

# APRA AMCOS MINI ONLINE LICENCE AGREEMENT



**Licence enquires** Oliver Khouri okhouri@apra.co.nz 0800 692 772 ext 722 P: 09 623 4722 F: 09 623 2174

## PART A

**APRA NEW ZEALAND LIMITED (APRA) and AMCOS NEW ZEALAND LIMITED (AMCOS)**  
both of Unit 113, Zone 23, 21-23 Edwin Street, Mt Eden, Auckland 1141, New Zealand

### LICENSEE INFORMATION

Name of Licensee:  
(sole trader / registered company)

(you)

Postal Address:

Contact Person:

Email Address:

Phone Number:

Name of Your Online Service:

Website:

Commencement Date:

### Licence Fees:

Tier A = \$250

Tier B = \$500

Tier C = \$1,000

per Licence Year, or part thereof, for each category of music use

Rates are exclusive of GST

### Service Type and Usage

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

#### On Demand Streaming (Individual Tracks)

Streamed pre-determined individual Tracks - no interactivity  
i.e. no playlists.

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

#### On Demand Services

Streamed pre-determined DJ mixes, Webcast archives,  
Music News Programs - no interactivity.  
1 session = 1 User, per hour or part thereof.

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

#### Webcasting

Live Streamed Webcasts received simultaneously by all  
Users.

1 session = 1 User, per hour or part thereof. Excludes  
Synchronisations

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

#### Podcasts (Featured Music)

Podcasts with no more than 80% music use, by duration.

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

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## Podcasts (Minimal Music)

Podcasts with no more than 40% music use, by duration.

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

## Entertainment/Audio-Visual Streaming Service

Streamed general a/v entertainment content with < 50% music use.

1 session = 1 User, per hour or part thereof. Excludes Synchronisations and Video on Demand Services.

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

## Looped Background Music

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

TIER	UNIQUE USERS	TICK
A	<10,000 unique Users p.a.	
B	<30,000 unique Users p.a.	
C	<80,000 unique Users p.a.	

## Clip Service & Movie Previews

Streamed Clips and/or Movie Previews not linked to the sale of Downloads.

TIER	CLIPS / MOVIE PREVIEWS	TICK
A	<1,250 Clips/Movie Previews p.a.	
B	<3,125 Clips/Movie Previews p.a.	
C	<6,250 Clips/Movie Previews p.a.	

## Music Download Service

Individual Track Download sales - no subscription.

TIER	DOWNLOADS	TICK
A	<1,500 Downloads p.a.	
B	<4,000 Downloads p.a.	
C	<10,000 Downloads p.a.	

## Backing Track Download Service

Individual Backing Track Download sales - no subscription.

TIER	DOWNLOADS	TICK
A	<1,500 Downloads p.a.	
B	<4,000 Downloads p.a.	
C	<10,000 Downloads p.a.	

## Ringtone Download Service

Individual Ringtone Download sales - no subscription.

TIER	DOWNLOADS	TICK
A	<500 Downloads p.a.	
B	<1,500 Downloads p.a.	
C	<4,000 Downloads p.a.	

## Karaoke Track Download Service

Individual Karaoke Track Download sales - no subscription

TIER	DOWNLOADS	TICK
A	<1,000 Downloads p.a.	
B	<2,500 Downloads p.a.	
C	<6,000 Downloads p.a.	

## Karaoke Track Streaming Service

Advertising or subscription funded Streaming - no Downloads.

TIER	STREAMS	TICK
A	<30,000 Streams p.a.	
B	<75,000 Streams p.a.	
C	<200,000 Streams p.a.	

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## Part B

### 1. Definitions

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

**Agreed Rate** means the interest rate for overdrafts as published by the Bank of New Zealand plus 2 percentage points, calculated on daily rests from the due date to the date of payment;

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

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

**Backing Track** means a sound recording or MIDI File of a Work for use as a backing track intended for use by a singer or other musician during a performance (whether or not that performance is to the public) and which may augment or replace other performers;

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

**Communicate** has the same meaning as in the *Copyright Act 1994*;

**Concert Film** means a Film where the content consists primarily of footage of a live performance of music in front of an audience;

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

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

**Film** means a copy of a cinematograph film in the form of an encrypted digital media file in which sounds and images are embodied, which contains digital rights management information and which is intended for Download or Streaming for the purpose of viewing;

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

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

**Interactive Music Service** means a service where a User can determine the order in which multiple Tracks, Music Videos and/or Clips are Streamed over the internet or an IP network, including by way of User determined playlists;

**Karaoke Track** means a sound recording or MIDI File of a Work synchronised with images (other than images depicting the performance or miming of the Work) together with a graphic reproduction of the lyrics of the Work intended for use as entertainment that includes the singing of the lyrics by members of the public, but does not include an Advertisement;

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

**Movie** means a Film produced with the intention of being released theatrically or on DVD;

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

**Music News Program** means any audio or audio-visual production the main purpose of which is to deliver music related news;

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

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

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

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

**Production Music** means all present and future Works and sound recordings of such Works, where the Work and sound recording are both owned by the same person or entity, and the principal purpose

of which is not to be made available for retail sale but rather is to be made generally available to studios, broadcasters and other persons for general non-exclusive use in audio, audio-visual and other productions;

**Ringtone** means a reproduction of a Work used to alert an end user of an incoming phone call or other event on a device, which when played back at normal speed in an uncompressed format on a user's device, is no more than sixty seconds in duration;

**Semi Interactive Music Service** means a service that enables access to Streams of Tracks predetermined by the Licensee where the User can influence the universe of Tracks Streamed through input and feedback mechanisms but cannot create their own predetermined list of Tracks nor determine the individual Tracks or artists to be played in any current or future Stream;

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

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

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

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

**TV Episode** means a Film produced with the intention of being broadcast on television;

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

**Video On Demand Service** means the service of delivering Movies, TV Episodes, and Concert Films, over the internet or an IP network to a User's Device at the request of the User;

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

**Website** means the website at the URL specified in Part A of this agreement; and

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

- This agreement commences with effect from the Commencement Date and, subject to clause 10 or earlier termination in accordance with clause 17, will continue until terminated by either party on 3 months' notice.
- APRA and AMCOS (we, us, our) grant you a non-exclusive licence to reproduce AMCOS Works and Production Music, authorise the reproduction of AMCOS Works and Production Music, and Communicate APRA Works and Production Music in New Zealand, in the form of Streams or Downloads as part of the Online Service, in accordance with this agreement.
- Nothing in this agreement constitutes the grant of a licence to reproduce a Work that is not an AMCOS Work or Production Music, or the grant of a licence to Communicate a Work that is not an APRA Work or Production Music.
- This agreement:
  - only applies to Your Online Service, as described in Part A of this agreement;
  - does not apply to services that generate NZ\$12,000 or more of Gross Revenue (excluding GST) in any given Licence Year, exceed the maximum number of Streams or Downloads set out in Part A, or are provided other than to Users.
  - does not include the right to Synchronise AMCOS Works or Production Music with any audio-visual material, including but not limited to Music Videos, or still images;
  - does not include the right to reproduce or Communicate to the public any Work in a manner that represents that particular Works or groups of Works identified by songwriter or title are associated with or promotes the sale or provision of any goods or services, including the Online Service itself, or any person, organisation or line of conduct;
  - does not include the right to Communicate to the public APRA

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

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## SIGNED AS AN AGREEMENT

Signed for and on behalf of the Licensee:

\_\_\_\_\_  
Signature of authorised person (If signing electronically type the words 'Signed by Me')

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

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

\_\_\_\_\_  
Date

Signed for and on behalf of AMCOS New Zealand Limited and APRA New Zealand Limited:

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

Manager Broadcast & Online  
Office held

Oliver Khouri  
Name of authorised person

\_\_\_\_\_  
Date