

**PPCA STANDARD TERMS AND CONDITIONS FOR LICENCE FOR PUBLIC USE OF
PROTECTED SOUND RECORDINGS**

**TERMS AND CONDITIONS - Licence for public use of protect sounds recordings and/or
music videos**

1. DEFINITIONS

1.1 In this Agreement:

- (a) **Agreement** means these Terms and Conditions, the Licence Details (including any Special Conditions noted thereon), Schedule 1 and Schedule 2, and any and all other schedules, attachments and/or annexures.
- (b) **Annual Renewal Date** means the anniversary of the Commencement Date.
- (c) **Commencement Date** means the date specified as such in the Licence Details.
- (d) **Copyright Act** means the Copyright Act 1968 (Cth), as amended from time to time.
- (e) **Exhibit** means cause a Licensed Music Video, in so far as it consists of visual images, to be seen in public and, in so far as it consists of sounds, to be heard in public, and **Exhibition** has a corresponding meaning.
- (f) **Licence** means the licence granted to You under clause 2.1 of this Agreement.
- (g) **Licence Details** means:
 - (i) the form that You completed and provided to PPCA at the time at which You applied for the grant of the Licence, in which You described Your uses of sound recordings and/or music videos, as amended by PPCA to include information relevant to the granting of this Licence in the section of the form marked "PPCA Use Only"; or
 - (ii) any similar form that You completed and provided to PPCA on or about an Annual Renewal Date, in which You provided updated details of Your uses of sound recordings and/or music videos;whichever is the most recent.
- (h) **Licensed Music Video** means a cinematograph film that embodies:
 - (i) a sound recording; or
 - (ii) a sound-track that, if made separately from the cinematograph film, would be a sound recording;

in which the copyright is owned or controlled by a Licensor listed in Schedule 1, in any form including digital or other electronic machine-readable form.

- (i) **Licensed Rights** means such of the following rights as are specified in the Licence Details as being granted to You in accordance with this Agreement (as further limited under clause 2.2).
- (i) the Public Performance Right in the Licensed Sound Recordings;
 - (ii) the Music on Hold Right in the Licensed Sound Recordings; and/or
 - (iii) the right to Exhibit the Licensed Music Videos.
- (j) **Licensed Sound Recording** means a Protected Sound Recording in which the copyright is owned or controlled by a Licensor listed in Schedule 1, and which has been released on a label listed in Schedule 2, in any form including digital or other electronic machine-readable form.
- (k) **Licensor** means a person who owns or controls the copyright in the Territory in a Protected Sound Recording and/or a Licensed Music Video, and who authorises PPCA to grant Licences in accordance with this Agreement.
- (l) **Music on Hold Right** means the right to transmit Licensed Sound Recordings to callers on hold by means of an analogue or digital service or device (whether now in existence or developed in the future), including without limitation a radio, compact disc player, cassette player, computer hard drive or other audio device, used in connection with a telecommunications system.
- (m) **Personal Information** means information or opinion about an individual from which the identity of the individual is apparent or can reasonably be ascertained.
- (n) **PPCA** means Phonographic Performance Company of Australia Limited (ACN 000 680 704).
- (o) **PPCA Tariff Schedule** means the published schedule of tariff classifications and fees (as amended from time to time) under which PPCA grants licences for the public use of Licensed Sound Recordings and Licensed Music Videos. The applicable version of the PPCA Tariff Schedule at any time can be accessed on the Website, or will be made available on request to PPCA.
- (p) **Public Performance Right** means the right to cause Licensed Sound Recordings to be heard in public.
- (q) **Protected Sound Recording** means a sound recording for which the Copyright Act grants a Public Performance Right and/or a Music on Hold Right.
- (r) **Schedule 1** means the list of Licensors published on the Website, as amended from time to time in accordance with clause 2.10.
- (s) **Schedule 2** means the list of labels owned or controlled by the Licensors listed in Schedule 1, as published on the Website, and as amended from time to time in accordance with clause 2.10.

- (t) **Territory** means Australia.
 - (u) **Website** means the PPCA website currently located at www.pcca.com.au and any subsequent website which might replace it.
 - (v) **You** means the person or entity holding the Licence granted under this Agreement, as specified in the Licence Details, and Your has a corresponding meaning.
- 1.2 A word or expression which is not defined in this Agreement, but which is defined in the Copyright Act, has the meaning given to it by that Act.

2. LICENCE

Grant of Licence

- 2.1 Subject to the terms and conditions of this Agreement, PPCA grants You on and from the Commencement Date a non-exclusive licence of the Licensed Rights in the Territory for an initial period of 12 months (**Initial Period**).
- 2.2 For the purposes of clause 2.1, and subject to clause 2.3, the Licence is, unless we inform You to the contrary, limited to those uses, premises, events, times, numbers of users, facilities, vehicles, venues and/or equipment described in the Licence Details (**Your Approved Uses**).

Variation of Licence

- 2.3 If at any time Your use of Licensed Sound Recordings or Licensed Music Videos materially changes from Your Approved Uses, You must notify PPCA in writing within 28 days of that change. In addition to that obligation, You must also notify PPCA of any such changes from Your Approved Uses by completing the Licence Details sections of any re-assessment form sent to You by PPCA prior to an Annual Renewal Date. PPCA may by written notice to You increase the amount of Your licence fee, in accordance with the then applicable PPCA Tariff Schedule, to reflect any such changes in Your Approved Uses (**Revised Fee**). The notification to You of the Revised Licence Fee will constitute a debt due and owing by You to PPCA.
- 2.4 Once You have paid any such Revised Licence Fee, and unless PPCA notifies You to the contrary, the Licence will be extended to include any changes notified to PPCA under clause 2.3 on and from the date that You notified PPCA, and for the purposes of clauses 2.2 and 2.3, Your Approved Uses will be deemed on and from that date to include those changes.

Licence Fee

- 2.5 In consideration of the grant of the Licence for the Initial Period, You must pay PPCA on or before the Commencement Date the licence fee for the Initial Period, as specified in the Licence Details. In consideration of the renewal of the Licence in any subsequent years, You must pay PPCA on or before the Annual Renewal Date the amount of the licence fee for that year, as notified to You by PPCA. PPCA may increase the licence fee payable for any subsequent years in accordance with the PPCA Tariff Schedule that applies on the Annual Renewal Date.
- 2.6 The amount of any licence fee payable under this Agreement is inclusive of GST.

PPCA Warranty

2.7 PPCA warrants that

- (a) it will procure that each of the Licensors, as applicable, will at all times keep You harmless and indemnified against all claims, demands, damages, costs, charges and expenses which may be made against You, or which You may suffer or incur at the suit of any third party arising out of any defect in the title of that Licensor in respect of the Licensed Rights, provided that:
 - (i) such claim or demand did not arise out of the exercise of any Licensed Rights, in respect of which, at the time or times of such exercise, the Licence had been withdrawn pursuant to clauses 2.10, 2.11 or terminated pursuant to clause 3;
 - (ii) You notify PPCA within 7 days of becoming aware of any such claim or demand being made or threatened; and
 - (iii) You make no admission of liability and take no action that might prejudice the position of PPCA, the Licensor which purports to either own or control the Licensed Rights (the Relevant Licensor) or of any persons owning or having any interest in the Sound Recording(s) concerned, without the prior written consent of PPCA or the Relevant Licensor;
 - (iv) any one or both of PPCA or the Relevant Licensor will be entitled to conduct at their own cost and expense all negotiations in respect of any such claim or demand and any proceedings that may arise from it, and to contest, settle or otherwise deal with any such claim or demand or proceeding as PPCA or the Relevant Licensor may in its absolute discretion determine. You must, if and when so reasonably required by PPCA or the Relevant Licensor, provide PPCA or the Relevant Licensor, as applicable, with such evidence relating to any matter arising out of any such claim or demand or proceeding as You may have at your disposal and attend and give evidence at any court hearing or other inquiry, provided that PPCA or the Relevant Licensor, as applicable, compensates You for all reasonable costs, expenses and labour time incurred; and
 - (v) PPCA must, within fourteen (14) days after being notified by You of any claim or demand having been made or threatened as provided in paragraph (a) (ii), inform You in writing of the name and address of the Relevant Licensor. PPCA will in all cases liaise directly with the Relevant Licensor on any such claim or demand and their response.

Limitations on Licence

2.8 This Licence does not authorise or permit You to:

- (a) use any Licensed Sound Recording or Licensed Music Video for the purpose of a broadcast on radio or television, or for any form of transmission or making available over the Internet, or in any circumstances other than Your Approved Uses;
- (b) duplicate, dub, transfer or otherwise copy or reproduce, by any means or in any medium (whether digital or analogue, and whether now in existence or developed in the future), the whole or any part of a Licensed Sound Recording or Licensed Music Video for any purpose whatsoever;
- (c) use any Licensed Sound Recording or Licensed Music Video prior to the date on which it is first published in Australia;

- (d) Exhibit any Licensed Music Video prior to the date on which the sound recording embodied in the Licensed Music Video is first published in Australia; or
 - (e) cause to be heard in public, or to be communicated to the public (including without limitation by any form of electronic transmission or making available over the Internet), independently of the Exhibition of a Licensed Music Video in accordance with this Agreement, any Protected Sound Recording embodied in a Licensed Music Video.
- 2.9 Nothing in this Agreement grants You any rights in relation to any musical, literary or artistic works, or any other copyright-protected subject matter, embodied or reproduced in a Licensed Sound Recording or Licensed Music Video. You acknowledge that if You wish to exploit any such rights, it is Your responsibility to obtain a licence from the owner of copyright in the relevant works, or from an organisation authorised to grant such licences, such as the Australasian Performing Right Association (APRA).
- 2.10 PPCA may at any time amend Schedule 1 by deleting or adding the name of a Licensor or Schedule 2 by deleting or adding the name of a label, and any such amendment takes effect as and from the date on which the amendment is incorporated into Schedule 1 or Schedule 2 and posted on the Website. You acknowledge and agree that if the name of a Licensor is deleted from Schedule 1, or the name of a label is deleted from Schedule 2, then the Licence for Licensed Sound Recordings and/or Licensed Music Videos owned or controlled by that Licensor or released on that label (as the case may be) is withdrawn on and from the date of posting on the Website, and if the name of a Licensor is added to Schedule 1, or the name of a label is added to Schedule 2, then the Licence extends to Licensed Sound Recordings and/or Licensed Music Videos owned or controlled by that Licensor or released on that label (as the case may be) on and from the date of posting on the Website.
- 2.11 PPCA may withdraw the Licence for particular Licensed Sound Recordings or Licensed Music Videos and notify You of such withdrawal. Any such withdrawal takes effect on and from the date on which You receive notification from PPCA of that withdrawal.
- 2.12 If the Licence for a Licensed Sound Recording or Licensed Music Video is withdrawn for any reason, You are not authorised under this Agreement to exercise any rights in that Licensed Sound Recording or Licensed Music Video after the date of withdrawal of the Licence.
- 2.13 This Licence is personal to You. It must not be assigned or sub-licensed except with the written consent of PPCA. For the purposes of this Agreement, an assignment will be deemed to have occurred where You, as a corporation, cease to be controlled (within the meaning of the Corporations Act 2001 (Cth)) by the person or persons who controlled You on the Commencement Date.
- 2.14 Nothing in this Agreement prevents You from seeking or obtaining a licence authorising You to exercise any rights in relation to sound recordings or music videos from any other party holding or retaining such rights (including the rights) and authorised to negotiate and grant such a licence, including the Licensors listed in Schedule 1.
- 2.15 You acknowledge that, notwithstanding this Licence, any person can, subject to certain conditions, avail themselves of the statutory licence under section 108 of the Copyright Act to cause sound recordings to be heard in public if they have paid an agreed amount to the owner of copyright in the recording or have given an undertaking to the copyright owner to pay such amount as is determined by the Copyright Tribunal under section 151 of the Copyright Act. The terms of these provisions of the Copyright Act are set out in full on the Website, or will be made available on request to PPCA.

3. TERM AND TERMINATION

- 3.1 On each Annual Renewal Date, unless this Licence is terminated by PPCA or by You pursuant to clause 3.2, and provided You pay the amount of the licence fee notified to You by PPCA in accordance with clause 2.5, the Licence will be automatically renewed for a further period of 12 months (**Further Period**) on the same terms and conditions (subject to clause 6.5).
- 3.2 Either You or PPCA may terminate this Agreement, at the end of the Initial Period or at the end of any Further Period, by written notice to the other party. A termination notice under this clause must be given to the other party at least two weeks before the relevant Annual Renewal Date and will take effect on and from the Annual Renewal Date.
- 3.3 If You breach any term or condition of this Agreement (including without limitation by failing to pay any amount of money due to PPCA by the relevant due date), PPCA may terminate the Agreement by written notice to You. Any such termination takes effect immediately on notification to You. A termination under this clause does not affect PPCA's right to recover from You any monies due and payable by You under this Agreement, or the right of PPCA or any of the Licensors listed in Schedule 1 to recover any damages they have suffered as a result of the breach.
- 3.4 Notwithstanding any other clause, this Agreement terminates automatically and without notice:
- (a) if You are not a natural person, immediately on the appointment to You of a liquidator or provisional liquidator, receiver or receiver and manager, administrator, or an agent of a mortgagee or immediately on the passing of a resolution or the making of an order for Your winding-up; or
 - (b) if You are a natural person, immediately on You committing an act of bankruptcy or being declared bankrupt, or on You making a composition with creditors.

A termination under this clause does not affect PPCA's right to recover from You any monies due and payable by You under this Agreement.

- 3.5 You must pay to PPCA any expenses, costs, fees, disbursements or other charges reasonably incurred by PPCA in recovering any monies due and payable by You under this Agreement, whether during the term of the Agreement or following the termination of the Agreement, including without limitation any debt collection fees and legal expenses.
- 3.6 If this Agreement is terminated for any reason, You will not be authorised under this Agreement to exercise any rights in any Licensed Sound Recordings or Licensed Music Videos after the date of termination of the Agreement.

Clause 4 has been intentionally removed.

PPCA's Complaints Handling and Dispute Resolution Policy has been updated and expanded since the printing of this application. The current version can now be viewed at www.pcca.com.au.

5. PERSONAL INFORMATION

- 5.1 You acknowledge that PPCA needs to collect Personal Information about You for the purpose of PPCA performing its obligations and exercising its rights under this Agreement (**the Primary Purpose**) and for related purposes. You authorise PPCA to collect, use and disclose Personal Information about You for the Primary Purpose, including without limitation to supply that Personal Information to the Australian Recording Industry Association Limited (**ARIA**) for the purpose of ARIA determining whether any person may require a licence for the reproduction of any sound recording or music video.
- 5.2 You acknowledge that this Agreement may require You to disclose to PPCA Personal Information about individuals from whom You obtain, or to whom You supply, goods or services (**Individual Customers**). It is Your responsibility to ensure that, before disclosing to PPCA any Personal Information about Individual Customers, each such Individual Customer is made aware that:
- (a) You may disclose to PPCA Personal Information about the Individual Customer, including without limitation their name and address, the details of the goods or services You supply to them or obtain from them, and the details of any agreements they have with You;
 - (b) PPCA may collect, use and disclose such Personal Information about the Individual Customer for the Primary Purpose and for related purposes; and
 - (c) PPCA may disclose such Personal Information about the Individual Customer to ARIA for the purpose of ARIA determining whether any person (including the Individual Customer) may require a licence for the reproduction of any sound recording or music video.
- 5.3 You must at all times indemnify and hold PPCA harmless against all claims, demands, damages, costs, charges and expenses (including legal expenses) that may be made against or incurred by PPCA arising out of or in connection with a breach of this clause, including without limitation any amount incurred or paid by PPCA as compensation for loss or damage suffered by any individual as a result of an interference with the privacy of that individual (within the meaning of the Privacy Act 1988 (Cth)).

6. MISCELLANEOUS

- 6.1 This Agreement takes effect when both PPCA and You have executed it.
- 6.2 This Agreement is subject to any Special Conditions that appear in the Agreement Details. In the event of any inconsistency between such Special Conditions and this Agreement, the Special Conditions will prevail, but only to the extent of the inconsistency.
- 6.3 Any notice or other communication to or by a party under this Agreement must be in writing addressed to the other party. Any such notice or communication is deemed to have been received by or served on the recipient:
- (a) if by email, on the day the email is sent (as long as the sender has not received a delivery failure message in relation to that email);
 - (b) if by delivery in person, when delivered to the recipient;
 - (c) if by post, five days from and including the date of postage; or

(d) if by facsimile transmission, when despatched to the recipient;

but if the delivery or receipt is after 4:00 pm (recipient's time), it is deemed to have been received or served on the following day.

- 6.4 All notices to PPCA must be sent to the address specified at the end of this Agreement. All notices to You will be sent to the address specified in the Agreement Details, or to such other address as You notify to PPCA in writing.
- 6.5 You acknowledge and agree that PPCA may amend any or all of the terms and conditions of this Agreement (with the exception of Schedule 1 and Schedule 2, which will only be amended in accordance with clause 2.10) at any time by giving notice to You in accordance with this clause 6 (**Amendment Notice**). If You do not agree with the amended terms and conditions, You may terminate this Agreement by giving notice in writing to PPCA before the date of effect specified in the Amendment Notice. If You continue to exercise any of the Licensed Rights after the date of effect of an Amendment Notice, You will be deemed to have agreed to the amended terms and conditions and You will continue to be bound by this Agreement, as amended.
- 6.6 No waiver by PPCA of a breach of a clause of this Agreement operates as a waiver of any other breach of the same clause or of a breach of any other clause. All rights not expressly granted to You under this Agreement are reserved to PPCA.
- 6.7 This Agreement is deemed to have been made in New South Wales and must be construed, and has effect, according to the laws of that State. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.