

## INPUT AGREEMENT

### Terms and conditions

#### CONTENTS

1.	DEFINITIONS AND INTERPRETATION .....	1
2.	LICENCE TO RECORDED MUSIC NZ .....	1
3.	LICENSED CONTENT .....	2
4.	WARRANTIES AND INDEMNITY .....	3
5.	GROSS RECEIPTS AND EXPENDITURE.....	3
6.	ALLOCATION AND DISTRIBUTION .....	4
7.	DISTRIBUTION POLICY .....	5
8.	AMENDMENTS .....	5
9.	LICENCE PERIOD .....	6
10.	TERMINATION .....	6
11.	GENERAL.....	7
	SCHEDULE 1: RIGHTS IN RELATION TO SOUND RECORDINGS AND MUSIC VIDEOS .....	9
	SCHEDULE 2: REQUIRED INFORMATION ABOUT CONTROLLED CONTENT .....	14
	SCHEDULE 3: DEFINITIONS AND INTERPRETATION.....	15

#### 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 3, has the meaning given by that clause; or
- (ii) which is defined in the Companies Act, but is not defined in Schedule 3, has the meaning given by the Companies Act; or
- (iii) which is defined in the Copyright Act, but is not defined in Schedule 3, has the meaning given by the Copyright Act.

1.2 Schedule 3 sets out further rules of interpretation for this agreement.

#### 2. LICENCE TO RECORDED MUSIC NZ

2.1 Subject to the terms and conditions set out in this agreement, you grant to Recorded Music NZ for the Licence Period a **non-exclusive** licence to exercise, and authorise third parties to exercise (and to sub-license other third parties to exercise), any or all of the Licensed Rights.

2.2 You also grant to Recorded Music NZ the following rights:

- (i) to develop and publish Licensing Schemes in relation to the Licensed Rights; and
- (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; and
- (iii) to make applications to the Copyright Tribunal in respect of the exercise of the Licensed Rights 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 Recorded Music NZ 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. For the avoidance of doubt this includes those activities that were previously undertaken by PPNZ Music Licensing Limited.
- (v) to fully promote, protect, enhance, and develop the interests of the Licensor and the Licensed Rights. For the avoidance of doubt, and by way of example, but not limited to, this includes those activities that were previously undertaken by the Recording Industry Association of New Zealand Incorporated, such as: the Official New Zealand Chart, music awards, anti-piracy and education advocacies, sales data collection and related reporting.

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

2.4 You reserve to yourself all rights not expressly granted to Recorded Music NZ 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. LICENSED CONTENT**

3.1 You acknowledge that Recorded Music NZ 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, and
- (iii) 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 Recorded Music NZ informed and updated throughout the Licence Period of all necessary and relevant details of your Controlled Content (including any changes from time to time).

3.2 In particular, you must use all commercially reasonable endeavours to:

- (i) provide to Recorded Music NZ 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 Recorded Music NZ reasonably requests in writing from time to time; and
- (ii) provide to Recorded Music NZ 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 Recorded Music NZ reasonably requests in writing from time to time; and
- (iii) promptly notify Recorded Music NZ 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 Recorded Music NZ if you transfer to a third party ownership or control of any Labels, or if you acquire ownership or control of a Label (including, for the avoidance of doubt, if you launch a new Label).

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

#### 4. WARRANTIES AND INDEMNITY

4.1 You represent and warrant to Recorded Music NZ, both as at the Commencement Date and on an on-going basis throughout the Licence Period, that:

- (i) you own or control all of the Rights in respect of the Sound Recordings, Music Videos and Artwork that are published or otherwise released on the Labels (**Label Content**) and you are entitled to grant to Recorded Music NZ a licence in the terms provided for in clause 2; and
- (ii) the exercise by Recorded Music NZ of the Rights in respect of the Label Content, and the granting by Recorded Music NZ 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 Recorded Music NZ under this Agreement, will not infringe the copyright or other rights of any person.

4.2 You must indemnify, defend and hold harmless Recorded Music NZ 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 4.1; or
- (ii) any other breach of your obligations under this agreement.

Recorded Music NZ holds the benefit of this indemnity as principal and as trustee for each Licensee.

4.3 Recorded Music NZ will:

- (i) promptly give you written notice of any third party claim of which it is aware and which may give rise to liability under the indemnity in clause 4.2; and
- (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); and
- (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 Recorded Music NZ or the relevant Indemnified Person for any reasonable expenses it incurs in doing so.

#### 5. GROSS RECEIPTS AND EXPENDITURE

5.1 You acknowledge and agree that Recorded Music NZ 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**).

5.2 You also acknowledge and agree that out of the Gross Receipts, Recorded Music NZ will expend or appropriate, or reserve for future anticipated expenditure, such amounts as it considers necessary or desirable acting reasonably:

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

## 6. ALLOCATION AND DISTRIBUTION

- 6.1 In respect of each Financial Year, Recorded Music NZ will, in accordance with the Distribution Policy:
- (i) determine the amount of Gross Receipts for the Financial Year; and
  - (ii) after deduction of the amounts referred to in clause 5.2, determine the total amount available for allocation among the Licensors (**Distributable Sum**); and
  - (iii) allocate a proportion of the Distributable Sum to you.
- 6.2 Subject to clause 6.4, at least once in each calendar year Recorded Music NZ will pay you the amount allocated to you under clause 6.1(iii) in respect of the immediately preceding Financial Year (**Distribution**).
- 6.3 If Recorded Music NZ notifies you in writing, at any time after payment of a Distribution under clause 6.2, that you were not entitled for any reason to receive some or all of the Distribution, you must repay the amount specified in Recorded Music NZ's notice within 30 days of receiving the notice. If you fail to repay any amount to which this clause 6.3 applies, Recorded Music NZ 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 Recorded Music NZ will have no obligation to do so, and may instead choose to recover the amount from you as a debt due to Recorded Music NZ.
- 6.4 Where Recorded Music NZ 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 to receive a payment in respect of that Controlled Content via the mechanism of a Direct-to-Artist Scheme, you authorise Recorded Music NZ to pay, in accordance with the Distribution Policy, a percentage of the relevant Distribution directly to such qualified person or persons.
- 6.5 Provided you give Recorded Music NZ 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 Recorded Music NZ 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. Recorded Music NZ will provide your auditor with reasonable access to Recorded Music NZ's premises, and will make available all relevant books of account and records for inspection by your auditor, provided that your auditor first gives Recorded Music NZ a written and signed undertaking (in a form acceptable to Recorded Music NZ) 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.
- 6.6 You acknowledge that:
- (i) Recorded Music NZ 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 3.2 or clause 3.3; and
  - (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; and
  - (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 Recorded Music NZ 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 Recorded Music NZ will use all reasonable endeavours to maximise the accuracy of any Distribution paid to you, in light of the circumstances outlined in this clause 6.6, Recorded Music NZ cannot guarantee the accuracy of any such Distribution. To the extent permitted by law you release Recorded Music NZ from, and you agree not to make or bring against Recorded Music NZ, 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 Recorded Music NZ in determining the Distributable Sum and allocating it among the Licensors except in the case of manifest error or fraud and subject to Recorded Music NZ paying to the Licensor the amount of any shortfall within 30 days of the completion of such audit.

## 7. DISTRIBUTION POLICY

- 7.1 You agree to be bound by the Distribution Policy as it applies from time to time.
- 7.2 From time to time during the Licence Period the Board may resolve to amend the Distribution Policy, in which case Recorded Music NZ will notify you in writing of the changes. If you do not agree with the changes, you may terminate this agreement under clause 10.1.
- 7.3 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 will apply:
- (i) Recorded Music NZ will prepare a revised draft of the Distribution Policy showing the Proposed Amendment in "mark-up", together with a statement explaining the effect of the Proposed Amendment and the reasons for it (**Consultation Documents**); and
  - (ii) Recorded Music NZ 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 Recorded Music NZ; and
  - (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.

## 8. AMENDMENTS

- 8.1 Subject to clause 8.2, Recorded Music NZ may at any time amend any of the terms and conditions of this agreement in accordance with the following:
- (i) Recorded Music NZ will send you and the other Licensors written notice which specifies the amendments and the reasons for proposing them (**Amendment Notice**).
  - (ii) You shall have 30 days to decline acceptance of the amended terms and conditions in writing to Recorded Music NZ. If Recorded Music NZ does not receive notice from you by the end of this period, you will be deemed to have accepted the amended terms and conditions, and such amended terms will take effect from the date specified in the Amendment Notice..
  - (iii) If you decline acceptance of the amended terms and conditions within the 30 day period then, subject to the provisions of clause 10.1, this agreement will be deemed terminated.
- 8.2 Clause 8.1 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 Recorded Music NZ additional rights in any of the Controlled Content (**Rights Amendment**). Recorded Music NZ may only make a Rights Amendment in accordance with the following:
- (i) Recorded Music NZ will prepare a written statement setting out the details of the Rights Amendment and the reasons for proposing it (the **Rights Amendment Notice**). This will also include details of any and all consequential amendments to this agreement; and
  - (ii) You shall have 30 days to advise acceptance or otherwise of the Rights Amendment in writing to Recorded Music NZ. If you accept the Rights Amendment it will take effect from the date specified in the Rights Amendment Notice.

- (iv) If Recorded Music NZ does not receive notice from you by the end of this period, you will be deemed to have accepted the amended terms and conditions, and the Right Amendment will take effect from the date specified in the Rights Amendment Notice.
  - (v) If you decline acceptance of the Rights Amendment, you grant Recorded Music NZ the option to continue this Agreement in accordance with the terms and conditions that applied immediately before the date of the Rights Amendment Notice. If Recorded Music NZ does elect to terminate this agreement then the provisions of clause 10.1 will apply.
- 8.3 If the IFPI amends any of its IFPI Agreements and Protocols and such amendment gives Recorded Music NZ cause to make a corresponding amendment to this Agreement, then Recorded Music NZ will duly notify the Licensor of those amendments subject to the provisions of either clause 8.1 or 8.2 above (depending on they type of amendment made by IFPI).

## 9. LICENCE PERIOD

- 9.1 The Licence commences on the Commencement Date and continues until it is terminated under clauses 8.1(iii) or 10 (**Licence Period**).

## 10. TERMINATION

- 10.1 Notwithstanding the termination provisions of clause 8.1(iii), 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.
- 10.2 Either party may terminate this agreement with immediate effect by giving written notice to the other where:
- (i) a party breaches any of the material terms or conditions of this agreement, and the other party reasonably considers that the breach is not capable of remedy; or
  - (ii) a party breaches any of the material terms or conditions of this agreement and the breach is capable of remedy, but that party fails to remedy the breach within 14 days following receipt of written notice from the other party requiring it to do so; or
  - (iii) an Insolvency Event occurs in relation to either party.
- 10.3 If this agreement expires or is terminated for any reason:
- (i) Recorded Music NZ will not, after the date of expiry or termination (**Termination Date**):
    - (a) grant any new Licence in respect of your Licensed Rights; or
    - (b) extend or allow to be extended any Licence of your Licensed Rights that was in force as at the Termination Date; or
    - (c) commence any legal proceedings relating to the exercise or exploitation of any of your Licensed Rights, but for the avoidance of doubt, Recorded Music NZ 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 10.3(ii);
  - (ii) all Licences granted by Recorded Music NZ 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, Recorded Music NZ will exercise its right of termination if you so direct; and
  - (iii) Recorded Music NZ 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.
- 10.4 Clauses 4, 6, 7, 8, 10.3, 11 and Schedule 3 survive the expiry or termination of this agreement, together with any other terms which by their nature are intended to do so.

## 11. GENERAL

- 11.1 Neither party may assign, transfer or otherwise deal with this agreement, or any of its rights or obligations under this agreement, or purport to do so, without the prior written consent of the other party (which will not be unreasonably withheld or delayed). Notwithstanding the foregoing, you do not require the consent of Recorded Music NZ where you assign or transfer your rights in whole or in part to any related body corporate, to any person or entity owning or acquiring a substantial portion of your stock or assets, or to any partnership or other venture in which you participate, and such rights may be assigned by any assignee. No such assignment shall, however, relieve you or the relevant assigned party of any of its obligations under this agreement. Further notwithstanding this clause 11.1, you do authorise the sub-licensing of your public performance rights by Recorded Music NZ to the Australian Performing Right Association for the purposes of the joint licence initiative currently underway between the parties and anticipated to be launched on 1 October 2013.
- 11.2 This agreement (including the Licensor 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 from the date of execution of this Agreement by both parties.
- 11.3 You acknowledge that Recorded Music NZ 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 Recorded Music NZ 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 Recorded Music NZ as soon as possible after any change in your contact details set out in the Licensor Details. Recorded Music NZ will also notify you and the other Licensors if any of Recorded Music NZ's contact details change during the Licence Period.
- 11.4 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 the Licensor Details (as amended under clause 11.3 if applicable). Such notice is deemed to have been received:
- (i) if sent by post, 4 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.
- 11.5 This agreement is governed by the laws of New Zealand. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New Zealand.
- 11.6 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.
- 11.7 Except as expressly provided in this agreement, neither party has authority to bind the other party.
- 11.8 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.
- 11.9 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.
- 11.10 In the event of any dispute or difference arising between the parties as to the interpretation or performance of this agreement the parties will forthwith meet and endeavour to resolve such difference in good faith between them. If such dispute or difference is not resolved between the parties within 10 working days of the parties

embarking upon such attempted resolution then the dispute or difference may be referred by the parties to mediation or any other alternative dispute resolution process as may be mutually acceptable to them.

- 11.11 You acknowledge that Recorded Music NZ 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

Summary of the rights contained in this Schedule 1:

### **PART 1 – NEW ZEALAND TERRITORIAL RIGHTS**

Public Performance  
Communication  
Music on Hold  
Technical Copying  
Ephemeral Copying  
Simulcasting  
Non-Interactive Webcasting  
Interactive Webcasting  
Audio-visual Streaming  
Clips Service  
Digital Content Rental  
On-Demand Offerings  
Audio Monitoring  
Artwork Rights  
Limited Use Clearances

### **PART 2 – EXTRA-TERRITORIAL RIGHTS**

Simulcasting  
Non-Interactive Webcasting  
Interactive Webcasting  
On-demand Offerings

### **PART 1 – NEW ZEALAND TERRITORIAL RIGHTS**

In respect of Sound Recordings and Music Videos, the **New Zealand Territorial Rights** are as follows:

#### **A. PUBLIC PERFORMANCE**

The right to cause a Sound Recording or Music Video to be played or shown in public.

#### **B. COMMUNICATION**

The right to Communicate a Sound Recording or Music Video to the public.

#### **C. 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.

#### **D. TECHNICAL COPYING**

The right to make copies of Sound Recordings or Music Videos for the purpose of exercising any of the other Rights in relation to Sound Recordings and Music Videos in circumstances where section 85 of the Copyright Act does not apply.

#### **E. EPHEMERAL COPYING**

The right to make and use a copy of a Sound Recording or Music Video in the circumstances referred to in section 85(2)(c) and (3).

#### **F. SIMULCASTING**

The right to Communicate a Sound Recording or Music Video to the public by means of a Simulcast.

#### **G. NON-INTERACTIVE WEBCASTING**

The right to Communicate a Sound Recording and 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 the Sound Recording or view the Music Video on any device at or near the same time that the Communication of the Sound Recording or Music Video is initiated by or on behalf of the operator of the service;
- (iii) no user is able to choose which Sound Recording or Music Video 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 Music Video, or any other form of fixed file or data from which the user can subsequently replay the Sound Recording or Music Video, created on the user's device.

#### **H. INTERACTIVE WEBCASTING**

**PLEASE NOTE:** *In this section (and Part 2, section C below) the phrase "interactive" is used to match the language of the IFPI webcasting protocols to which Recorded Music NZ is a signatory, and are intended to delineate certain webcasting services which provide for a level of interactivity (notably, limited customisation and playback control). However, it does not mean, or should be interpreted to mean, fully interactive services (for example, at the time of this Agreement, Spotify or Xbox Music) such as are subject to direct arrangements between service providers and Rights Holders.*

The right to Communicate a Sound Recording or Music Video to the public by means of a interactive, service which has the following characteristics:

- (i) the Communication from the servers of the service provider occurs over the internet;
- (ii) the user may Skip or Pause Sound Recordings or Music Videos 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); and
- (iv) the user is not able to request the transmission of a particular Sound Recording or Music Video; and
- (v) there is no copy of the Sound Recording or Music Video, or any other form of fixed file or data from which the user can subsequently replay the Sound Recording or Music Video, created on the user's device.

#### **I. AUDIO-VISUAL STREAMING**

The right to Communicate Cleared Sound Recordings reproduced in Audio-visual Content (excluding for the avoidance of doubt Music Videos) 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 service or linear channel where there is no copy of the Audio-visual Content, or any other form of fixed file or data from which the user can subsequently re-play the Audio-visual Content, which is created on the user's playback device

#### **J. CLIPS SERVICE**

The Communication of portions of Sound Recordings and/or Music Videos where such portions of the Sound

Recordings and Music Videos are integral to a service which offers products or services other than full track downloads.

#### **K. DIGITAL CONTENT RENTAL**

The right for a Digital content Provider to make available Rental Content by Communication, 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;
- (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 seven consecutive days 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 particular Sound Recordings or Music Videos;
- (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 acceptable protection measures (as reasonably determined by Recorded Music NZ).

#### **L. ON-DEMAND OFFERINGS**

The right to make Communication Works available by Streaming or Timed-Out Podcast via the internet or mobile telecommunication networks, provided that:

- (i) the Communication Works have previously been Communicated via a terrestrial or satellite network; and
- (ii) in the case of a television Communication Work, the Sound Recordings or Music Videos included within the Communication Work have been Cleared; and
- (iii) the Communication Works are offered from a server owned or controlled by the Licensee; and
- (iv) the user agrees, in advance of receiving the transmission of the Communication Works, to only use the Communication Works for the user's personal non-commercial use; and
- (v) the Communication Works do not contain any "back to back" Sound Recordings or Music Videos (however, a one time occurrence of no more than three Sound Recordings in a row within any one Communication Work is allowed); and
- (vi) if a Communication Work is less than 20 minutes in duration, the Communication Work may only contain excerpts of Sound Recordings or Music Videos that are no longer than 60 seconds or half the length of the Sound Recording or Music Video, whichever is the lesser; and
- (vii) except where use of a Sound Recording or Music Video is Incidental, the Communication Works are only offered and transmitted for a maximum of 7 consecutive days after the first Communication of the Communication Works; and
- (viii) except where use of a Sound Recording or Music Video is Incidental, users may only store the copy of the Communication Works on the user's device for a period of 7 consecutive days following the delivery of the Communication Works to the user; and
- (ix) the user is not able to request the transmission of a particular Sound Recording or Music Video; and
- (x) the Offering is not made in order to sell, advertise or promote particular products or services (other than, with the prior approval of the Licensor, Sound Recordings or Music Videos); and
- (xi) the Licensee agrees to implement acceptable protection measures (as reasonably determined by Recorded Music NZ).

#### **M. AUDIO MONITORING**

The right for Recorded Music NZ to authorise the reproduction and Communication of Sound Recordings for the purposes of facilitating use by Monitoring Services.

#### **N. 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 Non-Interactive Webcasting service, Interactive Webcasting service or a Simulcast service licensed by Recorded Music NZ.

#### **O. LIMITED USE CLEARANCES**

The right to use of Sound Recordings and Music Videos in dramatic or featured content (such as, without limitation, plays, ballet, sports and fashion shows) where such use is limited in duration, audience and frequency, provided that Recorded Music NZ has first established and published a Licensing Scheme for such use which has been approved by the Board.

### **PART 2 – EXTRA-TERRITORIAL RIGHTS**

In respect of Sound Recordings, and provided there is compliance with the terms and conditions of the IFPI Agreements and Protocols, the Extra-territorial Rights in respect of the IFPI Territories are as follows:

#### **A. SIMULCASTING**

The right to Communicate a Sound Recording from New Zealand by means of a Simulcast into one or more of the IFPI Territories.

#### **B. NON-INTERACTIVE WEBCASTING**

The right to Communicate a Sound Recording from New Zealand 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;
- (ii) multiple simultaneous users of the service can hear the Sound Recording or view the Music Video on any device at or near the same time that the Communication of the Sound Recording or Music Video is initiated by or on behalf of the operator of the service;
- (iii) no user is able to choose which Sound Recording or Music Video 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 Music Video, or any other form of fixed file or data from which the user can subsequently replay the Sound Recording or Music Video, created on the user's device.

#### **C. INTERACTIVE WEBCASTING**

The right to Communicate a Sound Recording or Music Video from New Zealand into one or more of the IFPI Territories by means of a interactive service which has the following characteristics:

- (i) the Communication from the servers of the service provider occurs over the internet;
- (ii) the user may Skip or Pause Sound Recordings or Music Videos 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); and
- (iv) the user is not able to request the transmission of a particular Sound Recording or Music Video; and

- (v) there is no copy of the Sound Recording or Music Video, or any other form of fixed file or data from which the user can subsequently replay the Sound Recording or Music Video, created on the user's device.

#### **D. ON-DEMAND OFFERINGS**

The right to make Communication Works from New Zealand available into one or more of the IFPI Territories by Streaming or Timed-Out Podcast via the internet or mobile telecommunication networks, provided that:

- (i) the Communication Works have previously been Communicated via a terrestrial or satellite network; and
- (ii) in the case of a television Communication Work, the Sound Recordings or Music Videos included within the Communication Work have been Cleared; and
- (iii) the Communication Works are offered from a server owned or controlled by the Licensee; and
- (iv) the user agrees, in advance of receiving the transmission of the Communication Works, to only use the Communication Works for the user's personal non-commercial use; and
- (v) the Communication Works do not contain any "back to back" Sound Recordings or Music Videos (however, a one time occurrence of no more than three Sound Recordings in a row within any one Communication Work is allowed); and
- (vi) if a Communication Work is less than 20 minutes in duration, the Communication Work may only contain excerpts of Sound Recordings or Music Videos that are no longer than 60 seconds or half the length of the Sound Recording or Music Video, whichever is the lesser; and
- (vii) except where use of a Sound Recording or Music Video is Incidental, the Communication Works are only offered and transmitted for a maximum of 7 consecutive days after the first Communication of the Communication Works; and
- (viii) except where use of a Sound Recording or Music Video is Incidental, users may only store the copy of the Communication Works on the user's device for a period of 7 consecutive days following the delivery of the Communication Works to the user; and
- (ix) the user is not able to request the transmission of a particular Sound Recording or Music Video; and
- (x) the Offering is not made in order to sell, advertise or promote particular products or services (other than, with the prior approval of the Licensor, Sound Recordings or Music Videos); and
- (xi) the Licensee agrees to implement acceptable protection measures (as reasonably determined by Recorded Music NZ) in accordance with protection measures as drafted and updated from time to time by Recorded Music NZ and IFPI;

## SCHEDULE 2: REQUIRED INFORMATION ABOUT CONTROLLED CONTENT

### Part 1 – Information about Controlled Recordings

Information to be supplied to Recorded Music NZ in relation to each Controlled Recording:

- a. Title of the Sound Recording (track) and name of the artist(s);
- b. Label under which the Sound Recording is released by the Licensor;
- c. Title, artist(s) and catalogue number of the product(s) on which the Sound Recording is released;
- d. Country in which the Sound Recording was originally made;
- e. Year in which the Sound Recording was originally released;
- f. Label under which the Sound Recording was originally released;
- g. International Standard Recording Code (**ISRC**), where available.

### Part 2 – Information about Controlled Videos

Information to be supplied to Recorded Music NZ 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. Country in which the Music Video was made;
- d. Year in which the Music Video was made;
- e. Label under which the sound recording embodied in the Music Video was originally released; and
- f. International Standard Recording Code (**ISRC**), where available.

### SCHEDULE 3: DEFINITIONS AND INTERPRETATION

1. In this agreement:

**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.

**Audio-visual Content** means any specific presentation of Sound Recordings in conjunction with images, whether moving or still and includes 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 telecommunications networks), or a clearly identifiable part thereof.

**Board** means, at any given point over time, the then board of directors of Recorded Music NZ.

**Cleared** means a Sound Recording or Music Video for which the owner of copyright has previously granted explicit written approval to reproduce in a Programme, Audio-visual Content or Rental Content.

**Commencement Date** means the date specified on page 1 of this agreement.

**Communicate** means to transmit or make available by any means of a communication technology, including by means of a telecommunications system or electronic retrieval system, and **Communication** has a correspondence meaning.

**Communication Work** means a transmission of Sound Recordings or Music Videos, or a combination of any of those, for reception by members of the public, and includes a broadcast or a cable programme.

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

**Controlled Recordings** means all of the Sound Recording in respect of which you own or control the Rights in New Zealand from time to time during the Licence Period.

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

**Copyright Act** means the Copyright Act 1994.

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

- (i) preferred genres; or
- (ii) preferred artists; or
- (iii) ratings for particular artists; or
- (iv) ratings for particular Sound Recordings or Music Videos,  
but does not include the ability of a user to select a Sound Recording or Music Video by a particular artist or from a particular album.

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

**Direct-to-Artist Scheme** means a scheme, as approved and varied from time to time by the Board, for the making of direct payments by Recorded Music NZ to certain registered New Zealand recording artists. For the purposes of further clarification, Recorded Music NZ promotes its Direct-to-Artist Scheme at the time of execution of this agreement as “The Recording Artists and Producers (“RAP”) Fund”.

**Distribution Policy** means Recorded Music NZ’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.

**Extra-territorial Rights** means the rights referred to in Part 2, Schedule 1 which are restricted to the IFPI Territories.

**Financial Year** means the year commencing 1 January and ending on 31 December.

**Gross Receipts** has the meaning given by clause 5.1.

**GST** means Goods and Services Tax payable pursuant to the Goods and Services Act 1985.

**IFPI** means the International Federation of the Phonographic Industry.

**IFPI Agreements and Protocols** means the multi-territory reciprocal agreements to which Recorded Music NZ is signatory, being the:

- (i) Agreement on reciprocal representation to license certain simulcasts;
- (ii) Agreement on reciprocal representation to license certain on-demand offerings of broadcasters' programs;
- (iii) Protocol to extend the agreement on reciprocal representation to License certain webcasts;
- (iv) Agreement on reciprocal representation to license certain webcasts;
- (v) Including any amendments to such agreements; and

such other agreements or protocols relating to multi-territory reciprocal rights as are appropriate for Recorded Music NZ to be a signatory to.

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

**IFPI Territories Schedule** means specific lists published and updated from time to time on the Website that sets out the territories of the respective IFPI members that have granted multi-territory licences in respect of certain webcasting, simulcasting and on-demand offering services which enable the respective IFPI members to issue licences for a range of webcasting, simulcasting and on-demand offering 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 Communication Work; and
- (ii) Sound Recordings reproduced in the Communication Work 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; or
- (ii) a liquidator, provisional liquidator, receiver, receiver and manager or administrator is appointed to you or any of your assets; or
- (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; or
- (iv) you propose a winding-up, dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving any of your creditors; or
- (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 (v) 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 Recorded Music NZ in writing, in accordance with this agreement, which authorises a person to exercise any of the Licensed Rights.

**Licence Fee** means any fee, royalty or other consideration payable to Recorded Music NZ 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 9.

**Licensing Scheme** has the meaning given by section 148 of the Copyright Act.

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

**Licensee** means a person to whom Recorded Music NZ grants a Licence.

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

**Licensor Details** means the information detailed on page 1 of this Agreement which the parties have signed, and to which these Terms and Conditions are attached.

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

**Music Video** means a film (as that term is defined in the Copyright Act) that embodies a Sound Recording or a soundtrack which, if made separately from the film, would be a Sound Recording.

**New Zealand** means the territories of New Zealand, Fiji, Samoa, Tonga, Tokelau, the Ross Dependency, the Cook Islands and Niue.

**New Zealand Territorial Rights** means the rights referred to in Part 1, Schedule 1 which are restricted to New Zealand.

**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 or Music Video from the point at which the transmission of the Sound Recording or Music Video stopped.

**Podcast** means a digital delivery of a Communication Work or Rental Content containing Sound Recordings which results in the creation of an electronic digital format copy of the Communication Work or Rental Content.

**Rental Content** means content made available to users for a fee being:

- (i) A clearly separate identifiable Communication Work 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;
- (iii) Audio-visual Content (that incorporates Cleared Sound Recordings).

**Rights** means the rights in relation to Sound Recording and Music Videos which are described in Schedule 1.

**Simulcast** means the simultaneous transmission of content that is Communicated, by any means, including but not limited to transmissions delivered using the internet.

**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.

**Sound Recording** means:

- (a) a recording of sounds, from which the sounds may be reproduced; or
- (b) a recording of the whole or any part of a literary, dramatic, or musical work, from which sounds reproducing the work or part may be reproduced,

regardless of the medium on which the recording is made or the method by which the sounds are reproduced or produced.

**Streaming** means to transmit Communication Works, Audio-visual Content or Rental Content from a server by means of a Communication via the internet and/or mobile telecommunications network that is substantially contemporaneous with the rendering of a Sound Recording or Music Video where there is no copy of the Communication Works, Audio-visual Content or Rental Content, or any other form of fixed file or data from which the user can subsequently re-play the Communication Works, Audio-visual Content or Rental Content.

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

**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.

**Website** means the Recorded Music NZ website. As at the Commencement Date, the Recorded Music NZ website is located at [www.ppnz.co.nz](http://www.ppnz.co.nz).

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 New Zealand 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 New Zealand of the Rights in relation to that Sound Recording or Music Video, you are authorised to grant to Recorded Music NZ a licence in the terms contemplated in clause 2;
- (ii) the singular includes the plural and vice versa; and
- (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; and
- (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; and
  - (b) any legislation is a reference to that legislation as amended, consolidated or replaced; and
  - (c) a monetary amount is in New Zealand dollars.