User, per hour or part thereof. Excludes Synchronisations.

A	B	C
<27,000 sessions p.a.	<67,500 sessions p.a.	<135,000 sessions p.a.

**Looped Background Music** loop with at least 3, but less than 15 Tracks that play randomly each time the webpage is accessed.

A	B	C
<10,000 unique Users p.a.	<30,000 unique Users p.a.	<80,000 unique Users p.a.

**Clip Service & Movie Previews** streamed Clips and/or Movie Previews not linked to the sale of Downloads.

A	B	C
<1,250 Clips/Movie Previews p.a.	<3,125 Clips/Movie Previews p.a.	<6,250 Clips/Movie Previews p.a.

**Semi-Interactive Music Service** Streamed Tracks with limited interactivity - i.e. skip/pause - but no playlist functionality.

A	B	C
<75,000 Streams p.a.	<200,000 Streams p.a.	<450,000 Streams p.a.

**Interactive Music Service** Users can determine the order in which individual Tracks are streamed.

A	B	C
<37,500 Streams p.a.	<85,000 Streams p.a.	<190,000 Streams p.a.

## PART B

### 1. Definitions

**Advertisement** means any material which is designed to attract the attention of the public or any part of it to a product or service, person, organisation or line of conduct;

**Agreed Rate** means the benchmark rate published by the National Australia Bank Limited plus 2%, calculated at daily rests from the due date to the date of payment;

**AMCOS Work** means a Work in respect of which AMCOS is entitled to administer the right of reproduction, or represents to you that it is entitled to grant a licence;

**APRA Work** means a Work in respect of which the right of Communication to the public is owned or controlled by APRA for Australia, or APRA represents to you that it is entitled to grant a licence;

**Clip** means a Stream which when played back at normal speed in an uncompressed format on a Device is no more than 30 seconds in duration;

**Communicate** has the same meaning as in the *Copyright Act 1968*;

**Device** means any device that is capable of receiving and displaying audio or audio-visual content;

**Download** means a copy of an audio or audio-visual recording of at least one Work in the form of an electronic file in which sounds are embodied;

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

**Gross Revenue** means all monies and the monetary value of all benefits receivable directly or indirectly by you or on your behalf, wherever receivable, in connection with the delivery of Your Service and other revenue received as a result of the provision of your services such as advertising fees and subscription revenue;

**Licence Year** means any consecutive period of 12 months commencing on the Commencement Date or the anniversary of the Commencement Date during the term of this agreement;

**Movie Preview** means a pre-recorded promotional production for a theatrically released motion picture;

**Music Video** means a cinematograph film produced for the primary purpose of promoting or visually representing:

- (a) the performer of a sound recording; and/or
- (b) the sound recording,

of a Work or Works embodied in the soundtrack of that film;

**Podcast** means an audio-only production, which contains both music and non-music content and is made available as a Download;

**Stream** means the Streaming of a Work;

**Streaming** means the Communication to the public of Works (which may or may not be pre-recorded) either as a stand-alone sound recording or within a content item by means of the internet to a Device under circumstances in which the User is prohibited from making a copy of the Work;

**Synchronisation** means to reproduce Works in the process of making and producing audio-visual recordings;

**Track** means a sound recording of a Work or in the case of Music Videos, the soundtrack (or each part thereof in the case of a long form video) embodying a Work forming part of the film;

**User** means an individual in Australia who receives the Online Service on a Device for his or her own private and domestic use;

**Webcast** means a limited form of Streaming that transmits live and simultaneously all or part of an event, for the simultaneous receipt by Users and with which Users cannot interact or influence content; and

**Work** means a musical work and any literary work normally associated with it by the copyright owner for Australia, and a reference to a Work includes a reference to a share in any such Work.

2. This agreement commences with effect from the Commencement Date and, subject to earlier termination in accordance with clause 17, will continue until terminated by either party on 3 months' notice.
3. APRA and AMCOS (**we, us, our**) grant you a non-exclusive licence to reproduce AMCOS Works, authorise the reproduction of AMCOS Works, and Communicate the APRA Works in Australia, in the form of Streams or Downloads as part of the Online Service, in accordance with this agreement.
4. Nothing in this agreement constitutes the grant of a licence to reproduce a Work that is not an AMCOS Work, or the grant of a licence to Communicate a Work that is not an APRA Work.
5. This agreement:
  - (a) only applies to Your Online Service, as described in Part A of this agreement;
  - (b) does not apply to services that generate AU\$12,000 of Gross Revenue (excluding GST) in any given Licence Year, exceed the maximum number of Streams or Downloads set out in Part A, or are provided other than to Users.
  - (c) does not include the right to Synchronise AMCOS Works with any audio-visual material, including but not limited to Music Videos, or still images;
  - (d) does not include the right to reproduce or Communicate to the public any Work in a manner that represents that particular Works or groups of Works identified by songwriter or title are associated with or promotes the sale or provision of any goods or services, or any person, organisation or line of conduct;
  - (e) does not include the right to:
    - (i) reproduce any Work into an Advertisement;
    - (ii) reproduce or Communicate to the public any Work in circumstances where there is consideration for the Stream or Download or the right to receive the Streaming or Download, that does not consist wholly of money;
    - (iii) reproduce or Communicate to the public any Work with words that are not approved or

normally associated with the Work by the copyright owner for Australia;

- (iv) perform in public or Communicate to the public any Grand Right Works in their entirety, unless the Communication is of a commercially released soundtrack album of a theatrical production or a cinematograph film of Grand Right Works;
  - (v) perform in public or Communicate to the public any choral work of more than 20 minutes' duration in its entirety, unless the Communication is of a commercially released soundtrack of such a choral work; or
  - (vi) perform in public, Communicate to the public or reproduce any sound recording or cinematograph film.
6. Nothing in this agreement constitutes a consent by the authors of Works in relation to any act contrary to the author's moral rights.
  7. If Your Online Service generates AU\$12,000 (excluding GST) Gross Revenue or more in any given Licence Year, exceeds the maximum usage limits in Part A of this agreement, or is made available other than to Users, you must notify APRA|AMCOS within 21 days, and APRA|AMCOS may terminate the agreement on receipt of such notice.
  8. At any time during the term of this agreement, we can request that you provide information relating to the number of Streams, music hours streamed, Downloads, Users, Gross Revenue or other information reasonably required within 30 days of the request.
  9. If you fail to comply with clause 8, we may reasonably estimate the information to be provided under that clause, including by reference to relevant previous information provided by you, for the purpose of issuing a tax invoice.
  10. You must pay us the Licence Fee set out in Part A of this agreement for each type of Service you operate, each Licence Year. This agreement will not be valid in any Licence Year until the Licence Fee has been received by us.
  11. You must, within 14 days of the Commencement Date and each anniversary of the Commencement Date, and receipt of a tax invoice, pay us Licence Fees for that Licence Year. 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.
  12. The payments specified in this agreement must be made to us in Australian currency and net of all withholding and similar taxes and you must pay to the relevant taxation authority all such taxes, in addition to the payments specified in this agreement to be made to us.
  13. If a third party approaches you and claims the right to receive licence fees payable in relation to a Work, you must notify us in writing within 7 days of such claim. We will continue to issue tax invoices in respect of your use of the Work until such time as the matter is resolved.
  14. We must notify you of any Works that cease to be APRA Works or AMCOS Works for the purposes of this agreement, other than by reason of falling into the public domain. If we notify you that a work is no longer an APRA Work or an AMCOS Work for the purposes of this agreement, you will cease to be licensed under this agreement in respect of the reproduction or Communication of the Work (as the case may be), from the date specified in the notice.
  15. You must keep proper records relating to Your Online Service including but not limited to accounting records and the information to be provided under clause 9. We may on 30 days' notice to you during your normal business hours at your principal place of business appoint a nationally recognised independent accountant or auditor who is approved by you, such approval not to be unreasonably withheld, to examine your records to determine the correctness of any declaration, notice or payment supplied or made under this agreement. You must pay the reasonable cost of the audit or examination if it establishes that the information provided by you resulted in the amounts payable under the Terms being understated by more than 5%.
  16. Disputes under this agreement may be referred by you to the dispute resolution procedure offered by us in accordance with the terms of APRA's authorisations under the *Consumer and Competition Act 2010* or other dispute resolution mechanism as agreed between the parties.
  17. If a party (**Defaulting Party**):
    - (a) 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;
    - (b) fails to remedy a breach of its obligations under this agreement which is capable of remedy within 21 days of notice of the breach; or
    - (c) materially breaches any of its obligations under this agreement which is not capable of remedy,the other party may, by notice to the Defaulting Party, terminate this agreement.
  18. All notices required to be given under this agreement must be sent in writing by email to the parties at the addresses set out in this agreement or to such other address as any party may notify in writing from time to time. Notices will be deemed to have been received on the day of sending.
  19. This agreement must be construed in accordance with the laws for the time being in force in the State of New South Wales.
  20. A party may only assign a right under this agreement with the prior written consent of the other party.

**SIGNED AS AN AGREEMENT**

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

\_\_\_\_\_  
Signature of authorised person

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Office held

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Name of authorised person

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

\_\_\_\_\_  
Signature of authorised person

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Office held

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Name of authorised person

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Signed for and on behalf of the **Licensee** in the presence of:

\_\_\_\_\_  
Signature of authorised person

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Office held (print)

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Name of authorised person (print)