

PPCA LICENCE: COMMUNITY RADIO BROADCASTERS (CBAA MEMBERS)

There are 6 easy steps to complete this Agreement:

Step 1

Complete relevant details on page 1. The sections that you need to complete are shaded in grey.

Step 2

Please tick “yes” or “no” in the box at the bottom of page 1 if your radio station simulcasts (ie. streams its broadcasts online). Don't forget to fill in the details on page 10.

Step 3

Read the terms and conditions on pages 2 to 10.

Step 4

Sign and date the Agreement where indicated on page 11.

Step 5

Please make a copy of this Agreement for your files.

Step 6

Return all pages of the signed Agreement to PPCA, by one of the options below:

Post:

PPCA
Business Affairs
PO Box Q20,
Queen Victoria Building,
NSW, 1230

Fax:

(02) 8569 1183

Email:

business.affairs@ppca.com.au

PPCA LICENCE: COMMUNITY RADIO BROADCASTERS (CBAA MEMBERS)

PRIVACY STATEMENT

PPCA respects the privacy of your personal information. We handle your personal information in accordance with the *Privacy Act 1988 (Cth)*. This Privacy Statement explains our policy for handling personal information and should be read in conjunction with our Privacy Policy which provides more detailed information about how we collect, use and store your personal information.

Collection - We need to collect the information requested below for the purpose of entering into this Agreement with you, for the administration of this Agreement, and for closely related business purposes.

Consequences of not providing the information - If you do not provide all of the information requested, it may prevent us from processing or administering your Agreement.

Use and Disclosure - We will use and disclose personal information only for the purposes for which it is collected or in accordance with the Privacy Act, including:

- administering this Agreement;
- maintaining licensing records;

- providing information to PPCA licensees on licensing matters and music industry events and information. *If you do not wish to receive this type of information, please contact our Privacy Officer;*
- providing information to the Community Broadcasting Association Ltd (CBAA) for the purpose of administering the Agreement;
- providing information to third party contractors that provide services or perform functions on our behalf (including debt collection agencies);
- providing information as authorised or required by law; and
- with your consent.

Access – Under the Privacy Act, you have the right to seek access to any personal information that we hold about you, unless we are permitted by law to withhold access to that information. Any requests for access to your personal information should be made in writing to the Privacy Officer at PPCA, PO Box Q20, Queen Victoria Building NSW 1230 or via email: privacy.mail@ppca.com.au. For more information about how we handle your personal information, please refer to our detailed Privacy Policy at www.pcca.com.au.

LICENCE DETAILS			
Item 1 Parties	Phonographic Performance Company of Australia Ltd (ABN 43 000 680 704) (“PPCA”)		
	Street Address: Level 4, 11-17 Buckingham Street, SURRY HILLS, NSW, 2010		
	Postal Address: PO Box Q20, QUEEN VICTORIA BUILDING, NSW, 1230		
	Email: business.affairs@ppca.com.au Telephone: (02) 8569 1100		
	AND		
	Business Name for the Radio Station:		(“You”/ ”Your”)
	ACN:	ABN:	
	Business Postal Address:		
Telephone:		Email:	
Contact Person:			
Item 2 Radio Station Details	Call Sign:		
	<i>list the community radio station to be broadcast, identified by its common name or call sign</i>		
	ACMA Designated Licence Area:		
ACMA Licence Number			
Item 3 Licence	In accordance with the terms of this Agreement, you are granted the Licence/s set out below:		
	(a) Broadcast Licence as set out in Schedule A		
	(b) Simulcast Licence as set out in Schedule B		
	Does your Station Require a Simulcast Licence?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
If you Simulcast your Radio Station, then you will be required to provide the information set out in Schedule C to CBAA as required during the Licence Period.			

Item 4 Licence Commencement Date	1 July 2014				
Item 5 Licence Fee	<p>During the Licence Period, in consideration of the Licence granted by this Agreement, you must pay to PPCA a Licence Fee for each Financial Year, which is calculated as follows:</p> <table border="1"> <tr> <td>(a) Broadcast Licence Fee</td> <td> <p>The greater of:</p> <ul style="list-style-type: none"> • 0.4% of Gross Revenue; or • \$250 (GST exclusive) (Minimum Fee), <p>per Financial Year.</p> </td> </tr> <tr> <td>(b) Simulcast Licence Fee (if CBAA has been advised that you are Simulcasting)</td> <td> <p>\$250 (exclusive of GST) per Financial Year for each Radio Station that Simulcasts PPCA Sound Recordings.</p> </td> </tr> </table> <p>The Minimum Fee and the Simulcast Licence Fee will increase from 1 July 2015 each Financial Year by the percentage increase in the Consumer Price Index (All Groups – 8 cap cities, as published by the Australian Bureau of Statistics).</p>	(a) Broadcast Licence Fee	<p>The greater of:</p> <ul style="list-style-type: none"> • 0.4% of Gross Revenue; or • \$250 (GST exclusive) (Minimum Fee), <p>per Financial Year.</p>	(b) Simulcast Licence Fee (if CBAA has been advised that you are Simulcasting)	<p>\$250 (exclusive of GST) per Financial Year for each Radio Station that Simulcasts PPCA Sound Recordings.</p>
(a) Broadcast Licence Fee	<p>The greater of:</p> <ul style="list-style-type: none"> • 0.4% of Gross Revenue; or • \$250 (GST exclusive) (Minimum Fee), <p>per Financial Year.</p>				
(b) Simulcast Licence Fee (if CBAA has been advised that you are Simulcasting)	<p>\$250 (exclusive of GST) per Financial Year for each Radio Station that Simulcasts PPCA Sound Recordings.</p>				
Item 6 Special Conditions					

LICENCE TERMS

Recitals

- A. PPCA is a collecting society which grants non-exclusive licences for and on behalf of the Licensors for various purposes including licences to Broadcast and Simulcast PPCA Sound Recordings in Australia.
- B. You are the holder of a full time or temporary community radio broadcasting licence pursuant to the Broadcasting Services Act 1992 and a member of the Community Broadcasting Association of Australia (**CBAA**).
- C. You wish to Broadcast, transmit and/or Simulcast PPCA Sound Recordings, and acknowledge that in order to do so, you must either obtain approval from the relevant copyright owners, or you may obtain a non exclusive "one-stop" licence from PPCA.
- D. You acknowledge that CBAA has negotiated the terms and conditions upon which PPCA will grant a non-exclusive licence to Broadcast and Simulcast PPCA Sound Recordings in Australia to those of CBAA's members who elect to participate.
- E. You have elected to participate in the licence negotiated by CBAA with PPCA by executing this Agreement.

1 Acknowledgements

- 1.1** The parties acknowledge and agree that:
- nothing in this Agreement is intended to oust the jurisdiction of the Copyright Tribunal;
 - nothing in this Agreement constitutes evidence that the Licence Fee payable by you under this Agreement appropriately values the rights granted to you by PPCA, or in any way reflects the "market rate" or "going rate"

for a licence of the kind granted to you under this Agreement; and

- if the terms of this Agreement are referred to the Copyright Tribunal, PPCA reserves the right to amend or vary the terms of this Agreement, based on any analysis which PPCA may undertake to value the rights granted to you under this Agreement.

2 Right to Seek Licence Directly From Licensors

- 2.1** Nothing in this Agreement prevents you from seeking or obtaining a licence to Broadcast, transmit or Simulcast (as applicable) any PPCA Sound Recording from any other party authorised to grant such a licence, including the Licensor who owns or controls that PPCA Sound Recording.

3 Licence Period

- 3.1** The Licence commences on the Commencement Date and continues indefinitely subject to termination under clause 13.

4 Licence

- 4.1** Subject to your compliance with all of the terms and conditions set out in this Agreement, PPCA grants to you:
- a Broadcast Licence to do the acts described in Schedule A of this Agreement; and
 - if advised to CBAA, a Simulcast Licence, to do the acts set out in Schedule B of this Agreement.
- 4.2** This Licence is only applicable to you during the Licence Period whilst you are a member of CBAA. If your membership with CBAA terminates or otherwise concludes during the Licence Period, then:

- (i) this Agreement will terminate with effect from the date that you cease to be a member of CBAA;
- (ii) you will be required to obtain a separate licence to Broadcast, transmit sound recordings as “music on hold” and if applicable, Simulcast sound recordings from the relevant sound recording copyright owners or from an organisation authorised to issue such licences such as PPCA; and
- (iii) you will not be entitled to a refund for any Licence Fees paid by you prior to the date of termination.

To avoid doubt, the terms of clause 13.4 of the Agreement will apply.

4.3 You agree to use the PPCA Sound Recordings only for the purposes set out in clause 4.1 and strictly in accordance with the terms of this Agreement.

5 Licence Exclusions

5.1 The Licence does not authorise you to:

- (i) reproduce, transmit, distribute, communicate to the public or otherwise use any PPCA Sound Recordings for a purpose other than as set out in Schedule A and if applicable, Schedule B;
- (ii) reproduce, transmit, distribute, communicate to the public or otherwise use any sound recording that is not a PPCA Sound Recording (in which case you must obtain separate permission from the copyright owner);
- (iii) reproduce, adapt, edit, remix, add to or delete from the PPCA Sound Recording;
- (iv) debase the PPCA Sound Recordings or subject the PPCA Sound Recordings to derogatory treatment;
- (v) reproduce, transmit, distribute, communicate to the public or otherwise use any Music Videos; and
- (vi) sub-license any rights granted to you by PPCA under this Agreement. Notwithstanding the foregoing, if you have been granted the right to Simulcast PPCA Sound Recordings, you may sub-license the Simulcast of the Radio Station under the Radio Station’s brand name via third party websites, provided that the Streams continue to be communicated from your server, included within your Reports and subject to approval of such third party website by PPCA.

5.2 This Agreement does not authorise you to use any musical, literary or artistic works, or any other copyright-protected subject matter, which may be embodied in a PPCA Sound Recording. If you wish to use any such works or other subject matter, you must obtain a separate licence from the copyright owner or from an organisation authorised to grant such licences, such as APRA.

5.3 This Agreement is intended to permit the Broadcast and transmission of PPCA Sound Recordings and if advised by you, the Simulcast of PPCA Sound Recordings but it does not authorise the reproduction or storage of PPCA Sound Recordings for any purpose. If you wish to reproduce or store sound recordings for any purpose other than under section 107 of the Act, you acknowledge that a licence is required to do so.

6 Your Obligations

6.1 Whenever you are using PPCA Sound Recordings under this Agreement, you must:

- (i) comply with all laws, regulations, codes, guidelines and directions of regulators that may be applicable to you;
- (ii) not do or say anything (including by way of advertising or promoting your business or commercial activities or those of another person) which might suggest that PPCA, a Licensor, an artist and/or any other person involved with the PPCA Sound Recordings approves or endorses, or is in some other way connected with, you or another person, or with your respective business or commercial activities;
- (iii) not do or say anything in relation to the PPCA Sound Recordings which might otherwise be regarded as misleading or deceptive, or which someone might regard as threatening, abusive, invasive of an individual’s privacy, harassing, defamatory, vulgar, obscene, hateful, racist or otherwise objectionable;
- (iv) not use, reproduce, transmit, Broadcast or Simulcast if applicable, any PPCA Sound Recording before it has been published in Australia or before the expiration of seven (7) weeks after the date of first publication of that recording outside Australia, whichever is the earlier;
- (v) use your best endeavours to announce the name of the artist or band and the title of each PPCA Sound Recording either immediately before or after the Broadcast of such PPCA Sound Recording or in as close proximity as possible to the time of such Broadcast; and
- (vi) not use an Infringing Copy of any PPCA Sound Recording.

6.2 Nothing in this Agreement is to be taken as any form of authorisation or approval for you to develop or communicate to the public a program or service which promotes a particular artist or artists. You must obtain any necessary authorisation or approval for such a program or service from the relevant artist or artists and/or the appropriate copyright owner. You agree to use best endeavours to ensure that a program (or any segment) or a format dedicated solely or predominantly to sound recordings embodying performances of a single artist and/or produced or distributed by a single Licensor are not broadcast by you without first contacting that Licensor as far in advance as reasonably practicable.

6.3 You agree to notify CBAA within 30 days of any change in the URL or location of the Radio Station Website, call sign, frequency or other broadcast identifier in respect of which this Licence is granted. CBAA will then notify PPCA on your behalf in relation to this change.

6.4 You will comply with *Code 5: Australian Music* as set out in the Community Radio Codes of Practice (dated October 2008 or any amended version) (the **Code**). Unless otherwise specified in the Code, you must Broadcast on the Radio Station:

- (i) 25% of Australian music, except for ethnic and classical music stations, and
- (ii) 10% of Australian music for ethnic and classical music stations.

6.5 Simulcast Licence Notification Process

- (i) Upon execution of this Agreement, you must advise CBAA as to whether you require a Simulcast Licence. A copy of the Simulcast Notification form is accessible on the PPCA website and will include the information set out in Schedule C. If you have indicated that you require a Simulcast Licence and paid the Simulcast Licence Fee, then the grant of a Simulcast Licence from PPCA will continue until terminated under this Agreement or until you advise CBAA that you no longer require a Simulcast Licence in accordance with clause 9.1(ii)(A) and Schedule C. Any notification provided to CBAA under this clause must be provided in writing each year during the Licence Period and must include the information in Schedule C. CBAA will share this information with PPCA.
- (ii) You must advise CBAA if subsequent to the execution of this Agreement, you wish to commence Simulcasting by completing the Simulcast Notification form. A Simulcast Licence will not be granted to you until you have advised CBAA and pay the Simulcast Licence Fee for that Financial Year. You will be required to pay the Simulcast Licence Fee in its entirety for the Financial Year. You will not be entitled to a pro-rata Simulcast Licence Fee.

7 Protection of PPCA Sound Recordings

7.1 You must:

- (i) not (unless permitted by law), remove or interfere with, or seek to remove or interfere with (**Interference**) any technical measures that are used by a Licensor to identify or protect a PPCA Sound Recording (including, without limitation, the ISRC embodied in a PPCA Sound Recording). If PPCA becomes aware of any Interference, it will notify you immediately, and:
 - (A) where the cause of the Interference is within your control, you must correct such Interference within seven (7) days of being so notified;
 - (B) where the cause of the Interference is not within your control, you must use your reasonable endeavours to correct the Interference and, in any event, must notify PPCA of the cause of the Interference and provide to PPCA such further information in relation to the Interference as PPCA may reasonably request; and
- (ii) not do anything that might, directly or indirectly, promote, induce or encourage any person to do any of the acts described in clause 7.1(i).

7.2 Without limiting your obligations under clause 7.1, if at any time during the Licence Period PPCA becomes aware of any technologies or practices that are reasonably capable of preventing or limiting Users from doing any of the acts described in clause 7.1(i) (**Protection Measures**), PPCA may give you a written notice requiring you to implement the Protection Measures in connection with the Radio Station provided that such Protection Measures do not impose substantial costs or result in perceptible aural degradation of the Broadcast or Simulcast.

7.3 Within 60 days after you receive a notice from PPCA under clause 7.2, or any longer period that you agree with PPCA in writing, you must implement the Protection Measures described in the notice. PPCA may terminate this Agreement under clause 13.2 if you fail to comply with this clause.

8 Changes to Licensors and Labels

8.1 You acknowledge that from time to time during the Licence Period, the catalogue of recordings that are PPCA Sound Recordings may change because:

- (i) new Licensors grant PPCA the rights to license their sound recordings;
- (ii) existing Licensors withdraw or vary their licence in respect of some or all of their sound recordings; or
- (iii) the ownership of labels changes.

8.2 Where sound recordings are added to the list of PPCA Sound Recordings as a result of an event described in clause 8.1, this Licence is deemed to have been varied to include such sound recordings on the day PPCA is notified of the change. PPCA will publish an updated Licensors Schedule and/or Labels Schedule on its Website as soon as practicable thereafter.

8.3 Where sound recordings are removed from the list of PPCA Sound Recordings as a result of an event described in clause 8.1, this Licence is deemed to have been varied to remove such sound recordings at the end of the Quarter in which PPCA publishes an updated Licensors Schedule and/or Labels Schedule on its Website.

8.4 If the Licence for a sound recording is withdrawn for any reason, you are not authorised under this Agreement to Broadcast or communicate that sound recording to Users after the date of withdrawal of the relevant Licensor and/or Label from the Website.

8.5 PPCA makes no warranty or representation that any Licensor, label and/or sound recording is or will continue to be covered by this Agreement for the Licence Period. PPCA will be under no obligation or liability to you or any other person if a Licensor, label and/or sound recording no longer forms part of this Agreement.

9 Licence Fees and Reporting

9.1 In consideration of the rights granted by PPCA to you under this Agreement, you:

- (i) authorise CBAA to collect the Licence Fee from you and remit this Licence Fee to PPCA on your behalf;
- (ii) will provide to CBAA by 30 April following the end of each Financial Year the following:

(A) the Simulcast Notification form set out in Schedule C in relation to Simulcasting. From 1 July 2015 onwards, if you do not provide this form to CBAA, then CBAA and PPCA will presume that there is no change to your Simulcast Licence requirements and the licences that you required in the previous licence year will apply for the upcoming year; and

(B) the audited financial reports. If you are not required to provide audited reports, then you will provide a complete and true written statement signed by your authorised officer (as required by Commonwealth Corporations Law, Australian Charities and Not-for-profits Commission legislation or state incorporation legislation), indicating the amount of Gross Revenue earned by you during the preceding Financial Year.

9.2 If you operate the Radio Station on a calendar and non-Financial Year basis, you may substitute the reports or statements required under clause 9.1 in relation to the



previous calendar year, rather than the previous Financial Year.

- 9.3** You will pay the Licence Fee to CBAA within 90 days of receipt of the tax invoice issued to you by CBAA.
- 9.4** For the purposes of complying with clause 9.1 or 9.2, you will procure that CBAA pays the Licence Fee in accordance with the terms of this Agreement and the PPCA/CBAA Industry Agreement. You also agree that CBAA may provide to PPCA the statements and information referred to in clause 9.1 and 9.2 above for the purpose of PPCA verifying your Licence Fees and administering the Agreement.
- 9.5** Notwithstanding anything to the contrary in this clause 9, payment of the Licence Fee by you to CBAA will not constitute payment to PPCA for the purposes of this clause. Subject to clauses 9.11 and 9.6, you will have complied with your obligation pursuant to clause 9.1 and clause 9.2 only upon receipt of the Licence Fee by PPCA from CBAA, or upon receipt by PPCA of the Licence Fee directly from you.
- 9.6** You agree that if CBAA fails to pay the Licence Fee as set out above for any reason (including termination or expiry of the PPCA/CBAA Industry Agreement), then nothing in this Agreement prevents, restricts or prohibits PPCA from seeking direct payment of the Licence Fee from you.
- 9.7** The Licence Fees are payable by depositing (whether by electronic transfer or otherwise) the full amount due and payable into a bank account nominated by PPCA, or by providing a cheque for the full amount made payable to PPCA. For the avoidance of doubt, you will not be deemed to have paid any amounts due under this clause 9 until PPCA has received those amounts, in full and in cleared funds, in its bank account.
- 9.8** If PPCA determines that you have not paid the correct amount due and payable in respect of a Financial Year (or calendar year), PPCA reserves the right to issue a further tax invoice to CBAA on your behalf, in respect of the outstanding balance.
- 9.9** If this Agreement is terminated or if you cease to Simulcast during the Licence Period, you will not be entitled to receive a refund in respect of any Licence Fees paid by you.
- 9.10** The amount of the Licence Fee is exclusive of any GST which may be payable in respect of the supply of the Licence by PPCA to you. You must pay to PPCA, in addition to the amount of the Licence Fee at the same time and in the same manner, an amount calculated by multiplying the prevailing GST rate by the amount of the Licence Fee.
- 9.11** Any Licence Fee or part thereof which is not paid in accordance with the terms of this clause 9 shall accrue interest as and from the date on which it was payable at a rate of 2 percentage points (2%) above the benchmark rate of the National Australia Bank Limited as published from time to time (or comparable rate as provided by a comparable financial institution, should the National Australia Bank Limited cease to operate, or cease to publish its benchmark rate). Such interest shall be payable in addition to the unpaid Licence Fee (or part thereof).

10 Music Use Reporting and Recordkeeping

10.1 Broadcast Reports

- (i) You agree to provide to PPCA:
- (A) copies of all music use reports supplied by you to APRA in the same format and at the same

time as supplied to APRA and including the information set out in (ii) below; or

- (B) if music use reports are not supplied to APRA, then you agree to provide to PPCA, a music use report in the format specified by PPCA and including the information set out in (ii) below for a period identified by PPCA of no more than 4 weeks duration. PPCA will provide you with no less than 28 days written notice of your obligation to collate and provide such music use reports to PPCA.

(ii) The music use reports must include the following information:

- the track title;
- the artist;
- the record label;
- the record company (if available);
- ISRC (if available);
- the duration of each track; and
- the number of times each such PPCA Sound Recording was Broadcast in the period covered by the music use reports.

10.2 Simulcast Reports

If you Simulcast PPCA Sound Recordings and you:

- (i) are able to report on the number of Streams that are Simulcast, then for each Quarter, you must provide a report which includes a complete log of all PPCA Sound Recordings that were Streamed to Users as part of a Simulcast during the relevant Quarter. For each PPCA Sound Recording, the relevant entry in the Report must identify:
- the track title;
 - the artist;
 - the record label;
 - the record company (if available);
 - the ISRC (if available); and
 - the total number of Streams of that PPCA Sound Recording during the relevant Quarter. For the avoidance of doubt, one PPCA Sound Recording communicated (in whole or in part) to one User equals one Stream,
- (ii) are unable to report on the number of Streams that are Simulcast, then you are not required to provide a Simulcast Report to PPCA. However you agree to keep PPCA informed as to your progress with respect to development of your Simulcast reporting capabilities during the Licence Period and, when such capabilities become available to you, you agree to engage with PPCA in relation to the provision of these reports.

10.3 You must provide an electronic copy of the Reports to PPCA by email in excel format.

10.4 Throughout the Licence Period, and for at least two years after the expiry or termination of this Agreement, you must keep comprehensive financial, operational and technical records relating to the Broadcast and Simulcast (if you have a

Simulcast Licence) (**Records**), including all records necessary to verify the accuracy of the Reports you have submitted to PPCA.

11 Inspections

- 11.1** If PPCA notifies you in writing that it wishes to inspect your Records, you must within 14 days (or a period of up to 30 days at PPCA's discretion), provide PPCA or its nominated third party representative with reasonable access to the Records at your business premises during normal working hours. You must also provide PPCA or its representative with reasonable assistance in connection with any inspection of the Records.
- 11.2** If as a result of an inspection under clause 11.1, PPCA determines that you have failed to comply with any of your obligations under this Agreement, PPCA may give you a written notice directing you to take such steps that PPCA considers reasonably necessary to remedy any such non-compliance.
- 11.3** You must comply with PPCA's directions as soon as reasonably practicable, but in any event within 14 days following the date of the notice.
- 11.4** PPCA will bear its own costs of an inspection under clause 11.1 (including the costs of engaging any third party representative) unless any underpayment referred to in clause 11.2 exceeds five percent (5%) of the correct amount that was due and payable to PPCA in respect of the period covered by the inspection, or the inspection reveals any material non-compliance with your obligations under this Agreement, in which case you must reimburse PPCA for its reasonable costs of the inspection (including PPCA's costs of engaging any third party representative).
- 11.5** You acknowledge that PPCA is entitled to supply information discovered during any inspection of your Records to the Licensors.

12 Confidentiality

PPCA will keep the Confidential Information confidential at all times, and will take reasonable steps to protect the Confidential Information against unauthorised use or disclosure. PPCA will not use or disclose Confidential Information except for purposes connected with this Agreement (including PPCA liaising with CBAA, PPCA making distributions of licence fees, reporting to its Licensors and registered artists or for the collation and submission of evidence for the purpose of legal proceedings), unless:

- (i) PPCA has your prior written consent to use or disclose Confidential Information for another purpose;
- (ii) PPCA is required by law to use or disclose Confidential Information for another purpose; or
- (iii) PPCA uses or discloses Confidential Information for the purpose of seeking legal, financial or other professional advice, but only in circumstances where PPCA's professional advisers are subject to an obligation of confidentiality in respect of the Confidential Information disclosed to them.

13 Termination

- 13.1** Either party may terminate this Agreement at any time on 90 days written notice to the other (**Notice Period**), such termination to take effect at the end of the Quarter following the expiry of the Notice Period.

- 13.2** PPCA may terminate this Agreement by giving you 60 days' written notice if you have failed to implement any Protection Measures that PPCA requires you to implement under clause 7.3.

- 13.3** PPCA may terminate this Agreement with immediate effect by giving you a written notice if:

- (i) you breach any of the terms or conditions of this Agreement, and PPCA reasonably considers that the breach is not capable of remedy;
- (ii) you breach any of the terms or conditions of this Agreement (including by failing to pay the Licence Fees when they fall due) and the breach is capable of remedy, but you fail to remedy the breach within 14 days following receipt of a written notice from PPCA requiring you to do so;
- (iii) in the course of your activities under or in connection with this Agreement, you infringe the copyright or other intellectual property rights of any third party, including a Licensor;
- (iv) you are no longer licensed or otherwise authorised for any reason to Simulcast or Broadcast PPCA Sound Recordings on the Radio Station;
- (v) CBAA fails to remit the Licence Fees to PPCA in accordance with the terms of the PPCA – CBAA Industry Agreement and after 14 days of notice from you requiring CBAA to remit the payment to PPCA, CBAA fails to remit the payment;
- (vi) you cease to be a member of CBAA or the PPCA/CBAA Industry Agreement is terminated; or
- (vii) any of the following events occurs in relation to you:
 - (A) an application is made to a court for an order, or an order is made, that you be wound up or declared bankrupt, or that a provisional liquidator, receiver or receiver and manager be appointed;
 - (B) a liquidator, provisional liquidator, receiver, receiver and manager or administrator is appointed to you or any of your assets; or
 - (C) you propose a winding-up, dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving any of your creditors.

- 13.4** If this Agreement expires or is terminated for any reason:

- (i) you must not use the PPCA Sound Recordings in connection with the Radio Station without the necessary alternative licence or licences in place;
- (ii) the expiry or termination does not affect PPCA's right to recover from you any amounts due and payable under this Agreement, or to take any other action (including claiming damages) which PPCA considers appropriate in relation to any breach of your obligations under the Agreement;
- (iii) you will remit to CBAA, a pro-rata proportion of the Broadcast Licence Fee payable in respect of the Quarter during which the termination occurred, calculated from the commencement of that Quarter up to and including the date of termination. You will not be entitled to remit a pro-rata proportion of the Simulcast Licence Fee; and

(iv) clause 4.2 will apply.

14 General

14.1 You must indemnify and hold harmless PPCA and the Licensors, and their respective directors, officers, employees, agents and contractors (each a **PPCA Indemnified Person**), from and against any claims, demands, actions, proceedings, damages (including additional, exemplary or punitive damages), liabilities, penalties, costs and expenses (including legal fees on a solicitor-client basis) which are suffered or incurred by a PPCA Indemnified Person in connection with any claim by a third party that arises directly or indirectly out of or as a result of:

- (i) any breach of, or failure to comply with, your obligations under this Agreement;
- (ii) any unauthorised use by you, or at your direction, of any sound recording (including a PPCA Sound Recording) or other copyright-protected material; or
- (iii) any breach by you, or at your direction, of any applicable laws, regulations, codes or directions of regulatory authorities.

14.2 You warrant that:

- (i) this Agreement has been duly executed and delivered by you and constitutes legal, valid and binding obligations on you, enforceable against you in accordance with the terms of this Agreement; and
- (ii) you can pay your debts as and when they fall due.

14.3 PPCA warrants that:

- (i) it is a company duly formed and subsisting under the laws of New South Wales;
- (ii) this Agreement has been duly executed and delivered by PPCA and constitutes legal, valid and binding obligations on PPCA, enforceable against it in accordance with the terms of this Agreement; and
- (iii) it has the right to license to you the right to Broadcast, transmit and Simulcast (if applicable) PPCA Sound Recordings in Australia for the Licence Period in accordance with this Agreement.

Notwithstanding the foregoing, you acknowledge that PPCA makes no warranty or representation about any rights other than the non-exclusive right to Broadcast, transmit or if applicable, Simulcast PPCA Sound Recordings, and acknowledges that the PPCA will be under no obligation or liability to you or any other person in respect of rights other than these rights.

14.4 The Licence is personal to you. You must not assign, sub-license or otherwise deal with the Licence, or any of your other rights under this Agreement, without the prior written consent of PPCA. For the purposes of this clause, you will be deemed to have assigned the Licence if you 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.

14.5 This Agreement is subject to any Special Conditions. In the event of any inconsistency between the Special Conditions and these Licence Terms, the Special Conditions will prevail to the extent of the inconsistency.

14.6 This Agreement (including the Licence Details and these Licence Terms) is the entire Agreement between the parties

about its subject matter and replaces all previous agreements, understandings, representations and warranties about that subject matter.

14.7 If either party wishes to send a notice to the other party, it must be in writing and either sent to the address, the fax number or email address, specified for that party in Item 1 of the Licence Details. A notice sent in accordance with this clause 14.7 is deemed to have been received:

- (i) if sent by post, four working days from and including the date of postage; and
- (ii) if sent by fax or email, on the day the fax or email is sent (provided the sender has not received a delivery failure message in relation to that fax or email),

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

14.8 This Agreement is governed by the laws of New South Wales. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New South Wales.

14.9 Any term of this Agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity or enforceability of the remainder of this Agreement is not affected.

14.10 A waiver by either party in respect of any breach of a condition or provision of this Agreement will not be deemed to be a waiver in respect of any continuing or subsequent breach of that provision, or breach of any other provision. The failure of either party to enforce at any time any of the provisions of this Agreement will in no way be interpreted as a waiver of such provision. Nothing in this Agreement operates to waive or otherwise affect any rights or obligations of the parties which may have arisen or accrued under a previous licence agreement, or with respect to the past operations of you or the Radio Station including the past unauthorised Broadcast or Simulcast of protected sound recordings.

14.11 The parties agree that any dispute or disagreement arising out of or relating to this Agreement will be handled in accordance with PPCA's *Complaint Handling and Dispute Resolution Policy*, as published on the Website from time to time.

15 Definitions and Interpretation

15.1 In this Agreement:

Act means the *Copyright Act 1968* (Cth), as amended from time to time.

APRA means the Australasian Performing Right Association Limited (ABN 42 000 016 099).

Broadcast means a communication of radio programs and other content to the public which is delivered by the Radio Station using the Broadcasting Services Bands, but excludes, for the avoidance of doubt, any simultaneous communication of the same content using any means other than the Broadcasting Services Bands.

Broadcast Licence Fee means the fee set out in Item 5(a) of the Licence Details.

Broadcasting Services Bands has the meaning given to that term in section 6(1) of the *Broadcasting Services Act 1992* (Cth).



Bundled Service means a package of services or products which includes the Simulcast provided to Users by you or any third party, whether or not for a fee or other consideration.

CBAA means Community Broadcasting Association of Australia.

Commencement Date means the date specified in Item 4 of the Licence Details.

Community Radio Broadcasting Service means a service licensed as such within the meaning of section 15 of the *Broadcasting Services Act 1992* as amended from time to time.

Confidential Information means:

- (i) the information you provide to PPCA in a Report; and
- (ii) any information that PPCA acquires as a result of an inspection of your Records under clause 11,

but does not include any information that is in the public domain at the time it is used or disclosed by PPCA.

Financial Year means a financial year commencing on 1 July and ending on 30 June.

Gross Revenue means your gross revenue as stipulated in your audited accounts, and if for whatever reason your accounts are not audited, gross revenue, relating to any aspects of the Radio Station's business, without deduction of any kind, including receipts from:

- (i) Advertising and sponsorship,
- (ii) Government or non government grants,
- (iii) the Community Broadcasting Foundation,
- (iv) subscriptions, membership fees, radiothons and other listener based funding,
- (v) Station CD sales, including usage of the Radio Station's name, image, trademark or logo, and
- (vi) Sale of airtime to third parties,

whether or not this revenue is in the nature of cash, contra, goods in kind or other offsetting arrangements. Where consideration is provided in a form other than cash, the monetary value of that consideration will be included.

GST means a goods and services tax or similar value added tax levied or imposed under the GST Law.

GST Law has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Infringing Copy means an infringing copy as defined in section 10(1) of the Act as amended from time to time.

ISRC means International Standard Recordings Code.

Labels Schedule means the list of labels owned or controlled by the Licensors listed in the Licensors Schedule, as published on the Website and amended from time to time.

Licence means the licence granted under clause 4.

Licence Details means the Licence Details form identified as such which the parties have signed, and to which these Licence Terms are attached.

Licence Fee means the amount payable to PPCA for the Licence, calculated in accordance with Item 5 of the Licence Details.

Licence Period means the period set out in clause 3.

Licensor means a person that owns or controls the copyright for Australia in sound recordings, and that has authorised PPCA to grant Licences of those sound recordings.

Licensors Schedule means the list of Licensors published on the Website and amended from time to time.

Music Video means a cinematograph film that embodies a sound recording or a soundtrack which, if made separately from the cinematograph film, would be a sound recording.

PPCA/CBAA Industry Agreement means the agreement between PPCA and CBAA as amended from time to time, intended to facilitate an industry wide licensing and collection scheme for community broadcasting stations.

PPCA Sound Recording means a sound recording in which the copyright is owned or controlled by a Licensor listed in the Licensors Schedule, and which has been released on a label listed in the Labels Schedule.

Protection Measures has the meaning given by clause 7.2.

Quarter means successive periods of three months ending on 31 March, 30 June, 30 September and 31 December in each Financial Year during the Licence Period.

Radio Station means the analogue and/or digital terrestrial radio broadcasting service identified in Item 2 of the Licence Details which:

- (i) is licensed under the Broadcasting Services Act 1992 (Cth) as a Community Radio Broadcasting Service;
- (ii) is owned or controlled by you; and
- (iii) is authorised (either under a licence agreement or pursuant to a statutory licence in the Act to Broadcast PPCA Sound Recordings.

Records has the meaning given by clause 10.4.

Report means a written report on the use of PPCA Sound Recordings which contains all of the information required under clause 10.

Simulcast means a communication to the public which:

- (i) is simultaneous with, and identical in content to, a Broadcast; and
- (ii) is delivered over the internet or mobile telecommunications networks.

Simulcast Licence Fee means the fee set out in Item 5(b) of the Licence Details.

Special Conditions means the special conditions (if any) which are applicable to the Licence, as specified in Item 6 of the Licence Details.

Stream means each communication to a User of a PPCA Sound Recording (whether in whole or in part) during the Simulcast.

Subscription Service means a service for which users are charged a fee or other consideration to access or use the service.

Territory means Australia.

User means a person who accesses the Simulcast.

Website means the PPCA website. As at the date of this Agreement, the PPCA website is located at www.pcca.com.au.

15.2 Any term or expression starting with a capital letter which is:

- (i) defined in the Licence Details, has the meaning given to it in the Licence Details;
- (ii) defined in the GST Law, but not defined elsewhere in this Agreement, has the meaning given to it in the GST Law.

15.3 In this Agreement the following rules of interpretation apply:

- (i) the singular includes the plural and vice versa;

- (ii) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;

- (iii) the words 'such as', 'including', 'particularly' and similar expressions are not used as nor are intended to be interpreted as words of limitation;

- (iv) a reference to:

- a. a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate; and
- b. a monetary amount is in Australian dollars.

SCHEDULE A BROADCAST LICENCE

PPCA grants to you, a non-exclusive licence during the Licence Period and within the Territory to:

- (a) Broadcast PPCA Sound Recordings as a part of the Radio Station; and
- (b) transmit PPCA Sound Recordings to telephone callers to the Radio Station who are on hold, by means of an analogue or digital service or device (whether now in existence or developed in the future) including without limitation radio, CD, cassette, tape, vinyl recording and any other sound carrier on a telecommunication system,

subject to the terms of this Agreement including payment of the Broadcast Licence Fee.

SCHEDULE B SIMULCAST LICENCE

A. Provided that you have notified CBAA in accordance with clause 6.5 and provided that the underlying Broadcast does not infringe the PPCA Sound Recordings embodied therein, PPCA grants you a non-exclusive licence within the Territory for the Licence Period:

- (a) to communicate to the public via the Radio Station Website, solely as part of the Simulcast, the PPCA Sound Recordings embodied in the Broadcast; and
- (b) to make temporary copies of those PPCA Sound Recordings for the sole purpose of that Simulcast.

The Licence is limited to Simulcasts originating in the Territory, which are capable of reception in the Territory. For the avoidance of doubt, both the Simulcast and the underlying Broadcast must originate in the Territory.

B. The parties acknowledge and agree that further to clause 1 of this Agreement, the terms set out in this Agreement (including the fees payable by you for the grant of the Simulcast Licence) reflect the terms of a temporary licensing scheme that PPCA has introduced, on a non-precedent setting basis, to help facilitate the development in Australia of legitimate services for the simulcasting of terrestrial radio broadcasts.

C. For the avoidance of any doubt, you agree that the Simulcast Licence does not authorise you to use any PPCA Sound Recordings in connection with:

- (a) any form of communication which features any content (including advertisements) that is not simultaneously Broadcast in identical form on the associated Radio Station;
- (b) any service which is otherwise independent of the Radio Station;
- (c) a Bundled Service or a Subscription Service; or
- (a) use copies made under clause Schedule B A(b) for any other purpose; and

D. You must:

- (a) not actively advertise, market or promote the availability of the Simulcast to persons outside the Territory, or display on or in connection with the Simulcast any advertisements that are targeted primarily at consumers outside the Territory; and
- (b) take all reasonably appropriate steps (consistent with the practices of reputable businesses in the online music industry) to ensure that users of the service cannot, and do not, capture, record, copy, retain, retransmit, redistribute or otherwise manipulate in digital form any PPCA Sound Recording that you communicate to users as part of the Simulcast of the Radio Station, and only Simulcast PPCA Sound Recordings that are sourced from legitimate and non-infringing sources.

SCHEDULE C

SIMULCAST NOTIFICATION

Simulcasting Notification

At any time during the coming year will your Radio Station:

	YES	NO
Make the Radio Station's service available as a Simulcast?	<input type="checkbox"/>	<input type="checkbox"/>

If you answered YES, please provide the following details:

Simulcast website	<i>(Insert the URL/website location of your station's website or the main website from where the simulcast will be accessible)</i> The Radio Station's simulcast is available from the following URL:
Any Other Websites from which the Simulcast will be accessible	The Radio Station's simulcast is also be available from the following third party sites for PPCA approval:
Music scheduling system (if any)	<i>(name and version number where applicable)</i>
Playout system	<i>(name and version number where applicable)</i>
Streaming provider	<i>(name of streaming provider or CDN, if any)</i>
Streaming software	<i>(name and version number where applicable)</i>

If you answered YES, you will be charged a Licence Fee by PPCA to Simulcast PPCA Sound Recordings in accordance with your PPCA licence.



SIGNED AS AN AGREEMENT:

	You

Print Name of Business/Company/Organisation Name:	

Signature of authorised officer	

Print Name and Position of authorised officer	

Date	

	PPCA

Signed for and on behalf of Phonographic Performance Company of Australia Limited	

Print Name of authorised officer	

Position	

Date	