

**RADIO BROADCASTER – COMMUNICATION LICENCE – LESS THAN \$5M GROSS INCOME**

**COVERING TERRESTRIAL RADIO BROADCAST, RADIO SIMULCAST AND ASSOCIATED ON-LINE RIGHTS OVER AND ABOVE RADIO SIMULCAST**

This agreement is effective from **1 July 2019**, and made **between:**

**Recorded Music New Zealand Limited**, Level 1, 2a Hakanoa Street, Grey Lynn, Auckland 1025  
(Recorded Music)

**And:**

**[XXXXXXXX]** (Licensee)

**Background**

- A. The Rights Holders both make or supply Controlled Content and own or control the copyright (including future copyright) in Controlled Content.
- B. The various Rights Holders have licensed their copyright in respect of the Communication of Controlled Content on a non-exclusive basis to Recorded Music for onward licence to the Licensee, among others.
- C. The Licensee operates and controls the Stations and Websites listed in schedule 1.
- D. Recorded Music has declared a new radio licensing scheme to take effect from 1 July 2019 (**Radio Scheme**). The Radio Scheme enables radio networks with gross income less than \$NZ5m to take out a primary Terrestrial Radio Broadcast and Radio Simulcast licence as well as a further optional licence in respect of certain on-line rights over and above Radio Simulcast.
- E. This agreement sets out the terms and conditions on which Recorded Music has agreed to grant the Licensee a non-exclusive Licence for Communication, certain limited Reproduction and Transient Copying of Controlled Content from the Stations and Websites in the New Zealand Territory for the Term for Terrestrial Radio Broadcast, Radio Simulcast and certain on-line Communication rights over and above Radio Simulcast.

**Execution:**

**Executed by Recorded Music New Zealand Limited by:**

\_\_\_\_\_  
Full name of Authorised Signatory

\_\_\_\_\_  
Signature of Authorised Signatory

**Executed by [XXXX] by:**

\_\_\_\_\_  
Full name of Authorised Signatory

\_\_\_\_\_  
Signature of Authorised Signatory

## 1. Definitions and interpretation

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1.1 In this agreement, unless the context otherwise requires or is specified otherwise:

**Advertisement** means any compilation of audio or audio visual material which is intended to promote the interests of any person, any product or service (excluding the Licensee's) for the commercial advantage of any person (excluding the Licensee), and for which, payment is made, whether in money or in any form of consideration, including contra payments.

**agreement** means this agreement and the schedules to it.

**Artwork** means official single or album artwork associated with Controlled Content for which The Rights Holder exclusively owns or controls the rights to the artwork in the New Zealand Territory, or is authorised to grant rights in the artwork to third parties in the New Zealand Territory, which may vary from time to time during the Term and, in relation to artwork the copyright in which continues to exist after the expiration of the related Controlled Content, includes such artwork beyond this rights period if still owned or controlled by The Rights Holder unless specifically advised otherwise by The Rights Holder to Recorded Music.

**Audio-Visual Content** means any combination of Controlled Content with visual images, whether moving or still, and includes a Programme or part of a Programme.

**Business Day** means any day other than a Saturday, Sunday or public holiday in New Zealand.

**Catch-up Streaming On-Demand** means the method of delivering a transmission of any Programme or part of a Programme by way of data flow from the Licensee's server (as distinct from a downloadable file transfer).

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

**Companies Act** means the Companies Act 1993, New Zealand.

**Controlled Content** means, collectively, any Controlled Recording, Controlled Video or associated Artwork.

**Controlled Recording** means any Sound Recording which any Rights Holder exclusively owns or controls the rights to within and for the New Zealand Territory, or is authorised to grant rights to third parties within and for the New Zealand Territory, which may vary from time to time during the Term.

**Controlled Video** means any Music Video which any Rights Holder exclusively owns or controls the rights to within and for the New Zealand Territory, or is authorised to grant rights to third parties within and for the New Zealand Territory, which may vary from time to time during the Term.

**Copyright Act** means the Copyright Act 1994, New Zealand.

**Customise** means where a member of a NZ Audience can influence the transmission of any Controlled Content including by specifying:

- (a) preferred genres; or
- (b) preferred Recording Artists; or
- (c) ratings for particular Recording Artists; or
- (d) ratings for particular Controlled Content.

**Excluded Income** means and includes any:

- (a) GST;
- (b) sundry or unrelated income (for example, but not limited to, that arising on the sale of assets) received by the Licensee for any activity outside its primary business activity of operating any Station or Website;
- (c) bona fide non-Related Party advertising agency commissions which are not *received* as payments to the Licensee;
- (d) New Zealand on Air funding received for the production of certain Programmes;
- (e) bad debt duly written off by the Licensee in respect of any payment due for an Advertisement; and
- (f) income received by the Licensee which is subject to a separate agreement between the Licensee and any Rights Holder.

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

**Gross Income** means, in relation to the rights granted under this Licence pursuant to clause 2, the gross invoiced revenues as reported and audited, of the Licensee's Stations and Websites received from all sources during a Financial Year in respect of the provision or supply of any Programme, Advertisement or other matter Communicated, or intended to be Communicated by any Station or Website; and includes the money value of any consideration received otherwise than in cash but does not include Excluded Income.

For the avoidance of doubt, **Gross Income:**

- (a) without limiting the generality of this definition, includes the amount paid or allowed by the Licensee to any person in respect of the provision of Programmes, Advertisements or other matter, shall be treated as part of the gross invoiced revenues *received* by the Licensee in respect of each of the Licensee's Stations and
- (b) Does include income received by the Licensee for the sale or Programmes.

**GST** means goods and services tax payable under the Goods and Services Tax Act 1985, New Zealand.

**Incidental** means where:

- (a) Controlled Recordings licensed by Recorded Music to the Licensee do not amount to more than **10%** of the total running time of any On-Demand Radio Podcast; and
- (b) Controlled Recordings licensed by Recorded Music to the Licensee which are reproduced in an On-Demand Radio Podcast are extracts only, of no longer than **60** seconds or **half** the length of the Controlled Recording, whichever is the lesser.

**Interest Rate** means interest calculated at a rate of **2%** per annum over the base overdraft facility rate charged by Recorded Music's banker from time to time.

**Licence** means the collective permissions and rights granted by Recorded Music to the Licensee under this agreement; and **Licensed** has a corresponding meaning.

**Licensee** includes the Licensee's Related Companies, and, where appropriate, its and their employees, agents and permitted assigns.

**Licence Fee** means the sums referred to in clause **5.1** and detailed further in schedule **3**.

**Live Video of Radio Simulcasts** means the real time transmission of Radio Simulcasts as visual Programming. For the avoidance of doubt, this is to cover the streaming of the Licensee's live studio as Radio Simulcasts are occurring and may include off-premises live broadcasts as well. It does not permit synchronisation or the Reproduction and Communication of Audio Visual Content such that the Licensee's activities are akin to television services rather than, at its core, a radio one. If the Licensee is unsure, please contact Recorded Music for verification.

**Music Proportion of a Station's Programme** means the music proportion of the Programme Communicated by each Station which proportion shall be expressed as a percentage of the total Programme time Communicated by each such Station in each Financial Year.

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

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

**NZ Audience** means an audience where at least **95%** of the total members of the audience are NZ Listeners or NZ Viewers.

**NZ Listener** means a person who is physically present in the New Zealand Territory at the time he or she listens to any Controlled Recording.

**NZ Viewer** means a person who is physically present in the New Zealand Territory at the time he or she views any Controlled Content.

**On-Demand Music Service** means a service or part of a service that enables any user or member of the service to receive on request a transmission of a particular Controlled Recording (within or as part of a Programme or otherwise) which is selected by or on behalf of such user or member.

**On-Demand Radio Podcasts** means the transmission of Controlled Content via the internet or mobile networks of a single **downloadable** digital file from any Website where:

- (a) Controlled Recordings licensed by Recorded Music to the Licensee have been Reproduced by the Licensee into a digital file format in combination with sounds or content created by the Licensee;
- (b) all of the Controlled Recordings licensed by Recorded Music to the Licensee are arranged and Reproduced for Communication in the Radio Podcast are separated by sound or content created by the Licensee (that is, there can be no continuous 'back-to-back' arrangement, Reproduction and Communication of Controlled Recordings in the On-Demand Radio Podcast). However, a Licensee may arrange and Reproduce for consecutive Communication in the On-Demand Radio Podcast **3** Controlled Recordings that are licensed by Recorded Music to the Licensee provided that such an arrangement can only occur once per On-Demand Radio Podcast;
- (c) if the On-Demand Radio Podcast is less than **20** minutes in duration, the On-Demand Radio Podcast may only contain Controlled Recordings licensed by Recorded Music which are Incidental;
- (d) the On-Demand Radio Podcast is only offered and transmitted by the Licensee for a maximum period of **7** consecutive days after the first Communication of the On-Demand Radio Podcast, except where the use of the Controlled Recordings licensed by Recorded Music to the Licensee and used in the On-Demand Radio Podcast are Incidental;
- (e) the On-Demand Radio Podcast is only able to be stored on a device for a maximum period of **7** consecutive days after the Communication of the On-Demand Radio Podcast to the device, except where the use of the Controlled Recordings licensed by Recorded Music to the Licensee and used in the On-Demand Radio Podcast are Incidental;
- (f) unless the relevant Rights Holder in the Controlled Recording has given express written approval to the Licensee, the On-Demand Radio Podcast cannot be used in order to sell, advertise or promote particular products or services;
- (g) On-Demand Radio Podcasts are provided only in the form of a Programme in its entirety and not in the form of individual tracks or portions of such a Programme;
- (h) there are no guides providing details at the time at which particular Controlled Recordings appear on any On-Demand Radio Podcast; and
- (i) there are no flags or other markers inserted within the On-Demand Radio Podcast which may directly indicate or which may be used to indirectly infer the start and end point of Controlled Recordings or segments of Controlled Recordings (provided however flags or markers may be inserted in respect of non-Controlled Recordings content).

**Permitted Platform** means the third party platforms listed in schedule 1.

**Prior Communicated Content** means Controlled Content that has previously been Communicated by the Licensee as Programming in the New Zealand Territory, provided however:

- (a) the Licensee does not provide any functionality to users to Customise such Prior Communicated Content other than by Station or Station genre;
- (b) if an On-Demand Radio Podcast, the Prior Communicated Content containing the Controlled Content is a single digital file which is only able to be stored on a device for a maximum period of 7 consecutive days following Communication, after which there is no copy, fixed file or data from which a NZ Listener or NZ Viewer can subsequently replay, Reproduce or Communicate the Controlled Content; and (c) if by way of Catch-up Streaming On-Demand, the Controlled Content is Streamed from a Website and there is no functionality to download such Controlled Content.

**Programme** includes any signal, announcement, item, communication, picture, or other matter Communicated, or intended to be Communicated by the Licensee for reception by any member of a NZ Audience.

**Radio Simulcast** means the simultaneous unaltered transmission of the Licensee's Terrestrial Radio Broadcasts via the internet.

**Recording Artist** means any performer of the relevant Controlled Content as each performer is named on, without limitation, metadata, flags, packaging or any other form of identifying mark.

**Related Company** has the meaning set out in the Companies Act.

**Reproduce** means copying, recording or storing Controlled Content in any material form (including in any digital format) in any medium and by any means. **Reproduction** has a corresponding meaning.

**Rights Holder** means the relevant person, company or organisation (as listed from time to time on Recorded Music's website at [www.recordedmusic.co.nz](http://www.recordedmusic.co.nz).) that owns copyright, or has exclusive rights to copyright in any Controlled Content.

**Sampling and Adaption** means the taking of part of the music of any Controlled Recording and incorporating such part into another Controlled Recording or adapting any Controlled Content in some other way.

**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 of it may be Reproduced,

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

**Station** has the meaning set out in schedule 1 (as may be updated by the Licensee by giving written notice to Recorded Music from time to time) and; and **Station** also includes a group of Stations having a common trade mark or format.

**Term** is the period as detailed in clause 4.1 of this agreement.

**Streaming** means the method of delivering a transmission of Controlled Content to a NZ Audience by way of a data flow from the Licensee's server or Permitted Platform (as distinct from a downloadable file transfer); and **Streamed** and **Stream** have corresponding meanings.

**Terrestrial Radio Broadcast** means the dissemination within the New Zealand Territory by wireless transmission of sounds of all kinds by mean of Hertzian waves intended to be received by NZ Listeners either directly or through the medium of relay stations but excluding placement on and dissemination through the internet or from or via a Website or Permitted Platform.

**Transient Copy** means any temporary copy of any Controlled Content, or portions of Controlled Content, made in the course and purpose of Communication and includes transmission caused by, without limitation, buffering or caching; and **Transient Copying** has a corresponding meaning.

**Website** comprises the list of websites and applications listed in schedule 1 (as these may change from time to time by the Licensee giving Recorded Music written notice), and for completeness includes a collection of pages accessible via a common root uniform resource locator (URL) used by a Station (or group of Stations having a common trade mark or format) to Radio Simulcast, where such Website is also owned, controlled or operated by the Licensee. For the avoidance of doubt, **Website** includes associated applications.

1.2 **Interpretation:** Unless the context requires otherwise:

- (a) the singular includes the plural and vice versa, and words importing one gender include the other genders;
- (b) headings are inserted for the sake of convenience of reference only and do not affect the interpretation of this agreement;
- (c) a **person** includes any individual, corporation, unincorporated association, Government department or municipal authority; and
- (d) a reference to any legislation is a reference to that legislation as amended, consolidated or replaced.

2. **Grant of rights – what this Licence covers**

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2.1 In consideration of the payment of the Licence Fee and due compliance with the terms and conditions of this agreement, Recorded Music grants to the Licensee a non-exclusive Licence in the New Zealand Territory to:

(a) **Terrestrial Radio Broadcast:**

- (i) Reproduce any Controlled Recording for the purposes of compiling playlists for any Terrestrial Radio Broadcast; and
- (ii) Communicate any Controlled Recording to a NZ Audience by Terrestrial Radio Broadcast;

(b) **Radio Simulcasts:**

- (i) Reproduce any Controlled Content for the purposes of any Radio Simulcast, including the compilation of playlists for any Radio Simulcast;
- (ii) Communicate any Controlled Content to a NZ Audience as a Radio Simulcast via any Website or Permitted Platform; and
- (iii) Link any such Radio Simulcast via any Website to any other third party website or via a Permitted Platform;

(c) **Live Video of Radio Simulcasts as visual Programming:**

- (i) Reproduce any Controlled Content for Live Video of Radio Simulcasts as visual Programming, including for the purposes of compiling playlists for any Live Video of Radio Simulcasts as Visual Programming;
- (ii) Communicate to a NZ Audience any Live Video of Radio Simulcasts as visual Programming; and
- (iv) Link any such Live Video of Radio Simulcast as visual Programming via any Website to a NZ Audience or to any third party Website via a Permitted Platform;

(d) **Controlled Videos:**

- (i) Reproduce any Controlled Video for the purposes of visual Programming on any Website; and
- (ii) Communicate any Controlled Video to a NZ Audience as visual Programming via any Website, provided the same re embedded links only from each such relevant Website;

(e) **On-Demand Radio Podcasting as a downloadable file:**

- (v) Reproduce any Prior Communicated Content for the purposes of creating any On-Demand Radio Podcast including for the purpose of compiling playlists for the creation of any On-Demand Radio Podcast; and
- (vi) Communicate Prior Communicated Content as part of any On-Demand Radio Podcast to a NZ Audience from any Website; and

(f) **Catch-up Streaming On-Demand:** Communicate (i.e. via Streaming), Prior Communicated Content to a NZ Audience from any Website or Permitted Platform.

2.2 **Transient Copies:** To meet the technical requirements of Communication only and whether via any of the mechanisms detailed in clause 2.1 above, the Licensee may make Transient Copies.

2.3 **New Controlled Content:** If any Rights Holder (which at the date of this agreement has not authorised Recorded Music to issue a licence in respect of Sound Recordings in which the



Rights Holder owns or controls copyright) subsequently grants such authority to Recorded Music then, from such time, that Rights Holder shall in all respects be bound by the terms of this agreement.

**3. Exclusions, prohibitions and other limitations or - what this Licence does not cover and what the Licensee is also obligated to do relevant to such exclusions, prohibitions and limitations**

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3.1 **Specific exclusions:** For the avoidance of doubt, the Licence granted under this agreement does not, unless otherwise:

- (a) explicitly detailed in clause 2 above; or
- (b) expressly permitted (in writing) by either the relevant Rights Holder or Recorded Music on behalf of that Rights Holder;

extend to any:

- (a) any Communication of any Controlled Content outside the New Zealand Territory;
- (b) any Communication of any Controlled Content (and specifically noting any Controlled Content comprising any Controlled Video) on any social media or third party platform which are not Permitted Platforms;
- (c) other reproduction or synchronisation not expressly set out in clause 2;
- (d) live performance by any Recording Artist for the Licensee which is the subject of a separate agreement between such Rights Holders and the Licensee;
- (e) use of Controlled Content for any Advertisement – i.e. for bona-fide Programming only;
- (f) Sampling and Adaption;
- (g) On-Demand Music Service;
- (h) alteration of any lyrics or images, including parody or mockery which could reasonably be considered as insulting or detrimental to the relevant Recording Artist;
- (i) transmissions within any closed proprietary system and/or within any closed private network – i.e. the relevant Communication via Streaming must originate from a Website or Permitted Platform;
- (j) giving of a public performance by means of the reception of a Communication;
- (k) commercial use by the Licensee's listeners or viewers;
- (l) Communication of any **Musical Works** as that term is defined in the Copyright Act;
- (m) manufacture, sale or distribution of any physical product containing Controlled Content;

- (n) exploitation of Controlled Content which may be the subject of exploitation by Recorded Music on behalf of the Rights Holders which is outside the scope of this Licence; and
- (o) the grant to any other person/entity any of the rights granted to the Licensee under this agreement.

3.2 **Moral rights:** Nothing in this agreement affects the moral rights of Rights Holders whether subsisting in the New Zealand Territory or any other territory.

3.3 **No Recording Artist endorsement:** The Licensee may not, without the prior written permission of Recorded Music or the relevant Rights Holder, Communicate any Controlled Recording in whole or in part in any context which could be reasonably considered as a direct Recording Artist endorsement or direct support by that Recording Artist for any of the products or services being advertised on any Station or Website or which may be viewed as detrimental to any Recording Artist appearing on any such Controlled Recording.

3.4 **No data to be published:** The Licensee agrees that the Controlled Content supplied is supplied strictly for Communication only and that the Licensee shall not:

- (a) Communicate, publish, print or Reproduce;
- (b) cause to be Communicated, published, printed or Reproduced; or
- (c) do anything whatsoever to permit, authorise or encourage any other party to Communicate, print, publish or Reproduce;

any material, information or data (now existing or developed in the future) which might assist or encourage the illegal copying and/or illegal Reproduction of Programmes incorporating Controlled Content or Programmes incorporating Controlled Content.

3.5 **No advance communication:**

- (a) The Licensee will not cause to be published in writing or Communicated in advance, either separately or in combination, precise information as to the identification and times of the day or hour upon which individual Controlled Recordings will be Communicated; and
- (b) Recorded Music acknowledges that the prohibition set out in sub clause (a) above shall not restrict the right of the Licensee to Communicate non-specific general information regarding any Programme to be Communicated which includes the title of any Controlled Recording and/or Featured Recording Artist.

3.6 **Limited consecutive use:** No Controlled Recording extracted from an album shall be Communicated continuously without vocal interruption being made, provided that, it shall not be a breach of this clause if the Licensee Communicates continuously **4** Controlled Recordings extracted from an album in the case of different Recording Artists or **2** Controlled Recordings extracted from an album in respect of the same Recording Artist. There are specific limitations as to the use set out in relation to On-Demand Radio Podcasts which are separate from the limitations set out in this clause **3.6**.

3.7 **Controlled Videos to be used in their entirety:**

- (a) Subject to the provisions of sub clause (b) following, all Controlled Videos shall be used in their entirety without editing and in the manner originally recorded by or for the Rights Holders except as specified under this agreement. In all other circumstances unless and until the Licensee receives the prior written permission of Recorded Music or the relevant Rights Holder no other editing shall be permitted and Recorded Music and the relevant Rights Holder retain the absolute right to refuse such permission.
- (b) To meet the technical requirements of Communication the Licensee may edit Controlled Videos licensed under this agreement for the following purposes:
  - (i) to meet censorship rules;
  - (ii) to edit the beginning and ending of any Controlled Recording in synchronisation or timed relation with the original Sound Recording;
  - (iii) to fade out the ending of a Controlled Video to meet commercial breaks;
  - (iv) to Communicate short extracts of a Controlled Recording for the following purposes **provided that** such extracts do not become a substantial part of the Programme:
    - a) a countdown of Controlled Videos;
    - b) a preview of new releases of Controlled Videos;
    - c) an interview with the relevant Recording Artist;
    - d) a news item about the relevant Recording Artist;
    - e) a Programme trailer; or
    - f) a quiz Programme format.

- 3.8 **Withdrawal of certain Controlled Content:** Notwithstanding the Licence granted under this agreement, each Rights Holder (or Recorded Music on behalf of the relevant Rights Holder), shall have the right at any time by giving notice in writing to the Licensee to exclude from the operation of this Licence any particular Controlled Content in respect of which Communication is specifically prohibited under the recording agreement between the respective Rights Holder and the owner of the copyright in that Controlled Content provided that the number of items of Controlled Content so excluded by each respective Rights Holder shall not exceed 25 in any one year and provided further (without limiting the Licensee's right of termination in clause 7.4) that the Licensee shall have the right to review the amount payable under clause 5.1 should the aggregate number of items of Controlled Content excluded from the operation of this agreement exceed fifty (50) items in any one year.

- 3.9 **Reservation of rights:** All rights not specifically granted under this agreement are absolutely reserved and retained by the each Rights Holder and Recorded Music and all other usage of Controlled Content by the Licensee will require the prior written permission of each relevant Rights Holder (or Recorded Music on behalf of each such Rights Holder).
- 3.10 **Terms of Use:** The Licensee shall ensure that the terms of use applying to each of its Websites state that users may only use the Controlled Content made available to them via access to any Website for personal, non-commercial purposes, subject always to a user's rights and exceptions under the Copyright Act.
- 3.11 **On-Line Security:** The Licensee shall use reasonable efforts to maintain such practical technological protections as are reasonable to ensure that Controlled Content cannot be Reproduced illegally.

#### 4. Term, and continuing payment

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- 4.1 **Period:** The Licence granted pursuant to this agreement shall be for a period of [ ] years, commencing on [ ] and ending on [ ], provided that the Licensee may, by providing written notice to Recorded Music, terminate that part of this Licence as to the on-line rights listed in clauses 2.1(c) to 2.1(f) inclusive at least one calendar month prior to the expiration of each 12 month period of this agreement.
- 4.2 **Continuing Payment until further scheme declared or further agreement made:** The parties agree that at the expiration of the Term and until a new scheme is declared; a new agreement entered into between the parties or a reference filed by either one of them in the Copyright Tribunal, the Licensee will continue to pay Recorded Music the Licence Fee if it continues to use the Controlled Content at the expiration of the Term and does not otherwise have all necessary agreements in place with all requisite Rights Holders.

#### 5. Financial Provisions – Licence Fee, payment, records, audit

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- 5.1 **Fee:** In consideration of the Licence granted under this agreement, the Licensee agrees to pay to Recorded Music, in the form and manner as Recorded Music may from time to time reasonably direct, for the period from the commencement of this Licence an annual licence fee being, in respect of all the grants of rights provided under clause 2 above, the percentage of each Station's Gross Income at the rates set out in schedule 3 as determined by reference to the Music Proportion of each Station's Programme (Communicated from the Station or from the Website).
- 5.2 **Verification of Licensee's Music Proportion:**
- (a) The Licensee certifies that the Music Proportion of a Station's Programme for each of its Stations and that Station's Website is as set out in schedule 2.
  - (b) Should that proportion alter so as to place any Station or Website in a different category, then the Licensee shall notify Recorded Music in writing of that change

and Recorded Music may make such reasonable enquiry regarding the change by reference to the Licensee's records of its programming of that Station or that Station's Website concerned.

- (c) If, after making reasonable enquiry, Recorded Music is satisfied that the Music Proportion of any Licensee's Station's Programme has altered, it will advise the Licensee accordingly and the Licensee shall provide an amended certificate certifying the altered Music Proportion of the Licensee's Programme in respect of each or any of the Stations and their respective Websites.
- (d) The change of category shall be operative from the beginning of the monthly payment date following receipt by Recorded Music of the amended certificate.

5.3 **Payment:** Payment of the annual Licence Fee will be paid **monthly** in arrears. The payment will be made with reference to the actual monthly Gross Income. The Licensee shall, as soon as practicable after the end of each month but no later than the 20<sup>th</sup> working day of the month following, advise Recorded Music of the Gross Income for the month just ended. Recorded Music shall issue a tax invoice for the Licence Fee due within 7 working days of receipt of such advice, which the Licensee will pay in full on or before the end of that month. The tax invoice provided by Recorded Music shall be in a PDF format or such other format as reasonably required by the Licensee.

5.5 **GST:** The Licensee shall pay to Recorded Music GST on each of the Licence Fee payments and Recorded Music shall provide the Licensee with a tax invoice in respect of each of the Licence Fee payments due.

5.6 **Interest on late payments of the Licence Fee:** Without prejudice to Recorded Music's other rights under or arising out of this agreement, if payment of the Licence Fee prescribed in clause 5.1 above is not made within **30** days of the due dates for payment accordance with the same clause during the currency of this agreement, Recorded Music shall have the right without notice to impose the Interest Rate on all such outstanding Licence Fee amounts calculated from the due date for payment until the actual date of payment of the outstanding amount, provided Recorded Music has given the Licensee written notice that the amount is overdue and the Licensee does not make payment within **10** business days.

5.7 **Audit trail:**

- (a) The Licensee will keep such records of all of its revenues, howsoever earned, and including consideration otherwise than in cash as shall enable Recorded Music's independent auditors or chartered accountants to find an adequate audit trail, acting reasonably, by which to verify the Gross Income, including the money value of all or any consideration received otherwise than in cash.
- (b) Such accounting records together with any and all relevant documentation shall be open for inspection on a confidential basis by Recorded Music's independent auditors or chartered accountants on behalf of Recorded Music upon reasonable notice and no more than once in respect of each Financial Year.
- (c) Subject to entering into requisite confidentiality undertakings with the Licensee, such advisers shall be entitled to inspect, make extracts, and take copies of such

accounting records and relevant documentation and to carry out such work as, in their reasonable opinion, is considered necessary to verify the Licence Fees due under clause 5.1 of this agreement. Recorded Music acknowledges that these accounting records are confidential and will be treated as such.

- (d) The reasonable fees incurred by Recorded Music in auditing the accounting records of the Licensee under this clause 5.7 shall be borne by Recorded Music except in circumstances where the audit discloses an underpayment of the Licence Fee in excess of a sum equal to 5% of the Gross Income already paid for the financial period to which the relevant audit relates in which case the audit fees shall be paid by the Licensee.

**5.8 Provision of audit certificate:**

- (a) Within 5 months from the end of every Financial Year, the Licensee shall send to Recorded Music an audit certificate of the Gross Income of the Licensee for that Financial Year signed by its auditor in the form set out in schedule 4.
- (b) On receipt of such audit certificate, Recorded Music shall assess the Licence Fee payable under this agreement by the Licensee in respect of the Financial Year to which the audit certificate relates.
- (c) Recorded Music will credit to the Licensee the total of the amounts paid by it in respect of the Financial Year in accordance with clause 5.7.
- (d) Any amount of Licence Fee overpaid by the Licensee shall forthwith be refunded to it by Recorded Music, and any amount of Licence Fee remaining payable by the Licensee to Recorded Music shall forthwith be paid by the Licensee to Recorded Music.

**5.9 Bad debts:**

- (e) Without limiting the application of the definition of "Excluded Income", within 3 months from the end of every Financial Year, the Licensee may send to Recorded Music a statement of bad debts of the Licensee written off for that Financial Year certified true and correct by a chartered accountant.
- (f) On receipt of such certificate, Recorded Music shall, if satisfied that such bad debts have been written off for such Financial Year, rebate from the Licence Fee payable under this agreement by the Licensee in respect of the Financial Year to which the write-off relates, a sum calculated by multiplying the amount of the certified write-off by the Licence Fee rate applicable to the Licensee's business.

## 6. **Announcements, data supply and statement of use:**

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### 6.1 **Announcements:**

(a) The Licensee agrees that in Communicating Controlled Content on any Station or Website, the Licensee shall reasonably announce or identify in writing or cause to be announced or identified in writing:

- (i) the title of the Controlled Recording;
- (ii) the name of any Recording Artist;
- (iii) where appropriate, the title of the album from which the individual Controlled Recording is extracted;

provided that if, in the opinion of the Licensee, such announcements/written identifications would interfere with the continuity of the presentation of the Communication then such announcements/written identifications need not be made or caused to be made at the time the Controlled Content is Communicated but the Licensee shall make a summary of any Recording Artists and titles which have been or will be Communicated.

(b) Where such announcements are Advertisements, then the Licensee shall not be required to make such announcements/written identifications.

6.2 **Distribution acknowledgment:** It is acknowledged by the Licensee that, Recorded Music required logs to be kept and provided as accurately, completely and promptly as possible for the purpose of ensuring that Recorded Music fulfils one of its key obligations to its Rights Holders, being that of distributing its royalty collections to its members, likewise as accurately, completely and promptly as possible.

6.3 **Statement of use of Controlled Content :** The Licensee shall on a weekly basis furnish to Recorded Music (at an email address to be notified) a statement in electronic form of all Controlled Content Communicated during the preceding week for each Terrestrial Radio Broadcast and Radio Simulcast as follows - the:

- (a) name of the Station;
- (b) name of any Featured Recording Artist;
- (c) title of the Controlled Recording;
- (d) ISRC code of the Controlled Recording or the Controlled Video;
- (e) duration of the Communication of each Controlled Recording or Controlled Video; and
- (f) title of Communication (if any).

6.4 **Change of format:** From time to time Recorded Music may, by giving reasonable notice in writing to the Licensee, require further additional reasonable information and/or changes to

the format of the statement of use of reporting of Controlled Content provided that such requirement does not impose undue cost or inconvenience on the Licensee.

## 7. Termination provisions and consequences of termination

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- 7.1 **Termination or suspension for non-payment of Licence Fee:** Recorded Music may by written notice served at the last known address or registered office of the Licensee immediately terminate or suspend this agreement and the Licence granted under this agreement if payment of the Licence Fee or any part of it is in arrears for **30** days after the due date for payment or the date upon which a tax invoice for the relevant sum is provided by Recorded Music, whichever is the later, provided Recorded Music has given the Licensee at least **10 Business Days'** notice that it is in arrears and the Licensee does not make payment.
- 7.2 **Termination for failure to provide reporting:** In the event that the Licensee fails or refuses to deliver any of the reporting required by this agreement within the time specified or if there is a substantial error in such reporting and this failure or default is not fully rectified within **30** days after Recorded Music has e-mailed a written demand for such reporting or for such rectification to the Licensee, Recorded Music shall have the absolute right to terminate or suspend the Licence granted under this agreement.
- 7.3 **Termination for bankruptcy or insolvency:** In the event that a party is:
- (a) adjudicated bankrupt; or
  - (b) that any insolvency proceedings are instituted against the that party and are not dismissed within thirty **30** days after their commencement; or
  - (c) is reorganised, either voluntary or otherwise; or
  - (d) a trustee or receiver is appointed to take over all or a substantial part of that party's assets and is in control of them for **15** days or more;
- the other party shall have the option to immediately terminate this agreement and the Licence granted under it.
- 7.4 **Termination for any other cause:** A party (the **Terminating Party**) may immediately terminate or suspend this agreement at any time if the other party has committed a breach of the provisions of this agreement and the other party has, after **30** days' notice in writing served by the Terminating Party to the other party, at the last known address or registered office of the other party, not rectified the breach, or continues or repeats such breach.
- 7.5 **Right of recovery:** Any termination or suspension shall not affect the right of Recorded Music to recover monies due and payable under this agreement prior to the date of termination or suspension and shall be without prejudice to any other rights or remedies of either party.
- 7.6 **Cessation of rights:** Upon termination or suspension of this agreement and of the Licence granted under it, all rights granted by Recorded Music to the Licensee shall immediately revert to Recorded Music free and clear of any claims by the Licensee and the Licensee shall have no further right of Communication, limited Reproduction or Transient Copying of



Controlled Content nor to exercise any other rights granted to the Licensee pursuant to this agreement.

## 8. Warranties and liabilities

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- 8.1 **Warranty from both parties:** Both parties undertake and warrant to the other that they have the authority to enter into and execute this agreement in all respects.
- 8.2 **Indemnity from Licensee:** The Licensee agrees to indemnify and keep indemnified Recorded Music and each Rights Holder against any liability arising out of the Licensee's failure to limit its Communication of Controlled Content to the New Zealand Territory.
- 8.3 **No liability:** Neither Recorded Music nor any Rights Holders will be liable for any:
- (a) breach of copyright or other acts or omissions of the Licensee in respect of the rights in any literary, dramatic, or musical works reproduced on the any Controlled Content which are owned or controlled by any licensing body, company, entity or person other than Recorded Music and the Rights Holders; or
  - (b) failure of the Licensee to limit any Communication of the Controlled Content to the New Zealand Territory or to a NZ Audience.

## 9. Dispute resolution

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- 9.1 **Disputes:** Both parties must, during and after the term of this agreement, without delay and in good faith, attempt to resolve any dispute which arises out of or in connection with this agreement prior to commencing any proceedings, but failure to do so will not be deemed a breach of this agreement entitling any party to terminate.
- 9.2 **Notification:**
- (a) A party wishing to resolve a dispute must notify the other party of the existence of the dispute and must identify the nature of the dispute in writing.
  - (b) If, within **35** Business Days of the notice of the dispute, the parties do not agree on a dispute resolution technique or if the dispute is not resolved, then either party may refer the dispute to mediation. The mediation will be administered in accordance with the Mediation Protocol of the Arbitrators' and Mediators' Institute of New Zealand Inc. (AMINZ).
- 9.3 **Continuation:** The existence of a dispute or the commencement of proceedings does not affect the obligation of both parties to continue to perform their respective obligations under this agreement.
- 9.4 **Copyright Tribunal:** Nothing in this section **9** affects the right of either party to seek a determination from the Copyright Tribunal of New Zealand in relation to the subject matter of this agreement.

## 10. Remaining provisions

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- 10.1 **Confidentiality:** Neither party shall disclose any of the terms or provisions of this agreement or any other information confidential to the other party without that party's prior written permission unless to its professional advisors, within its group of companies or if required to do so by law (which for the avoidance of doubt, includes the Copyright Tribunal of New Zealand) or the rules of any Stock Exchange (if applicable).
- 10.2 **No assignment:**
- (a) This agreement is personal to the Licensee and Recorded Music.
  - (b) Neither party is entitled to assign or sub-licence any of its rights or dispose of any of its obligations under this agreement without the prior written permission of the other party, such consent not to be unreasonably withheld.
- 10.3 **Waiver:** The failure of either party at any time to properly enforce any of the provisions of this agreement or to exercise any rights granted pursuant to this agreement will not be considered a waiver or affect such party's right to enforce any or all of the provisions of this agreement.
- 10.4 **Entire agreement:**
- (a) This agreement sets out the entire agreement of both parties in relation to the subject matter contained in this agreement and each of the parties to this agreement acknowledges that it has not entered into this agreement in reliance on any representation or term not contained in this agreement.
  - (b) This agreement supersedes and cancels all Previous Agreements, negotiations, commitments and representations made between the parties whether oral or written.
- 10.5 **Execution:** Both parties will (and will procure that any other necessary party within its control will) execute all such documents and do all such acts and things as may be reasonably be required on or subsequent to completion of this agreement for securing each of the obligations of the respective parties under this agreement and this agreement may be executed in any number of counterparts.
- 10.6 **Jurisdiction:** This agreement will be construed according to the laws of New Zealand. Both parties agree to submit to the exclusive jurisdiction of the New Zealand Courts.
- 10.7 **Amendment or modification:** This agreement may not be amended or modified otherwise than by written agreement between the parties, which may include communication in electronic format, provided that both parties clearly agree on the face of it via such communication that the same is intended to be an amendment or addendum to the terms of the agreement and the persons who agree as such confirm they have the authority to bind the party they are writing and committing on behalf of.
- 10.8 **Severance:** If any clause in this agreement is found by a competent authority to be invalid, unlawful or unenforceable, such clause will be severed from this agreement but the rest of the agreement will remain enforceable to the fullest extent of the law.

10.9 **Notices:**

- (a) All notices required to be given under this agreement must be sent in writing to the addresses detailed in sub-clause (e) and (f) below (as applicable).
- (b) Notices may be served by hand delivery, by post or by email.
- (c) Notices served by hand delivery or by email will be deemed to have been received on the day of sending provided it is a Business Day, and if not a Business Day, then on the next Business Day.
- (d) Notices sent by post will be deemed to have been received on the **3rd** Business Day after posting.
- (e) A notice for Recorded Music shall be addressed as follows:

**Recorded Music NZ Limited**

Attention: Damian Vaughan

Level 1, 2A Hakanoa Street, Grey Lynn, Auckland 1021

Private Bag 78850, Grey Lynn, Auckland 1245

Email: [Damian@recordedmusic.co.nz](mailto:Damian@recordedmusic.co.nz)

A notice to the Licensee shall be addressed as follows:

**[XXXX]**

**Schedule 1 – List of Stations and Websites (including applications)**

**[COMPLETE SCHEDULE PRIOR TO EXECUTION]**

**LIST OF STATIONS (including frequencies):**

**LIST OF ASSOCIATED WEBSITES:**

**LIST OF APPLICATIONS:**

**LIST OF PERMITTED THIRD PARTY PLATFORMS:**

**Schedule 2: Music Proportions**

**[COMPLETE SCHEDULE PRIOR TO EXECUTION]**

**[XXXX]** CERTIFIES that the Music Proportion of the Licensee's Programme in respect of each of the Stations is as follows:

<b>Station</b>	<b>Music Proportion of the Licensee's Station's Programme</b>
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**Schedule 3: Licence Fee**

**[COMPLETE SCHEDULE PRIOR TO EXECUTION]**

**Terrestrial Radio Broadcast, Radio Simulcast and other online Communication rights as granted to the Licensee as detailed in Clause 2.1 of the agreement.**

<b>Financial Year or part of</b>	<b>Royalty Rate as percentage of Gross Income for Terrestrial Radio Broadcast and Radio Simulcast as per clause 2.1 (a) and 2.1(b)</b>	<b>Royalty Rate as percentage of Gross Income for On-Line Rights over and above Terrestrial Radio Broadcast and Radio Simulcast as detailed in clauses 2.1(c); 2.1(d); 2.1(e) and 2.1(f)</b>
	<i>See published schedule</i>	<b>0.05%</b>

**Recommended example reporting template**

Radio Stations	Broadcast & simulcast rate	Additional online rights rate	Total rate payable	Gross advertising revenue	Less agency commission	Less bad debts	Gross income	Licence fee
music station 1	xx%	0.05%	xxx%	xxx	xxx	xxx	xxx	xxx
<b>Total Revenue</b>				<b>xxx</b>	<b>xxx</b>	<b>xxx</b>	<b>xxx</b>	<b>xxx</b>

**Schedule 4:**  
**Audit Certificate**

I, of [ \_\_\_\_\_ ] of [ \_\_\_\_\_ ] chartered accountant, certify that:

- (a) I am the duly appointed auditor of [ \_\_\_\_\_ ] for the Financial Year ended [ \_\_\_\_\_ ].
- (b) In terms of the provisions relating to the Licence Fee, and the calculation of it as contained in the agreement entered into between Recorded Music New Zealand Limited and [ \_\_\_\_\_ ] a copy of which agreement I have read and understood, the amount of Gross Income as defined in clause 1 of the agreement on which the Licence Fee is payable is \$ [ \_\_\_\_\_ ].

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\_\_\_\_\_ Signed

\_\_\_\_\_ Dated