

PPCA INPUT AGREEMENT

LICENCE DETAILS

Item 1 (clauses 14.3, 14.4)	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;"></th> <th style="width: 45%;">You</th> <th style="width: 40%;">PPCA</th> </tr> </thead> <tbody> <tr> <td>Name</td> <td>[company name] [trading as business name – if different] ABN:</td> <td>Phonographic Performance Company of Australia Ltd ABN: 43 000 680 704</td> </tr> <tr> <td>Address</td> <td></td> <td>Level 4, 11 – 17 Buckingham Street Surry Hills NSW 2010 PO Box Q20 QUEEN VICTORIA BUILDING NSW 1230</td> </tr> <tr> <td>Phone</td> <td></td> <td>(02) 8569 1133</td> </tr> <tr> <td>Fax</td> <td></td> <td>(02) 8569 1183</td> </tr> <tr> <td>Contact</td> <td></td> <td>PPCA Distribution</td> </tr> <tr> <td>Email</td> <td></td> <td>distribution.mail@ppca.com.au</td> </tr> <tr> <td>Registered for GST?</td> <td>YES / NO</td> <td>YES</td> </tr> </tbody> </table>		You	PPCA	Name	[company name] [trading as business name – if different] ABN:	Phonographic Performance Company of Australia Ltd ABN: 43 000 680 704	Address		Level 4, 11 – 17 Buckingham Street Surry Hills NSW 2010 PO Box Q20 QUEEN VICTORIA BUILDING NSW 1230	Phone		(02) 8569 1133	Fax		(02) 8569 1183	Contact		PPCA Distribution	Email		distribution.mail@ppca.com.au	Registered for GST?	YES / NO	YES
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Registered for GST?	YES / NO	YES																							
Item 2 (clause 12)	Commencement Date This agreement commences on the latest date that a party signs it, as set out in the signature blocks below.																								

By signing below, you acknowledge that you have read and understood, and you agree to be bound by, all of the terms and conditions of this agreement, including the attached Terms and Conditions.

SIGNED for and on behalf of **[LICENSOR COMPANY NAME]**)
 by its authorised representative in the)
 presence of:)

.....
 Signature of authorised representative

.....
 Signature of witness

.....
 Name of authorised representative

.....
 Name of witness

.....
 Position/title of authorised representative

Date:

SIGNED for and on behalf of **PHONOGRAPHIC PERFORMANCE COMPANY OF AUSTRALIA LTD**)
 by its authorised representative in the presence of:)

.....
 Signature of authorised representative

.....
 Signature of witness

.....
 Name of authorised representative

.....
 Name of witness

.....
 Position/title of authorised representative

Date:

PPCA INPUT AGREEMENT TERMS AND CONDITIONS

1 Definitions and Interpretation

1.1 Unless the context requires otherwise, a term or expression:

- (i) which starts with a capital letter and is defined in Schedule 4, has the meaning given by that clause;
- (ii) which is defined in the Corporations Act, but is not defined in Schedule 4, has the meaning given by the Corporations Act; or
- (iii) which is defined in the Copyright Act, but is not defined in Schedule 4, has the meaning given by the Copyright Act.

1.2 Schedule 4 sets out some rules of interpretation for this agreement.

2 Licence to PPCA

2.1 Subject to the terms and conditions set out in this agreement, you grant to PPCA for the Licence Period a non-exclusive licence to:

- (i) exercise; and
- (ii) authorise third parties to exercise (and to sub-licence other third parties to exercise),

any or all of the Licensed Rights.

2.2 You also grant to PPCA the following rights:

- (i) to develop and publish Licence Schemes in relation to the Licensed Rights;
- (ii) to negotiate and agree with Licensees (either individually or in groups) on the terms and conditions for any Licences, including the Licence Fees payable by those Licensees;
- (iii) to make applications to the Copyright Tribunal in respect of the exercise of the Licensed Rights (including in respect of any Licence Schemes), and to defend or otherwise participate in any other relevant proceedings in the Copyright Tribunal; and
- (iv) to commence, defend or otherwise participate in any legal proceedings, or take any other action, that PPCA considers necessary or desirable for the purpose of:
 - (A) collecting or recovering any Licence Fees or other amounts payable by any person in connection with the exercise of the Licensed Rights; or
 - (B) preventing any unauthorised exercise or exploitation by any person of the Licensed Rights.

2.3 For the purpose of clauses 2.2(iii) and 2.2(iv), you appoint PPCA as your attorney and you authorise PPCA to conduct any proceedings in your name if PPCA considers it appropriate to do so.

2.4 You reserve to yourself all rights not expressly granted to PPCA under this agreement (including, for the avoidance of doubt, the right to take any action that you consider necessary or desirable for the purpose of preventing any unauthorised use of the Controlled Content).

3 Direct Licensing

- 3.1 You acknowledge that as the licence granted to PPCA under clause 2 is non-exclusive, you will retain at all times during the Licence Period the right to exercise, and authorise third parties to exercise, any or all of the Licensed Rights.
- 3.2 Within 60 days following the Commencement Date, you must publish a Direct Licensing Policy and you must provide a copy of the policy to PPCA. If you make any changes to your Direct Licensing Policy at any time during the Licence Period, you must promptly provide PPCA with a copy of the revised Policy.
- 3.3 You must make your Direct Licensing Policy available on your website (if you have one) and you must provide a copy to any person who requests it.
- 3.4 Where PPCA enquires of you whether or not a particular person has been licensed by you or an intermediary acting on your behalf, you must answer the inquiry within 30 days or sooner if reasonably possible. The fact of the inquiry and any details provided by PPCA in connection with the inquiry must be treated as Confidential Information.

4 Licensed Content

- 4.1 You acknowledge that PPCA uses information about your Controlled Content to:
- (i) determine the amounts which you and the other Licensors are entitled to be paid as Distributions; and
 - (ii) otherwise exercise its rights and perform its obligations under this agreement,
 - (iii) and you agree to use all commercially reasonable endeavours (having regard to the size of your repertoire of Controlled Content and the range of different geographical regions from which it originates) to keep PPCA informed and updated throughout the Licence Period of all necessary and relevant details of your Controlled Content (including any changes from time to time).
- 4.2 In particular, you must use all commercially reasonable endeavours to:
- (i) provide to PPCA for each Controlled Recording that you own or control as at the Commencement Date and each sound recording that becomes a Controlled Recording during the Licence Period, the information specified in Part 1 of Schedule 2, together with any other information that PPCA requests in writing from time to time;
 - (ii) provide to PPCA for each Controlled Video that you own or control as at the Commencement Date and each Music Video that becomes a Controlled Video during the Licence Period, the information specified in Part 2 of Schedule 2, together with any other information that PPCA requests in writing from time to time;
 - (iii) promptly notify PPCA if at any time during the Licence Period you become aware that you no longer own or control the Rights in any Controlled Recording or Controlled Video; and
 - (iv) promptly notify PPCA if you transfer to a third party ownership or control of any of the Labels listed in Schedule 3, or if you acquire ownership or control of a Label which is not listed in Schedule 3 (including, for the avoidance of doubt, if you launch a new Label).

4.3 You must use all commercially reasonable endeavours to advise PPCA in writing in respect of any Artwork that you no longer own or control from time to time during the Licence Period.

5 Warranties and Indemnity

5.1 You represent and warrant to PPCA, both as at the Commencement Date and on an ongoing basis throughout the Licence Period, that:

- (i) you own or control all of the Rights in respect of the Artwork and the sound recordings and Music Videos that are published or otherwise released on the Labels (**Label Content**) and you are entitled to grant to PPCA a licence in the terms contemplated in clause 2;
- (ii) the exercise by PPCA of the Rights in respect of the Label Content, and the granting by PPCA of licences to exercise such Rights, in each case in accordance with the terms of this agreement, will not infringe the copyright or other rights of any person; and
- (iii) the exercise by a Licensee of the Rights in respect of the Label Content, in accordance with the terms and conditions of a licence granted by PPCA under this agreement, will not infringe the copyright or other rights of any person.

5.2 You must indemnify, defend and hold harmless PPCA and each Licensee, and their respective directors, officers, employees, agents and contractors (each an **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 may be suffered or incurred by an Indemnified Person in connection with any claim by a third party (including, for the avoidance of doubt, a Licensee), where such third party claim arises directly or indirectly out of or as a result of:

- (i) a breach of any of the warranties in clause 5.1; or
- (ii) any other breach of your obligations under this agreement.

PPCA holds the benefit of this indemnity as principal and as trustee for each Licensee.

5.3 PPCA will:

- (i) promptly give you written notice of any third party claim of which it is aware and which may give rise to your liability under the indemnity in clause 5.2;
- (ii) not make any admissions in relation to a third party claim without your prior written consent (which must not be unreasonably withheld or delayed);
- (iii) at your request and expense, allow you to control the conduct and settlement of all negotiations and litigation resulting from a third party claim; and
- (iv) at all times in relation to a third party claim, act in accordance with your reasonable instructions and give you any assistance you reasonably request in relation to any negotiations or litigation resulting from the claim, provided you reimburse PPCA or the relevant Indemnified Person for any reasonable expenses it incurs in doing so.

6 Gross Receipts and Expenditure

6.1 You acknowledge and agree that PPCA will consolidate all Licence Fees and other remuneration collected or received by it with all other moneys earned, collected or received by it (**Gross Receipts**).

6.2 You also acknowledge and agree that out of the Gross Receipts, PPCA will expend or appropriate, or reserve for future anticipated expenditure, such amounts as it considers necessary or desirable:

- (i) for the operation, administration, management, promotion and protection of PPCA's activities;
- (ii) for the satisfaction of any legal obligation or liability of PPCA that may arise from time to time; and
- (iii) for any other purposes that the Board determines from time to time.

7 Allocation and Distribution

7.1 In respect of each Financial Year, PPCA will, in accordance with the Distribution Policy:

- (i) determine the amount of Gross Receipts for the Financial Year;
- (ii) after deduction of the amounts referred to in clause 6.2, determine the total amount available for allocation among the Licensors (**Distributable Sum**); and
- (iii) allocate a proportion of the Distributable Sum to you.

7.2 Subject to clause 7.4, at least once in each calendar year PPCA will pay you the amount allocated to you under clause 7.1(iii) in respect of the immediately preceding Financial Year (**Distribution**).

7.3 If PPCA notifies you in writing, at any time after payment of a Distribution under clause 7.2, that you were not entitled for any reason to receive some or all of the Distribution, you must repay the amount specified in PPCA's notice within 30 days of receiving the notice. If you fail to repay any amount to which this clause 7.3 applies, PPCA may in its sole discretion choose to set off that amount against any future Distribution it pays to you, but for the avoidance of doubt PPCA will have no obligation to do so, and may instead choose to recover the amount from you as a debt due to PPCA.

7.4 Where PPCA determines that you would be entitled to receive a Distribution in respect of any Controlled Content, and one or more persons is or are qualified under the Direct Artist Distribution Scheme to receive a payment in respect of that Controlled Content, you authorise PPCA to pay, in accordance with the Distribution Policy, a percentage of the relevant Distribution directly to such qualified person or persons.

7.5 Provided you give PPCA at least 30 days' prior written notice, you may at your own expense, and no more than once in respect of any Financial Year, appoint an independent auditor (who must be a chartered accountant) to examine the books of account and records of PPCA to check that the amounts allocated or paid to you from time to time have been correctly calculated in accordance with the Distribution Policy and the provisions of this agreement. PPCA will provide your auditor with reasonable access to PPCA's premises, and will make available all relevant books of account and records for inspection by your auditor, provided that your auditor first gives PPCA a written and signed undertaking (in a form acceptable to PPCA) that he or she will report to you only in relation to the correctness or otherwise of the amounts allocated or paid to you, and that he or she will not refer to, or disclose any information about, any amounts allocated or paid to any other Licensor.

7.6 You acknowledge that:

- (i) PPCA will not always have complete, accurate and up-to-date information about all of the Controlled Content or Artwork, particularly if you do not provide the information referred to in clause 4.2 or clause 4.3;

- (ii) Licensees use Controlled Content or Artwork in a variety of different ways, some of which involve the exercise of rights comprised in the copyright and others of which do not;
- (iii) in many cases there is no detailed, or any, logging or reporting of such uses by Licensees; and
- (iv) even where logs, reports or other information would be available, in some cases the costs to PPCA of purchasing or obtaining such information (which would reduce the Distributable Sum) might outweigh the potential benefits in terms of improved accuracy and completeness,

and you further acknowledge that, whilst PPCA will use all reasonable endeavours to maximise the accuracy of any Distribution paid to you, in light of the circumstances outlined in this clause 7.6 PPCA cannot guarantee the accuracy of any such Distribution. To the extent permitted by law you release PPCA from, and you agree not to make or bring against PPCA, any claim, demand, action or proceeding in relation to the amount of any Distribution paid to you, or in relation to the process followed by PPCA in determining the Distributable Sum and allocating it among the Licensors.

8 Distribution Policy

- 8.1 Subject to this clause 8, you agree to be bound by the Distribution Policy as it applies from time to time.
- 8.2 From time to time during the Licence Period the Board may resolve to amend the Distribution Policy, in which case PPCA will notify you in writing of the changes. If you do not agree with the changes, you may terminate this agreement under clause 13.1.
- 8.3 If any proposed amendment of the Distribution Policy (**Proposed Amendment**) would be likely, in the Board's reasonable opinion, to have a material adverse effect on any of the Licensors, the following paragraphs will apply:
 - (i) PPCA will prepare a revised draft of the Distribution Policy showing the Proposed Amendment in "markup", together with a statement explaining the effect of the Proposed Amendment and the reasons for it (**Consultation Documents**).
 - (ii) PPCA will send you and the other Licensors a copy of the Consultation Documents and will give you a period of 30 days from the date specified on the Consultation Documents (**Review Period**) in which to consider the Proposed Amendment and provide comments to PPCA.
 - (iii) The Board will not make any resolution to adopt the Proposed Amendment until the Review Period has ended and in making any such resolution, the Board will have regard to any comments received from you and the other Licensors.

9 GST and Recipient Created Tax Invoices

- 9.1 Any consideration or amount payable under this agreement, including any non monetary consideration (as reduced in accordance with clause 9.5 if required) (**Consideration**) is exclusive of GST.
- 9.2 If GST is or becomes payable on a supply made under or in connection with this agreement, an additional amount (**Additional Amount**) is payable by the recipient equal to the amount of GST payable on that supply as calculated by the party making the supply (**Supplier**) in accordance with the GST Law.
- 9.3 The Additional Amount payable under clause 9.2 is payable at the same time and in the same manner as the Consideration for the supply.

- 9.4 If for any reason (including, without limitation, the occurrence of an adjustment event) the amount of GST payable on a supply (taking into account any decreasing or increasing adjustments in relation to the supply) varies from the Additional Amount payable by the Recipient under clause 9.2, the Supplier must provide a refund or credit to the Recipient, or the Recipient must pay a further amount to the Supplier, as appropriate.
- 9.5 Notwithstanding any other provision in this agreement, if an amount payable under or in connection with this agreement (whether by way of reimbursement, indemnity or otherwise) is calculated by reference to an amount incurred by a party, whether by way of cost, expense, outlay, disbursement or otherwise (**Amount Incurred**), the amount payable must be reduced by the amount of any input tax credit to which that party is entitled in respect of that Amount Incurred.
- 9.6 In relation to the issue of tax invoices:
- (i) if at the relevant time you are registered for GST, the parties agree that PPCA will issue recipient created tax invoices (**RCTIs**) in respect of any taxable supplies made by you under or in connection with this agreement;
 - (ii) you must not issue tax invoices in respect of any supply referred to in clause (i), unless clause 9.7 applies;
 - (iii) you must notify PPCA immediately if:
 - (A) having previously been registered for GST, you cease to be registered for GST at any time; or
 - (B) having not previously been registered for GST, you become registered for GST at any time; and
 - (iv) PPCA acknowledges that it is registered for GST as at the Commencement Date and that it will notify you promptly if:
 - (A) it ceases to be registered for GST at any time; or
 - (B) it fails or ceases to satisfy any of the requirements of the *A New Tax System (Goods and Services Tax) Act 1999 Classes of Recipient Created Tax Invoice Determination (No. 20) 2000* (as amended, substituted or replaced) (**Determination**) and any other relevant determination.
- 9.7 PPCA will not issue a document that would otherwise be an RCTI on or after the date when either it has or you have failed to comply with any of the requirements of the Determination or any other relevant determination.
- 9.8 PPCA will:
- (i) set out in the RCTI your ABN;
 - (ii) issue the original or a copy of the RCTI to you within 28 days after determining the value of a taxable supply referred to in clause 9.6(i) and will retain the original or the copy;
 - (iii) issue the original or a copy of an adjustment note to you within 28 days after the adjustment and will retain the original or the copy; and
 - (iv) reasonably comply with its obligations under taxation laws.
- 9.9 In this clause 9:
- (i) words used that are defined in the GST Law have the meaning given by the GST Law unless they are assigned a different meaning; and

- (ii) any reference in this clause 9 to an input tax credit to which a party is entitled includes, without limitation, an input tax credit arising from a creditable acquisition or creditable importation by that party but to which the representative member of a GST group of which the party is a member is entitled.

10 Withholding of Payments

- 10.1 Where a Distribution is payable to you under this agreement, PPCA may withhold such proportion of the Distribution as is required by any applicable legislation in force from time to time, including without limitation any legislation that imposes or levies a Tax.
- 10.2 Without limiting clause 10.1, if you have not provided your ABN to PPCA, and the amount of a Distribution payable to you exceeds \$50.00 (exclusive of GST), or such other sum as is specified from time to time in applicable legislation, PPCA may withhold such proportion of the Distribution as is required by the legislation.
- 10.3 Where PPCA withholds any amount in accordance with this clause 10, PPCA will:
 - (i) remit that amount to the relevant Government Agency in accordance with the applicable legislation; and
 - (ii) provide you with a certificate or other written notification stating the amount withheld, and including any other information that is required by the applicable legislation.

11 Amendments

- 11.1 Subject to clause 11.2, PPCA may at any time amend any of the terms and conditions of this agreement by giving you and the other Licensors a written notice under this clause 11.1 which specifies the amendments (**Amendment Notice**). The amended terms and conditions will take effect 30 days after the date of the Amendment Notice (**Effective Date**), and the Amendment Notice will specify the Effective Date. If you do not agree with the amended terms and conditions, you may terminate this agreement by giving PPCA a written notice at any time before the Effective Date and in that notice, you must specify either that the termination is deemed retrospectively to have taken effect on the first day of the Financial Year in which PPCA receives your notice or that the termination is to take effect at the end of that Financial Year. For the avoidance of doubt, if you specify that the termination will take effect retrospectively on the first day of the Financial Year, you will not be entitled to be paid a Distribution in respect of that Financial Year. If you do not contact PPCA before the Effective Date, you will be deemed to have agreed to the amended terms and conditions and you will be bound by those amended terms and conditions.
- 11.2 Clause 11.1 does not apply to any amendment of the definition of Licensed Rights, or of Schedule 1, or of any other term or condition of this agreement, to the extent that such amendment has the effect of granting to PPCA additional rights in any of the Controlled Content (**Rights Amendment**). PPCA may only make a Rights Amendment in accordance with the following paragraphs:
 - (i) PPCA will prepare a written statement setting out the details of the Rights Amendment and the reasons for proposing it, and will attach to the statement a revised version of this agreement showing the Rights Amendment incorporated in "markup" (together, the **Explanatory Statement**).
 - (ii) PPCA will send you and the other Licensors a copy of the Explanatory Statement and will give you a period of 30 days from the date of the Explanatory Statement (**Review Period**) in which to consider the Rights Amendment, ask questions of PPCA and/or consult your professional advisers. The Explanatory Statement will specify the date on which the Review Period ends.
 - (iii) If you do not agree to the Rights Amendment, you must notify PPCA in writing to this effect before the end of the Review Period. If PPCA receives a notice under this clause 11.2(iii),

you will be deemed to have rejected the Rights Amendment and this agreement will continue in force in accordance with the terms and conditions that applied immediately before the commencement of the Review Period.

- (iv) If you do not contact PPCA before the end of the Review Period, then with effect from the first day following the end of that Period you will be deemed to have agreed to the Rights Amendment and you will be bound by the revised version of this agreement (incorporating the Rights Amendment) which was included with the Explanatory Statement.

11.3 If this agreement has been amended under clause 11.2(iv) to incorporate a Rights Amendment, with the effect that additional rights in any of the Controlled Content have been granted to PPCA (**Additional Rights**), you may withdraw the Additional Rights with effect from the end of any Financial Year after the Financial Year in which the Rights Amendment took effect, by giving PPCA a written notice at least 90 days before the end of the relevant Financial Year. Your notice must specify the Additional Rights that you are withdrawing, and must refer to the Rights Amendment under which the Additional Rights were granted to PPCA. If PPCA receives a notice under this clause 11.3, the Additional Rights will be deemed to have been withdrawn with effect from the end of the relevant Financial Year, and clause 13.3 will apply as if a reference in that clause to a termination of this agreement were a reference to the withdrawal of the Additional Rights.

12 Licence Period

The Licence commences on the Commencement Date and continues until it is terminated under clause 13 (**Licence Period**).

13 Termination

13.1 Either party may notify the other party in writing that it wishes to terminate this agreement. If there are at least 90 days left in the Financial Year at the time the other party receives the notice, the termination will take effect at the end of that Financial Year. The termination will otherwise take effect at the end of the next Financial Year.

13.2 PPCA may terminate this agreement with immediate effect by giving you a written notice if:

- (i) you breach any of the material terms or conditions of this agreement, and PPCA reasonably considers that the breach is not capable of remedy;
- (ii) you breach any of the material terms or conditions of this agreement 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; or
- (iii) an Insolvency Event occurs in relation to you.

13.3 If this agreement expires or is terminated for any reason:

- (i) PPCA will not, after the date of expiry or termination (**Termination Date**):
 - (A) grant any new Licence;
 - (B) extend or allow to be extended any Licence that was in force as at the Termination Date; or
 - (C) commence any legal proceedings relating to the exercise or exploitation of any of the Licensed Rights, but for the avoidance of doubt PPCA may take action of the kind referred to in clause 2.2(iv)(A) in relation to any Licence that was in force as at the Termination Date, or which continued in force after that date by virtue of clause 13.3 (ii);
- (ii) all Licences granted by PPCA prior to the Termination Date will continue to bind you until they expire or are terminated in accordance with their terms, provided that if any Licence is

granted on terms such that it automatically continues unless one party exercises a right of termination, PPCA will exercise its right of termination if you so direct; and

- (iii) PPCA will continue to account to you, after the Termination Date, for any Distribution that is payable to you in accordance with the Distribution Policy and this agreement.

13.4 Clauses 5, 7, 7.6, 10, 13.3, 14 and Schedule 4 survive the expiry or termination of this agreement, together with any other terms which by their nature are intended to do so.

14 General

14.1 You must not assign, transfer or otherwise deal with this agreement, or any of your rights or obligations under this agreement, or purport to do so, without the prior written consent of PPCA (which will not be unreasonably withheld or delayed).

14.2 This agreement (including the Licence Details, these Terms and Conditions and each Schedule) is the entire agreement between the parties about its subject matter and replaces all previous agreements, understandings, representations and warranties about that subject matter.

14.3 You acknowledge that PPCA relies on its Licensors to ensure that their contact details are accurate, complete and up-to-date at all times during the Licence Period, and that PPCA may be unable to send payments to you or communicate with you in relation to this agreement if your contact details are not correct. You must notify PPCA as soon as possible after any change in your contact details set out in Item 1 of the Licence Details. PPCA will also notify you and the other Licensors if any of PPCA's contact details change during the Licence Period.

14.4 If either party wishes to send a notice to the other party, it must be in writing and sent to the address, fax number or email address specified for that party in Item 1 of the Licence Details (as amended under clause 14.3 if applicable). A notice sent in accordance with this clause 14.4 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),
- (iii) 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.

14.5 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.

14.6 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.

14.7 Except as expressly provided in this agreement:

- (i) nothing in this agreement is intended to constitute a fiduciary relationship or an agency, partnership or trust; and
- (ii) neither party has authority to bind the other party.

14.8 Except as expressly provided in this agreement:

- (i) each person who executes this agreement does so solely in its own legal capacity and not as agent or trustee for or a partner of any other person; and
- (ii) only those persons who execute this agreement have a right or benefit under it.

- 14.9 No waiver of a right or remedy under this agreement is effective unless it is in writing and signed by the party granting it. It is only effective in the specific instance and for the specific purpose for which it is granted. A single or partial exercise of a right or remedy under this agreement does not prevent a further exercise of that or of any other right or remedy. Failure to exercise or delay in exercising a right or remedy under this agreement does not operate as a waiver or prevent further exercise of that or of any other right or remedy.
- 14.10 The parties agree that any dispute or disagreement arising out of or relating to this agreement (**Dispute**) will be handled in accordance with the Dispute Resolution Policy, but the parties will refer any Dispute to mediation before engaging in any other form of external dispute resolution process contemplated in the Dispute Resolution Policy. You must also provide PPCA, promptly following any request, with such information as it reasonably requires in connection with the resolution of any dispute between PPCA and a Licensee.
- 14.11 You acknowledge that PPCA may provide you with Confidential Information and you undertake to maintain the confidentiality of that Confidential Information.

SCHEDULE 1

RIGHTS IN RELATION TO SOUND RECORDINGS AND MUSIC VIDEOS

Part 1 – Domestic Rights

In respect of **sound recordings**, the **Domestic Rights** are as follows

- **Public Performance** – the right to cause a sound recording to be heard in public.
- **Broadcasting** – the right to communicate a sound recording to the public by means of a Broadcast.
- **Datacasting** – the right to communicate a sound recording to the public by means of a Datacasting Service.
- **Music On Hold** – the right to communicate a sound recording to telephone callers on hold by any means (whether analogue or digital and whether now known or developed in the future) from a device, system or service used in connection with any telecommunications device, system, service or network.
- **Technical Copying** – the right to make copies of sound recordings for the purpose of exercising any of the other Rights in relation to sound recordings in circumstances where section 107 of the Copyright Act does not apply.
- **Ephemeral Copying** – the right to:
 - (i) make and use a copy of a sound recording in the circumstances referred to in section 107(3) of the Copyright Act; or
 - (ii) retain a copy of a sound recording after the expiry of the 12 month period referred to in section 107(5) of the Copyright Act.
- **Retransmission Remuneration** – the right to collect on behalf of another person, equitable remuneration to which that person becomes entitled as a result of the retransmission, in accordance with Part VC of the Copyright Act, of a free-to-air broadcast which includes a sound recording owned or controlled by that person.
- **Simulcasting** – the right to communicate a sound recording to the public by means of a Simulcast.
- **Webcasting** – the right to communicate a sound recording to the public by means of a non-interactive, pre-programmed service which has the following characteristics:
 - (i) the communication from the servers of the service provider occurs over the internet or a mobile telecommunications network;
 - (ii) multiple simultaneous users of the service can hear the sound recording on their playback devices at or near the same time that the communication of the sound recording is initiated by or on behalf of the operator of the service;
 - (iii) no user is able to choose which sound recordings they hear or the times at which they hear them, or is otherwise able to control the nature and timing of the content delivered to them; and
 - (iv) there is no copy of the sound recording, or any other form of fixed file or data from which the user can subsequently replay the sound recording, which is created on the user's playback device.

- **Interactive Webcasting** – the right to communicate a sound recording to the public by means of an interactive, pre-programmed service which has the following characteristics:
 - (i) the communication from the servers of the service provider occurs over the internet or a mobile telecommunications network;
 - (ii) the user may Skip or Pause sound recordings transmitted as part of the service;
 - (iii) the user is able to Customise the service (except that a service may not offer unlimited Skips together with the ability to Customise);
 - (iv) the user is not able to request the transmission of a particular sound recording; and
 - (v) there is no copy of the sound recording, or any other form of fixed file or data from which the user can subsequently replay the sound recording, which is created on the user's playback device.

- **Audiovisual streaming** – the right to communicate Cleared sound recordings reproduced in Audiovisual Content (excluding for the avoidance of doubt Music Videos and radio programs) to the public over the internet, a mobile telecommunications network or any other communications network now known or developed in the future, including by means of an interactive on demand service or linear channels where there is no copy of the Audiovisual Content (other than a temporary copy), or any other form of fixed file or data from which the user can subsequently replay the Audiovisual Content, which is created on the user's playback device.

- **Digital Content Rental** - the right for a Digital Content Provider to make available Rental Content by Broadcast, Streaming or Timed-Out Podcast, provided that:
 - (i) the sound recordings reproduced within the Rental Content have been Cleared;
 - (ii) the Rental Content is offered from a server owned or controlled by the Digital Content Provider or otherwise approved by PPCA;
 - (iii) the user agrees, in advance of receiving the transmission of the Rental Content, to only use the Rental Content for the user's personal non-commercial use;
 - (iv) users may only store the copy of the Rental Content on the user's playback device for a period of 7 consecutive days, or if the Rental Content is delivered by a Broadcaster, the User may store the Rental Content on the user's playback device for a predetermined period of time, following the delivery of the Rental Content to the user by the Digital Content Provider;
 - (v) the user is not able to request the transmission of a particular sound recording;
 - (vi) the Rental Content is not made in order to sell, advertise or promote particular products or services; and
 - (vii) the Digital Content Provider agrees to implement industry standard or acceptable protection measures (as reasonably determined by PPCA).

- **On-demand Offerings**- the right for a Broadcaster to make available a Program or feature film by Streaming or Timed-Out Podcast via the internet or mobile networks or any other communications network, provided that:
 - (i) the Programs or feature films have previously been Broadcast or will in the next 30 days be Broadcast by the Broadcaster;
 - (ii) the sound recordings have been Cleared;

- (iii) the Programs or feature films are offered from a server owned or controlled by the Broadcaster or otherwise approved by PPCA;
 - (iv) the user agrees, in advance of receiving the transmission of the Program or feature film, to only use the Program or feature film for the user's personal non-commercial use;
 - (v) the Programs or feature films do not contain any "back to back" sound recordings (however, a one time occurrence of no more than three sound recordings in a row within any one Program or feature film is allowed);
 - (vi) if a Program or feature film is less than 20 minutes in duration, the Program or feature film may only contain excerpts of sound recordings that are no longer than 60 seconds or half the length of the sound recording, whichever is the lesser;
 - (vii) except where use of a sound recording is Incidental, users may only store the copy of the Program or feature film on the user's playback device for a predetermined period of time following the delivery of the Program or feature film to the user by the Broadcaster;
 - (viii) the user is not able to request the transmission of a particular sound recording;
 - (ix) the Offering is not made in order to sell, advertise or promote particular products or services (other than sound recordings);and
 - (x) the Broadcaster agrees to implement industry standard or acceptable protection measures (as reasonably determined by PPCA).
- **Audio Monitoring** – the right for PPCA to authorise the reproduction and communication of sound recordings for the purpose of facilitating use by Monitoring Services.

In respect of **Music Videos**, the **Rights** are as follows:

- **Public Performance** – the right to cause a Music Video to be heard in public (to the extent that it consists of sounds) and/or seen in public (to the extent that it consists of visual images).
- **Broadcasting** – the right to communicate a Music Video to the public by means of a Broadcast.
- **Datacasting** – the right to communicate a Music Video to the public by means of a Datacasting Service.
- **Simulcasting** – the right to communicate a Music Video to the public by means of a Simulcast.
- **Webcasting** – the right to communicate a Music Video to the public by means of a non-interactive, pre-programmed service which has the following characteristics:
 - (i) the communication from the servers of the service provider occurs over the internet;
 - (ii) multiple simultaneous users of the service can hear and/or see the Music Video on their playback devices at or near the same time that the communication of the Music Video is initiated by or on behalf of the operator of the service;
 - (iii) no user is able to choose which Music Videos they hear and/or see or the times at which they hear and/or see them, or is otherwise able to control the nature and timing of the content delivered to them; and
 - (iv) there is no copy of the Music Video, or any other form of fixed file or data from which the user can subsequently replay the Music Video, which is created on the user's playback device.
- **Technical Copying** – the right to make copies of Music Videos for the purpose of exercising any of the other Rights in relation to Music Videos.

- **Retransmission Remuneration** – the right to collect on behalf of another person, equitable remuneration to which that person becomes entitled as a result of the retransmission, in accordance with Part VC of the Copyright Act, of a free-to-air broadcast which includes a Music Video owned or controlled by that person.

In respect of **Artworks**, the **Rights** are as follows:

- **Artwork Rights** – the right to reproduce and communicate Artwork associated with a particular sound recording or Music Video for display in conjunction with the communication of that sound recording or Music Video as applicable, to the public by means of a Webcasting service, Interactive Webcasting service or an audio only Broadcast service licensed by PPCA.

Part 2 – Extra-territorial Rights

In respect of sound recordings, the **Extra-territorial Rights** in respect of the IFPI Territories are as follows

- **Extra-territorial Simulcasting** – the right to communicate a sound recording from Australia by means of a Simulcast into one or more the IFPI Territories.
- **Extra-territorial Webcasting** – the right to communicate a sound recording from Australia into one or more of the IFPI Territories by means of a non-interactive, pre-programmed service which has the following characteristics:
 - (i) the communication from the servers of the service provider occurs over the internet or a mobile telecommunications network;
 - (ii) multiple simultaneous users of the service can hear the sound recording on their playback devices at or near the same time that the communication of the sound recording is initiated by or on behalf of the operator of the service;
 - (iii) no user is able to choose which sound recordings they hear or the times at which they hear them, or is otherwise able to control the nature and timing of the content delivered to them; and
 - (iv) there is no copy of the sound recording, or any other form of fixed file or data from which the user can subsequently replay the sound recording, which is created on the user's playback device.
- **Extra-territorial Interactive Webcasting** – the right to communicate a sound recording from Australia into one or more of the IFPI Territories by means of an interactive, pre-programmed service which has the following characteristics:
 - (i) the communication from the servers of the service provider occurs over the internet or a mobile telecommunications network;
 - (ii) the user may Skip or Pause sound recordings transmitted as part of the service;
 - (iii) the user is able to Customise the service (except that a service may not offer unlimited Skips together with the ability to Customise);
 - (iv) the user is not able to request the transmission of a particular sound recording; and
 - (v) there is no copy of the sound recording, or any other form of fixed file or data from which the user can subsequently replay the sound recording, which is created on the user's playback device.
- **Extra-territorial On-demand Offerings**- the right for a Broadcaster to make available a Program from Australia into one or more of the IFPI Territories by Streaming or Timed-Out Podcast via the internet or mobile networks, provided that:

- (i) the Programs have previously been Broadcast by the Broadcaster;
- (ii) in the case of a television Program, the sound recordings have been Cleared;
- (iii) the Programs are offered from a server owned or controlled by the Broadcaster;
- (iv) the user agrees, in advance of receiving the transmission of the Program, to only use the Program for the user's personal non-commercial use;
- (v) the Programs do not contain any "back to back" sound recordings (however, a one time occurrence of no more than three sound recordings in a row within any one Program is allowed);
- (vi) if a Program is less than 20 minutes in duration, the Program may only contain excerpts of sound recordings that are no longer than 60 seconds or half the length of the sound recording, whichever is the lesser;
- (vii) except where use of a sound recording is Incidental, the Programs are only offered and transmitted by the Broadcaster for a maximum of 7 consecutive days after the first broadcast of the Program;
- (viii) except where use of a sound recording is Incidental, users may only store the copy of the Program on the user's playback device for a period of 7 consecutive days following the delivery of the Program to the user by the Broadcaster;
- (ix) the user is not able to request the transmission of a particular sound recording;
- (x) the Offering is not made in order to sell, advertise or promote particular products or services (other than sound recordings); and
- (xi) the Broadcaster agrees to implement acceptable protection measures (as reasonably determined by PPCA) in accordance with protection measures as drafted and updated from time to time by PPCA and IFPI.

SCHEDULE 2 REQUIRED INFORMATION ABOUT CONTROLLED CONTENT

Part 1 – Information about Controlled Recordings

Information to be supplied to PPCA in relation to each Controlled Recording:

- a. Title of the recording (track) and name of the artist(s) (including session musicians);
- b. Label under which the recording is released by the Licensor;
- c. Title, artist(s) and catalogue number of the product(s) on which the recording is released;
- d. Country in which the recording was originally made;
- e. Year in which the recording was originally released;
- f. Label under which the recording was originally released;
- g. Country of citizenship, residence or incorporation of:
 - (i) the record company or label which paid for the recording; and
 - (ii) each performer, session musician and guest artist who appeared on the recording; and
- h. International Standard Recording Code (**ISRC**), where available.

Part 2 – Information about Controlled Videos

Information to be supplied to PPCA in relation to each Controlled Video:

- a. Name of the artist and title of the Music Video;
- b. Label under which the Music Video is released by the Licensor;
- c. Catalogue number of the Music Video, where applicable;
- d. Country in which the Music Video was made;
- e. Year in which the Music Video was made;
- f. Country of citizenship, residence or incorporation of the record company, label or others which paid for the Music Video; and
- g. Label under which the sound recording embodied in the Music Video was originally released; and
- h. International Standard Recording Code (**ISRC**), where available.

**SCHEDULE 3
LABELS**

List to be inserted or attached prior to execution and amended from time to time during the Licence Period.

SAMPLE

SCHEDULE 4 DEFINITIONS AND INTERPRETATION

1. In this agreement:

ABN has the meaning given by the *A New Tax System (Australian Business Number) Act 1999* (Cth).

Artwork means official single or album artwork associated with the Controlled Content for which you own or control the rights from time to time during the Licence Period.

Audiovisual Content means clearly separate and identifiable audio visual television content (including episodes of a series, films and audio visual programs created specifically for access via the internet or mobile networks), or a clearly identifiable part thereof.

Board means the board of directors of PPCA from time to time.

Broadcast means the transmission of content in analogue or digital form via radiofrequency spectrum, cable, optical fibre or satellite by a Broadcaster but does not include a transmission which is:

- (i) delivered using the internet or a mobile telecommunications network (including a Simulcast);
- (ii) delivered on demand on a point-to-point basis; or
- (iii) a Datacasting Service.

Broadcaster means a person licensed under applicable Commonwealth legislation to provide a Broadcast service..

Cleared means a sound recording for which the owner of copyright has previously granted explicit approval to reproduce in a Program, Audiovisual Content or Rental Content.

Commencement Date means the date specified in Item 2 of the Licence Details.

Confidential Information is information provided by PPCA:

- (i) for the purposes of a meeting, decision or review by the Board, a committee of the Board or a committee or working group established to act on behalf of PPCA;
- (ii) for the purpose of an enquiry by PPCA of the Licensor as to whether or not a particular person has been licensed directly by the Licensor or an intermediary acting on behalf of the Licensor; or
- (iii) for any purposes where PPCA stipulates that the information provided is Confidential Information.

Controlled Content means, collectively, the Controlled Recordings and the Controlled Videos.

Controlled Recordings means all of the sound recordings in respect of which you own or control the Rights in Australia from time to time during the Licence Period.

Controlled Video means all of the Music Videos in respect of which you own or control the Rights in Australia from time to time during the Licence Period.

Copyright Act means the *Copyright Act 1968* (Cth).

Corporations Act means the *Corporations Act 2001* (Cth).

Customise means where the user can influence the transmission of the service including by specifying:

- (i) preferred genres;
- (ii) preferred artists;
- (iii) ratings for particular artists; or
- (iv) ratings for particular sound recordings,

but does not include the ability of a user to select a sound recording by a particular artist or from a particular album.

Datacasting Service has the same meaning as those words have under the *Broadcasting Services Act 1992* (Cth).

Digital Content Provider means an entity providing digital content rental services for a fee paid by subscribers or users, by Streaming or Timed-Out Podcasts of Rental Content.

Direct Artist Distribution Scheme means the scheme for the making of direct payments by PPCA to certain recording artists whose performances are featured in Australian Recordings and Australian Videos, as approved and varied from time to time by the Board.

Direct Licensing Policy means a policy describing the circumstances (if any) in which you will consider granting licences directly to interested persons to exercise any of the Licensed Rights, and, if applicable, the process by which those interested persons may contact you and request a licence.

Dispute Resolution Policy means PPCA's *Complaint Handling and Dispute Resolution Policy* (or any other policy dealing with substantially the same subject matter), as published on the Website from time to time.

Distributable Sum has the meaning given by clause 7.1(ii).

Distribution has the meaning given by clause 7.2.

Distribution Policy means PPCA's policy for the calculation, allocation and payment to Licensors of Distributions, as approved and varied from time to time by the Board and published on the Website.

Domestic Rights means the rights referred to in Part 1, Schedule 1 which are restricted to Australia.

Financial Year means:

- (i) the period commencing on the Commencement Date and ending on the next 30 June; and
- (ii) each subsequent period of 12 months ending on 30 June.

Government Agency means a government or any governmental, semi-governmental, legislative, administrative, fiscal, quasi-judicial or judicial entity, authority, department or other body, whether foreign, Federal, State, Territorial or local.

Gross Receipts has the meaning given by clause 6.1.

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).

IFPI means the International Federation of the Phonographic Industry.

IFPI Territories means each country listed in each of the specific IFPI Territories Schedules as amended from time to time.

IFPI Territories Schedules means specific lists published and updated from time to time on the Website that set out the territories of the respective IFPI members that have granted multi-territory licences in respect of certain webcasting and simulcasting services which enable the respective IFPI members to issue licences for a range of webcasting and simulcasting services into the territories of other IFPI members that are signatories to these reciprocal agreements.

Incidental means where:

- (i) sound recordings do not amount to more than 10% of the total running time of the Program; and
- (ii) sound recordings reproduced in the Program are extracts only, of no longer than 60 seconds or half the length of the sound recording, whichever is the lesser.

Insolvency Event means any of the following events:

- (i) an application is made to a court for an order that you be wound up or declared bankrupt, or that a provisional liquidator, receiver or receiver and manager be appointed;
- (ii) a liquidator, provisional liquidator, receiver, receiver and manager or administrator is appointed to you or any of your assets;
- (iii) you enter into an arrangement or composition with one or more of your creditors, or an assignment for the benefit of one or more of your creditors;
- (iv) you propose a winding-up, dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving any of your creditors;
- (v) you are insolvent as disclosed in your accounts, or you otherwise state that you are insolvent, or you are presumed to be insolvent under any applicable law; or
- (vi) anything occurs under the law of any jurisdiction that has a substantially similar effect to any of paragraphs (i) to (iv) above.

Label means any record label, business name, trade mark or brand under which you publish or otherwise release any sound recordings or Music Videos at any time during the Licence Period.

Licence means a licence granted by PPCA in writing, in accordance with this agreement, which authorises a person to exercise any of the Licensed Rights.

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

Licence Fee means any fee, royalty or other consideration payable to PPCA in connection with the grant of, or the exercise of rights under, a Licence, or otherwise in connection with the exercise or exploitation of any of the Licensed Rights.

Licence Period has the meaning given by clause 12.

Licence Scheme has the meaning given by section 136 of the *Copyright Act 1968* (Cth).

Licensed Rights means all of the Rights in relation to the Controlled Recordings and the Controlled Videos.

Licensee means a person to whom PPCA grants a Licence.

Licensor means you and each other person that owns or controls Rights in any sound recordings or Music Videos and grants a licence of those Rights to PPCA on terms materially the same as those set out in this agreement.

Monitoring Services means third parties that use music recognition technology services and audio fingerprinting software to recognise and monitor sound recording usage.

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.

Offering means the making available of a Program by Streaming or Timed Out Podcast.

Pause means the ability of a user to stop play back and, on request, continue to play, a sound recording from the point at which the transmission of the sound recording stopped.

Podcast means a digital delivery of a Program or Rental Content which results in the creation of an electronic digital format copy of the Program or Rental Content.

Program means a clearly separate identifiable radio or television program (including episodes of a series) or a clearly identifiable part thereof that has been Broadcast.

Rental Content means content made available to users for a fee (including a subscription fee) being:

- (i) a clearly separate identifiable Program that incorporates Cleared sound recordings (including episodes of a series) or a clearly identifiable part thereof;
- (ii) a feature film (or a clearly identifiable part thereof) that incorporates Cleared sound recordings; or
- (iii) Audiovisual Content (that incorporates Cleared sound recordings),

but excludes for the avoidance of doubt in each instance, Music Videos or Programs that predominantly include Music Videos.

Rights means the rights in relation to sound recordings and Music Videos which are described in Schedule 1.

Simulcast means the simultaneous or near simultaneous transmission of content that is delivered by a Broadcast, by another means, including but not limited to transmissions delivered using the internet or a mobile telecommunications network.

Skip means the ability of a user to advance to a further pre-defined point in the transmission of a service by way of discrete steps, where the duration of such steps are determined by the person making the transmission.

Streaming means to transmit a Program, Audiovisual Content or Rental Content from a server by means of a transmission via the internet and/or mobile network that is substantially contemporaneous with the rendering of a sound recording where there is no copy of the Program, Audiovisual Content or Rental Content, or any other form of fixed file or data from which the user can subsequently re-play the Program, Audiovisual Content or Rental Content.

Tax means any tax, levy, charge, franchise, impost, duty, fee, rate, deduction, compulsory loan or withholding, which is assessed, levied, imposed or collected by any Government Agency and includes, for the avoidance of doubt, capital gains tax, fringe benefits tax, income tax, value

added tax, goods and services tax, sales or use tax, training guarantee levy, profits tax, undistributed profits tax, payroll or employment tax, group tax, PAYG or PAYE withholding tax, land tax, import or customs duty, excise, municipal rates, and any interest, fine, penalty, charge, fee or any other amount imposed on or in respect of any of the above.

Timed Out Podcast means a Podcast that ceases to be accessible after a predetermined period of time after the time of delivery.

Website means the PPCA website. As at the Commencement Date, the PPCA website is located at www.pcca.com.au.

2. In this agreement the following rules of interpretation apply:

- (i) you will be taken to control a sound recording or Music Video if:
 - (A) you are the owner or exclusive licensee in Australia of the Rights in relation to that sound recording or Music Video; or
 - (B) under the terms of an agreement between you and the owner or exclusive licensee in Australia of the Rights in relation to that sound recording or Music Video, you are authorised to grant to PPCA a licence in the terms contemplated in clause 2;
- (ii) the singular includes the plural and vice versa;
- (iii) 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;
- (iv) the words 'such as', 'including', 'particularly' and similar expressions are not used as, and are not intended to be interpreted as, words of limitation; and
- (v) a reference to:
 - (A) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
 - (B) any legislation is a reference to that legislation as amended, consolidated or replaced; and
 - (C) a monetary amount is in Australian dollars.