



RECORDED MUSIC NEW ZEALAND LIMITED

(Recorded Music NZ)

Distribution Policy

As at 14th August 2019

CONTENTS

Part A: The Rights under Copyright Law and Agreements with Recorded Music New Zealand Limited (Recorded Music NZ)

1. Description of Recorded Music NZ
2. Legal Background
3. Master Rights Agreement
4. Direct-to-Recording Artist Scheme - Registration
5. Distributors
6. International Master Rights Holders
7. Reciprocal or Bilateral Agreements
8. Obligations of Master Rights Holders
9. Obligations of Recording Artists registered in the Direct-to-Recording Artist Scheme

Part B: Licences, OneMusic, Data and Initiatives

10. Types of Licences for Sound Recordings and Music Videos
11. OneMusic Licences

Part C: Distribution, Expenses & Payment

12. Distribution Pools & Data
13. Times & Cut-off Dates
14. Expense Allocation
15. Payments – Process and Procedure
16. Data Initiatives

Part D: General & Other

17. Recorded Music NZ's Obligations
18. Complaints and Disputes
19. Changes to this Distribution Policy

Part E: Schedules

Schedule and Attachment Index

| | |
|--------------|---|
| Schedule 1: | Constitution |
| Schedule 2: | Structure Diagram |
| Schedule 3: | Master Rights Agreement |
| Schedule 4: | Direct-to-Recording Artist Scheme Registration Form |
| Schedule 5: | Master Rights Agreement Acceptance Form |
| Schedule 6: | Amended Distribution Payment Percentages Form |
| Schedule 7: | Types of Licences granted by Recorded Music |
| Schedule 8: | Music Map |
| Schedule 9: | Weighting System |
| Schedule 10: | Privacy Policy |
| Schedule 11: | Complaints Policy |

PART A: THE RIGHTS UNDER COPYRIGHT LAW AND AGREEMENTS WITH RECORDED MUSIC NZ

1. Describing Recorded Music NZ

Recorded Music NZ is a not for profit limited liability company registered in 1957 under the then Companies Act.

Recorded Music NZ:

- (a) Has a **constitution** which is attached as Schedule 1;
- (b) Has an elected board, shareholders and executive management – see **structure** diagram attached as Schedule 2;
- (c) Is, among other things, authorised via **Master Rights Agreements** (Schedule 3) to grant **permissions**, issue blanket licences and **collect licence fees** from many users of sound recordings; and
- (d) Net of administration fees, which includes costs in relation to certain advocacy and promotional activities, **distributes** all remaining sums to its **Master Rights Holders** who have entered into a Master Rights Agreement and qualifying members of the **Direct-to-Recording Artist Scheme** (attached as Schedule 4) based on relevant **data** collected from various and many users.

2. Legal Background

Under the Copyright Act 1994 (**Copyright Act**), each of the Master Rights Holders (as owners or exclusive licensees of copyright in sound recordings and sound recordings contained within music videos) ... *has the **exclusive right** to do, ... the following acts in New Zealand:*

- (a) To **copy** the work;*
- (b) To **issue copies** of the work to the public, whether by sale or otherwise;*
- (c) To **perform** the work in public;*
- (d) To **play** the work in public;*
- (e) To **show** the work in public;*
- (f) To **communicate** the work to the public [section 16];*

A number of these acts are carried out by the Master Rights Holders themselves, such as the licensing of music streaming and download services; the sale of recorded music in any medium or the right to synchronise a work with images in an advertisement (i.e. reproduction/synchronisation).

However, there are other situations where Master Rights Holders request Recorded Music NZ to represent certain of these rights on their behalf. For instance, when their sound recordings are used by businesses such as cafes, bars, radio stations, TV networks, streaming video services, gyms ... the list is extensive. In these situations, their rights are licensed on a **non-exclusive basis** by Recorded Music NZ as a collective licensing organisation.

It would be inefficient, and result in frequent infringement, if it were necessary for these types of music users to obtain individual permissions from each Master Rights Holder. Instead, they seek **blanket licences** from Recorded Music NZ who in turn either grants individually-negotiated **licences or issues licensing schemes** which apply to like groups of users. The Copyright Act also applies to such organisations and the schemes they operate.

With respect to recordings made on or after 30th December 2018, the Copyright Act also grants certain rights to performers. Performers are entitled to give or withhold their consent when recordings they have performed on are:

- (a) **copied**
- (b) **communicated** to the public or
- (c) **issued to the public** as copies.

Performers can assign their rights to a third party by agreement in writing, or they can give a consent that covers specific recordings, a category of recordings, or recordings generally.

New Zealand law does not give performers a right to remuneration or payment in respect of their performances. As a result, Recorded Music NZ does not collect on behalf of, or make payments to, performers on the basis of performers' rights. Eligible performers are entitled to register for the Direct-to-Recording Artist Scheme, under which performers can receive up to 50% of the revenues collected on behalf of Master Rights Holders. This Scheme is based on agreement rather than a statutory right of performers.

3. **Master Rights Agreement**

If Master Rights Holders wish Recorded Music NZ to collect licence fees on their behalf then they must **execute** a Master Rights Agreement (previously called an Input Agreement) and deliver it to Recorded Music NZ. If this is not completed, Recorded Music NZ is not authorised to collect licence fees nor distribute royalties in respect of any sound recording labels or artists may own the copyright in.

The current **form of the Master Rights Agreement** is attached as Schedule 3. The additional summary and directions as to execution of this document (Part A) and completion of minimum repertoire requirements (Part B) is set out and attached as Schedule 5.

Each Master Rights Agreement, among other things, sets out:

- (a) The **scope of licence** granted to Recorded Music NZ;
- (b) The **rights and obligations** of both Recorded Music NZ and the Master Rights Holder to each other;
- (c) The terms applying to various key issues like **distribution and cost allocation**; as well as
- (d) The **extension or clarification of the grant of rights** from time to time.

4. Direct-to-Recording Artist Scheme – Registration

Eligible recording artists who perform on a recording but are not Master Rights Holders of that recording may, subject to certain conditions (see Schedule 4 –Direct-to- Recording Artist Registration Forms), elect to register (**Registrant**) in the **Direct-to-Recording Artist Scheme (Registration)**.

Recording artists are eligible if they:

- are a featured (ie principal or named) artist on a recording (not a session or contract musician, producer or DJ), either as a soloist or part of a band;
- are a New Zealand citizen or resident; and
- have performed on a recording which is the subject of a Master Rights Agreement with Recorded Music NZ,

Provided:

- (a) The relevant Master Rights Holder has granted the requisite permission to Recorded Music NZ (note, this will be specifically included in the new form of Master Rights Agreement); and
- (b) The Registration is complete and effective.

Recorded Music NZ can then distribute up to **50%** of the funds available for distribution in respect of each such sound recording directly to the relevant Registrant. The remaining **50%** is then distributed to the Master Rights Holder.

In some cases, the percentage of distribution may be amended or agreed otherwise between the parties. In such a case, both parties must complete and execute an **Amended Direct-to-Recording Artist Scheme Form** (set out attached as Schedule 6) and return it to Recorded Music NZ.

If the relevant recording artist(s) is also the Master Rights Holder(s), that person or people will receive **100%** of the distributions.

5. Distributors

In some cases, certain sound recordings owned by a Master Rights Holder may be distributed or licensed by another entity, often referred to as a **Distributor**.

If a Distributor is also a Master Rights Holder in their own right, Recorded Music NZ will pay any distributions to that Distributor on behalf of itself and the other Master Rights Holder who appointed the distributor for the territory of New Zealand. This is to ensure administrative and cost efficiencies.

The only time Recorded Music NZ will not distribute on this basis is if it is explicitly advised in writing otherwise. In this situation, Recorded Music NZ will confer with all parties with no funds being released until ownership is confirmed.

6. International/Offshore Master Rights Holders

If a local Master Rights Holder is owned by an offshore company, entity or individual, all distributions will nonetheless be paid to the local Master Rights Holder.

If an international Master Rights Holder has no representation in New Zealand, then such a person or entity is not eligible to register directly with Recorded Music NZ but can instead seek representation and entitlement to distributions via a local agent, or via Reciprocal or Bilateral Agreements as described in Section 7 following.

7. Reciprocal or Bilateral Agreements

Recorded Music NZ is currently a party to the following **Reciprocal or Bilateral Agreements**:

- (a) **PPL UK** and Recorded Music New Zealand Limited dated 13 August 2010 to cover the territory of the **UK**; and
- (b) **Sound Exchange** and Recorded Music New Zealand Limited dated 25 July 2012 to cover the territory of the **United States of America**; and
- (c) **PPCA** and Recorded Music New Zealand Limited dated 28th March 2019 to cover the territory of **Australia**.

These agreements allow for any individual or entity who is an offshore Master Rights Holder who does not have an exclusive licence agreement in place with a New Zealand resident Master Rights Holder to nonetheless receive distributions from Recorded Music NZ via their locally domiciled collection company as we have listed above.

Recorded Music NZ is unable to take such registrations directly from offshore, as the administrative burden and costs would outweigh any benefits of such direct registration. The use of Reciprocal or Bilateral Agreements with larger collective organisations in English-speaking territories most likely to be utilised by offshore Master Rights Holders provides a much more cost effective solution for all parties concerned.

8. Obligations of Master Rights Holders

Recorded Music NZ relies on the licence granted by Master Rights Holders, and the information provided by them, to grant licences to third parties and to collect and distribute funds.

Most importantly, in the Master Rights Agreement each Master Rights Holder:

- (a) warrants to Recorded Music NZ that it is the owner or licensee of copyright in the relevant sound recordings, and that it has the rights necessary to grant the required licence to Recorded Music NZ; and
- (b) agrees to indemnify Recorded Music NZ in respect of any breaches of this warranty.

This means that Master Rights Holders are responsible for clearing all rights associated with their recordings before granting the licence to Recorded Music NZ. This includes obtaining an assignment or consent from any and all performers who perform on any sound recording. If an assignment of performers' rights or an appropriate consent has not been obtained in respect of any recording made on or after 30th December 2018, Recorded Music NZ will be unable to license that recording.

In addition, each Master Rights Holder has an ongoing obligation to provide a range of up-to-date and accurate **information** to Recorded Music NZ. Clause 3.1 provides:

"The Rights Holder will use commercially reasonable endeavours (having regard to the size of the repertoire of Controlled Content and the range of different geographical regions from which it originates) to supply and keep Recorded Music NZ informed and updated throughout the Rights Period of all necessary and relevant details of the Controlled Content (including any changes from time to time). In particular, The Rights Holder will use commercially reasonable endeavours to:

- (a) *supply the following information to Recorded Music NZ about the Controlled Content:*
 - (i) *name of the recording artist(s);*
 - (ii) *title of the Sound Recording (track) or title of the Music Video;*
 - (iii) *Label under which the relevant Sound Recording or Music Video is released by The Rights Holder;*
 - (iv) *in the case of a Sound Recording, Title, artist(s) and catalogue number of the product(s) on which the Sound Recording is released;*
 - (v) *country in which the Sound Recording or the Music Video was originally made;*
 - (vi) *year in which the Sound Recording was originally released or the Music Video was made;*
 - (vii) *Label under which the relevant Sound Recording or the Music Video was originally released;*
 - (viii) *in the case of Music Videos, the Label under which the sound recording embodied in the Music Video was originally released; and*
 - (ix) *where available, the International Standard Recording Code (ISRC);*
- (b) *promptly notify Recorded Music NZ if it no longer exclusively owns or controls the Rights, or is*

no longer exclusively authorised to grant Rights, in any Controlled Recording or Controlled Video at any time during the Rights Period;

- (c) promptly notify Recorded Music NZ if it transfers exclusive ownership or control of any Labels to a third party, or if The Rights Holder acquires exclusive ownership or control of a Label (including, for the avoidance of doubt, if The Rights Holder launches a new Label); and*
- (d) advise Recorded Music NZ in writing in respect of any Artwork that The Rights Holder no longer exclusively owns or controls, or is no longer exclusively authorised to grant Rights, from time to time during the Rights Period."*

Recorded Music NZ requests that Master Rights Holders make sure they review and comply with these requirements on an ongoing basis.

While it encourages provision of this information and any updates as soon as possible, Master Rights Holders should note that Recorded Music NZ is unable to guarantee that information provided after the applicable **distribution cut-off date** for a Financial Year (see Section 13 following) will be taken into account in the distribution for that Financial Year. In some cases Recorded Music NZ will not be able to make payment unless and until it receives the requested information.

To reiterate, Master Rights Holders must ensure that they keep Recorded Music NZ informed of:

- any changes to the Master Rights they **own or control**, including any recording labels that are discontinued and new labels that are introduced
- new recordings that are released – these must be registered with Recorded Music NZ.

If a Master Rights Holder does not register a new recording, Recorded Music NZ reserves the right not to pay royalties in respect of that recording until the registration is complete, having regard to the cut-off dates outlined above.

Recorded Music NZ also requires Master Rights Holders to also advise promptly of:

- (a) Any **errors or overpayments** of which they become aware from their annual statements;
- (b) Any changes to their **addresses, contact details or key personnel**;
- (c) Any change to their **tax status** (including GST or offshore applicable Non-Resident Withholding Tax);
- (d) **Bank account details and account numbers**; and
- (e) Company or other entity **ownership details/changes**.

9. Obligation of Artists or Direct-to- Recording Artist Scheme – Registrants

Under each Registration, a Registrant has an ongoing obligation to provide a range of up-to-date and accurate **information** to Recorded Music NZ. These requirements are set out in Schedule 4.

PART B: LICENCES, ONEMUSIC, DATA AND INITIATIVES

10. Types of Licences for Sound Recordings and Music Videos

Recorded Music NZ licenses the broadcast, simulcast, communication, limited reproduction and compilation and the use of associated artwork of **sound recordings** and sound recordings embodied in **music videos** as outlined in the table attached as Schedule 7 - Types of Licences granted by Recorded Music NZ.

11. OneMusic

The table in Schedule 7 also shows the licensing via OneMusic – www.onemusicnz.com.

Recorded Music NZ has granted a **sub-licence to APRA | AMCOS** to licence users of music in what is known as the **public performance** category of blanket licensing. Please see the Music Map attached as Schedule 8.

Public Performance licensing includes the areas of hospitality, retail, fitness, dance, music-on-hold, education, sports codes, councils ... the list is extensive and growing and covers all users whether they be businesses, public entities, or individual persons – provided music is played, showed or communicated **in public**.

Recorded Music NZ also sub-licenses its reproduction rights for **Music Service Providers (MSPs)** to OneMusic. OneMusic licenses these MSPs only when the reproductions are made for the purposes of supply to their customers for the purposes of public performance.

Recorded Music NZ does have some separate licences for public performance that it licences **directly** due to their bespoke nature. This currently includes: cinemas; licensing of broadcasters; dramatic context; events, non-broadcast videos and airlines.

There is relative clarity (via legal opinion and court cases) on what constitutes “**in public**” and it is generally wider in scope than is often thought.

And, while there are some **exceptions** for certain users (charitable clubs for instance), these exceptions are on the other hand more restrictive than is often thought.

OneMusic’s goal is to ensure full compliance by all users of music to ensure equity and fairness amongst users. OneMusic’s focus is therefore on **market penetration of reasonably priced and fairly implemented licensing schemes** for all users playing or showing music in public in New Zealand.

The **licensing revenue** is mostly split **50:50** with APRA | AMCOS net of operating costs (with some obvious exceptions, such as live music performance, which is a right that only applies to the underlying musical composition).

Recorded Music NZ also continues to work on improving the **data sets** for each sub-category of licensing with APRA | AMCOS.

PART C: DISTRIBUTION – POOLS & DATA, EXPENSES & PAYMENT

12. Distribution Pools & Data

There are **two distributions** made by Recorded Music NZ annually. For all Recorded Music NZ revenue generated for the territory of NZ this occurs by 30th June in each calendar year and the **Secondary Distribution** by 30th September in the same year.

The Main Distribution comprises the following funds or **pools** and the **actual data or data proxy** used for the purposes of each pool is noted against each fund / pool as follows:

- (a) **Radio (other than those listed below):** i.e. commercial, student, regional and ACAB. This is allocated by track with a weighting system. An explanation of the weighting system is set out in Schedule 9.
- (b) **Public performance:** This includes all OneMusic income as well as direct payments for Schools, Polytechs and Universities. The public performance pool comprises licence fees from the following industries/areas:
 - Hospitality;
 - Retail;
 - Fitness;
 - Music on Hold;
 - Other – including dance schools, music in the workplace, sports codes, transport, churches and councils; and
 - Music service providers (**MSPs**).

This fund is allocated by track based on radio data as the proxy. Additionally, subject to receipt of complete data and licence fees, some MSP income is distributed on the actual playlist data provided.

- (c) **Sporting Events:** Distributed at track level according to data supplied.
- (d) **Cinema:** Distributed using television data.
- (e) **Airline licensing:** Public performance and communication income distributed using data supplied from actual inflight programming.
- (f) **Limited online communication licences e.g. Webcasting or General Entertainment Licences:** Distributed using radio data.
- (g) **International Revenue:** Specifically income received in the distribution calendar year from Sound Exchange in the US and in some cases adjustment income received from PPL in the UK for past distribution calendar years. Full track data is supplied and distributions are made against this data. For any income received relating to the distribution year but received on or after 30th June this is distributed in the secondary distribution by 30th September.
- (h) **Iwi Radio:** Specific data is received from Iwi stations and distribution is made against this separate track data.
- (i) **RNZ National:** Specific data is received from RNZ National and distribution is made against this separate track data.

- (j) **RNZ Concert:** Distribution is made against specific RNZ Concert data on a per-track basis.
- (k) **Pacific Revenue:** It is proposed to be distributed using radio data from that region as available.
- (l) **Any Partial Repertoire or bespoke licences:** Actual data for repertoire covered under part repertoire licences.
- (m) **Special Event, Theatrical or Dramatic Context Licensing:** Distributed at track level where possible subject to adequate receipt of data.
- (n) **Television:** includes all:
 - Commercial TV;
 - Pay TV;
 - Regional TV; and
 - Streaming Video on Demand (**SVOD**) licence fees.

Distribution by way of BMAT (a 3rd party digital fingerprinting service) covering 5 x Free to Air TV Channels + Sky Sports. Music usage is collected on both programming and advertisement/promos. Any sound recordings used in advertisements or promos have a 7.5% value weighting apportioned compared to general programming.

Monthly physical data is also supplied by TVNZ, TV3, music supervisors, publishers and some independent TV production companies.

Monthly selector logs are also provided by music television stations, comprising Edge TV and MTV NZ. All distributions are made at track level.

- (o) **TV specific usage blankets:** i.e. XFactor, Dancing With The Stars etc. Distribution is made at track level.

The **Secondary Distribution** comprises the following funds:

International Revenue: For any income received relating to the distribution year but received on or after 30th June.

13. Times & Cut-Off Dates

This is the date on which Recorded Music NZ generally “**locks down**” the information available to it for the purposes of making a distribution.

For each financial year of Recorded Music NZ – being 1st January to 31st December (**Financial Year**), the cut-off date to register repertoire in relation to the distribution of the previous year’s income is usually **1st March – i.e. 8 weeks after the end of the Financial Year**.

Recorded Music NZ cannot guarantee it will be able to process further information received after this date from Master Rights Holders or Registrants.

14. Expense Allocation

Expenses are largely allocated on the basis of the dollar amount of each fund as a percentage of total revenue.

Expenses include:

- Salaries and associated employee or contractor costs;
- IFPI (The International Federation of the Phonographic Industry) subs;
- IT and maintenance costs;
- Finance and audit fees;
- Leases and related expenses;
- Communications;
- Travel – both domestic and international;
- Entertainment;
- Recorded Music NZ Grants; and
- Other ancillary expenses normally and reasonable incurred in the running of such a business.

For expenses outside the above groupings which are readily identifiable, such as legal fees for a specific area of the business or data monitoring costs for one distribution pool, these are allocated against the relevant distribution pool.

The **authority to deduct** such expenses is detailed in the Master Rights Agreements and Recorded Music NZ's Constitution.

Recorded Music NZ's Board of Directors (**Board**) adopts a **budget** for each Financial Year and **delegates specific authority** for expenditure to its CEO and executive only.

Appropriate **financial controls** are in place and are reviewed in more detail by its auditors every 3 to 5 years or otherwise as required.

All expenses relating to **advocacy and member services** are met from licensing revenue prior to distribution.

Generally, all net revenue is **fully distributed** against the Financial Year to which it relates. The only current exception is in relation to a deferred distribution fund which is to provide cover for any one-off, unforeseen or extraordinary events. This includes such items such as Copyright Tribunal proceedings or otherwise as the Board of Directors may determine. The deferred distribution fund has certain appropriate parameters applied to it and is reviewed annually by the Board.

Recorded Music NZ's **accounts** are prepared in accordance with generally accepted accounting principles (GAAP) and Recorded Music NZ uses an accrual basis of accounting. This means that revenues and expenses are allocated to the Financial Year in which the right to receive the revenue or the obligation to pay the expense actually arises.

Recorded Music NZ is **audited** each year and its accounts are published ahead of its Annual General Meeting (including on its website) held before the end of May in each Financial Year. Recorded Music NZ's auditors are KMPG and were last changed in 2012.

15. Payments – Process and Procedure

Pre-Invoice Request process:

Our payment process includes the following stages:

- Collection of data – request and supply from various sources/users including some data such as radio that is already pre-weighted with automatic pre-agreed multipliers (for example see Schedule 9 which sets out the weighting system for radio);
- Process and analysis – i.e. ingestion by sound recording and matching of master rights ownership by sound recording;
- Allocation of income for each pool/fund to the sound recordings in the relevant pool/fund;
- Checking the allocations of data first internally and then secondly with Master Rights Holders (of all types); and
- Confirmation, amendment and finalisation of data schedules as the income is allocated automatically.

Invoice Request and Payment process:

Once confirmed as detailed above, Recorded Music NZ will then:

- Issue invoice requests with track data files and royalty income against the same to Master Rights Holders and Registrants;
- Receive invoices for payment within 10 days of such receipt;
- Pay each invoice to the bank accounts provided on each invoice by the relevant Master Rights Holders and Registrants;
- For Master Rights Holders, this is done via receipt of manual paper invoices. Upon verifying the accuracy of the invoice, Recorded Music NZ then pays to the bank account provided on the invoice; and
- For Registrants under the Direct-to-Recording Artist Scheme, each one has the option of either using this process or logging in via their secure on-line account with Recorded Music NZ which already details all the relevant information. In the latter case, the on-line payment option then requires the Registrant to self-generate an invoice which is then sent to Recorded Music NZ and duly paid by Recorded Music NZ.

Overpayments/Adjustments:

Recorded Music NZ is not aware of any overpayment to date. However, there is an obligation set out in the Master Rights Agreement (clause 6.3) which requires prompt return of any such overpayment made by mistake immediately upon being so notified by Recorded Music NZ.

Recorded Music NZ has had some payments (part) returned to it from certain Master Rights Holders or Registrants who have confirmed they no longer control the relevant sound recordings. Recorded

Music NZ endeavours to avoid this by undertaking the pre-invoice process detailed above, before actual payment is made.

Minimum Payments:

Recorded Music NZ operates a minimum payment threshold of \$10. Any amounts below this threshold accrue and are carried forward to the next distribution.

Holding Accounts:

Other than the deferred distribution fund, Recorded Music NZ does not hold any funds over. All amounts are allocated for distribution for each Financial Year. Sometimes, Master Rights Holders or Registrants fail or choose not to invoice immediately and such sums can therefore roll forward until an invoice is raised and sent to Recorded Music NZ for payment.

16. Data Update and Initiatives

Over the last few years Recorded Music NZ has sought to improve its data collection methods and subsequent distribution. Developments and improvements over recent years include:

- (a) The introduction of the Television data recognition service **BMAT** which identifies sound recordings when embodied within television programming and advertising. The service has proven enormously effective and augments direct data collection from local Television licensees. More detail is outlined in Section 12 (n) above; and
- (b) The collection of data directly from MSPs who supply content to retail and hospitality licensees who hold OneMusic licences. As the MSPs are now able to supply regular digital information, Recorded Music NZ is making direct distributions based on this information. More detail is outlined in Section 12 (b) above.
- (c) As of late 2018, Recorded Music NZ has also improved its data collection from the two commercial radio networks and we now receive real time digital feeds of the sound recordings that they broadcast. While we already received their data digitally, this new development will improve data collection efficiencies and subsequent data reporting and distribution.

Moving forward, Recorded Music NZ will continue to focus and improve the on-going development of bulk repertoire ingestion. Additionally, we will be adding new features to our data system so that the current functionality and reporting is accessible to all members as well and as they desire or require. This will include sales, streams and broadcast information.

PART D: GENERAL & OTHER

17. Recorded Music NZ's Obligations

Confidentiality: Recorded Music NZ's staff are subject to a duty of confidentiality in respect of the information they acquire in the course of their duties for Recorded Music NZ. This means they do not, unless specifically requested and in certain controlled and cleared circumstances, disclose details about the allocation and distribution process, especially individual dollar amounts or percentages of airplay logs attributable to particular artists, band members, tracks, Registrants or Master Rights Holders.

Recorded Music NZ's privacy policy is listed on its website and is attached as Schedule 10. Note that details of shareholdings and addresses are, however, lodged at the Companies Office as required by law.

Access to Information: Subject to the constraints of both Recorded Music NZ's commitment to confidentiality (as detailed above) and its Privacy Policy, Recorded Music NZ is committed as an organisation to transparency. The latter provides a balance between full disclosure and not overwhelming recipients with too much information.

The statements Recorded Music NZ therefore sends out with distribution payments are designed to help Master Rights Holders and Registrants understand how their payments are calculated and the sound recordings and music videos they relate to. If further information or explanation is required, Recorded Music NZ is here to assist you, so please make direct contact as per the contacts list set out on our website at www.recordedmusic.co.nz.

18. Complaints & Disputes

Recorded Music NZ encourages feedback on its performance across all areas of its business. It respects the rights of Master Rights Holders and Registrants to complain if they believe there is any mistake specifically in relation to distributions that are the subject of this Distribution Policy but also as to any other matter as set out in our Complaints and Dispute Resolution Policy attached as Schedule 11.

Recorded Music NZ aims to deal with all complaints satisfactorily but otherwise in accordance with its Complaints and Dispute Resolution Policy which may include mediation.

Recorded Music NZ also follows certain codes as published by the international body for Master Rights Holders and the Recorded Music Industry being IFPI (www.IFPI.org), to ensure best industry practice. These specifically include, with reference to distribution:

- (a) IFPI –MLC Standard Distribution Principles – October 2018; and
- (b) IFPI - Code of Conduct for Music Industry Music Licensing Companies – June 2016.

19. Changes to this Distribution Policy

From time to time, Recorded Music NZ may amend this Distribution Policy to reflect, among other things:

- (a) Changes to its operations;
- (b) Requests or instructions from its Board;
- (c) Amendments to the Master Rights Agreement;
- (d) Specific feedback or experience from and with Master Rights Holders and Registrants;
- (e) The international policies or codes referred to above;
- (f) Amendments to the Copyright Act; or
- (g) Decisions of the Copyright Tribunal New Zealand.

This Distribution Policy is amended with the approval of the Board and then promptly published on its website as soon as possible.

This current version of Recorded Music NZ's Distribution Policy is dated **14th August 2019**.



RECORDED MUSIC NZ LIMITED – DISTRIBUTION POLICY
SCHEDULE / ATTACHMENT INDEX [CONTROL SHEET DATES]

1. Constitution [2013-05-23]
2. Structure Diagram [2018-11-27]
3. Master Rights Agreement [v2 – 2019-01-01]
4. Direct-to- Recording Artist Scheme Registration Forms (Registration Form and Terms and Conditions) [2018-03-20]
5. Instructions on execution of Master Rights Agreement [v2 – 2019-01-01]
6. Direct-to-Recorded Artist % Form [2018-03-20]
7. Types of Licences granted by Recorded Music [2018-10-30]
8. The Music Map [2018-10-30]
9. Radioscope Weighting System [as at 2017-05-09]
10. Privacy Policy [2018-10-30]
11. Complaints Policy [2018-10-30]

Please note the form of Constitution attached refers to PPNZ Music Licensing Limited before it was renamed to Recorded Music New Zealand Limited.

The Constitution does not need to be re-adopted so please read the name PPNZ / company as Recorded Music NZ / company.



CONSTITUTION OF
PPNZ MUSIC LICENSING LIMITED

Adoption of constitution: I certify that this document was adopted
as the constitution of the company by special resolution on **23 May 2013**.

A handwritten signature in black ink, appearing to read "Nenir D".

Director

TABLE OF CONTENTS

| | | |
|-----|--|----|
| 1. | DEFINITIONS AND INTERPRETATION | 1 |
| 2. | CAPACITY AND POWERS OF COMPANY | 4 |
| 3. | SHARES | 4 |
| 4. | PURCHASE OF OWN SHARES | 7 |
| 5. | FORFEITURE AND CANCELLATION OF SHARES | 7 |
| 6. | TRANSFER OF SHARES | 8 |
| 7. | SHARE REGISTER | 9 |
| 8. | TRANSITIONAL PROVISIONS | 10 |
| 9. | MEETINGS OF SHAREHOLDERS | 10 |
| 10. | VOTING AT MEETINGS | 13 |
| 11. | APPOINTMENT AND REMOVAL OF DIRECTORS | 14 |
| 12. | PROCEEDINGS OF DIRECTORS | 18 |
| 13. | ALTERNATE DIRECTORS, COMMITTEES OF DIRECTORS | 22 |
| 14. | INDEMNITY AND INSURANCE | 23 |
| 15. | POWERS AND DUTIES OF THE BOARD | 24 |
| 16. | AUTHORITY TO BIND | 25 |
| 17. | LIQUIDATION | 25 |

**CONSTITUTION OF
PPNZ MUSIC LICENSING LIMITED
UNDER THE COMPANIES ACT 1993**

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions: In this constitution, unless the context otherwise requires, the following words and expressions have the meanings given to them in this clause:

“Act” means the Companies Act 1993.

“alternate director” means a director appointed pursuant to clause 13.

“amalgamation” means the completed act of the company and one or more other companies amalgamating pursuant to Part XIII of the Act and continuing as one company, which may be one of the amalgamating companies or may be a new company.

“annual meeting” means a meeting of Shareholders held pursuant to clause 9.1.

“Artist Representative Director” means a director appointed by the Independent Shareholders under clause 11.7.

“balance date” means 31 December in any year, unless determined otherwise by the Board.

“Board” means the directors numbering not less than the required quorum acting as the Board of directors of the company as specified in clause 12.6.

“class” and “class of Shares” means a class of Shares having attached to them identical rights, privileges, limitations and conditions.

“chairperson” means the director of the Board appointed under clause 12.2.

“company” means PPNZ Music Licensing Limited.

“constitution” means this constitution of the company and all amendments to it as duly made from time to time.

“director” means a person appointed and continuing in office for the time being, in accordance with this constitution, as a director of the company.

“Distributable Sum” means the total payments made by the company to Licensors in a financial year pursuant to the Input Agreements and the distribution policy set by the Board from time to time.

“distribution”, in relation to Shares held by a Shareholder, means:

- (a) the direct or indirect transfer of money or property, other than Shares or all or any part of the Distributable Sum, by the company to or for the benefit of that Shareholder; or
 - (b) the incurring of a debt by the company to or for the benefit of a Shareholder,
- whether by means of a purchase of property, the redemption or other acquisition of Shares, a distribution of indebtedness, or by some other means.

“dividend” means a distribution by the company, other than a distribution to which section 59 or section 76 of the Act applies and not the Distributable Sum.

“financial year” for the company means the period 1 January to 31 December, unless the balance date of the company is otherwise changed by the Board in which case it shall be the twelve month period ending on that new balance date.

“Independent Director” means the director appointed by the Independent Shareholders under clause 11.7.

“Independent Share” means a Share in the company as defined in clause 3.7.

“Independent Shareholder” means the registered holder of an Independent Share.

“Input Agreement” means each written agreement in the form approved by the Board from time to time, between a Licensor and the company under which a Licensor licences to the company rights in relation to sound recordings and/or music videos (or any other such thing) or enters into any similar arrangement with the company in a form approved by the Board.

“interests register” means a register kept by the company at its registered office as required by section 189(1)(c) of the Act.

“Licensor” means a Recorded Rights Holder who has a valid and enforceable, and current, Input Agreement with the company.

“major transaction”, in relation to the company, means:

- (a) the acquisition of, or an agreement to acquire (whether contingent or not), assets the value of which is more than half the value of the company’s assets before the acquisition; or
- (b) the disposition of, or an agreement to dispose of (whether contingent or not), assets of the company, the value of which is more than half the value of the company’s assets before the disposition; or
- (c) a transaction which has or is likely to have the effect of the company acquiring rights or interests or incurring obligations or liabilities including contingent liabilities, the value of which is more than half the value of the company’s assets before the transaction;

but does not include:

- (d) any transaction entered into by a receiver appointed pursuant to an instrument creating a charge over all or substantially all of the property of the company.

Nothing in paragraph (b) or paragraph (c) of this definition applies by reason only of the company giving, or entering into an agreement to give, a charge secured over assets of the company the value of which is more than half the value of the company’s assets for the purpose of securing the repayment of money or the performance of an obligation.

In assessing the value of any contingent liability for the purposes of paragraph (c) of this definition, the directors:

- (e) must have regard to all circumstances that the directors know, or ought to know, affect or may affect, the value of the contingent liability; and
- (f) may rely on estimates of the contingent liability that are reasonable in the circumstances; and
- (g) may take account of:
 - (i) the likelihood of the contingency occurring; and
 - (ii) any claim the company is entitled to make and can reasonably expect to be met to reduce or extinguish the contingent liability.

“month” means calendar month.

“ordinary resolution” means a resolution that is approved by a simple majority of the votes of those Shareholders entitled to vote and voting on the question.

“postal vote” includes the right to vote by any electronic means approved by the Board either generally or for that particular vote.

“Recorded Rights Holder” means a person that owns or controls rights in any sound recording and/or music video (or any other such thing) as more particularly defined in the relevant Input Agreement.

“register” means the register of Shares required by clause 7 of this constitution and section 87 of the Act to be kept by the company.

“Registrar” means the Registrar of Companies appointed under section 357(1) of the Act.

“Related company” means a company related to another company as defined in section 2(3) of the Act.

“Share” means a share in the company.

“Shareholder” means a person registered in the register as the holder of a Share or until the person’s name is entered in the register, a person who is entitled to have that person’s name entered in the register as a Shareholder under a registered amalgamation proposal in respect of which the company is the amalgamated company.

“solvency test” means an examination to be applied to the financial state of the company, which will be satisfied if:

- (a) the company is able to pay its debts as they become due in the normal course of business; and

- (b) the value of the company's assets is greater than the value of its liabilities, including contingent liabilities, and in respect of which regard has been had to the matters referred to in section 4(2) of the Act.

For the purpose of this definition "debts" and "liabilities" have the meaning given to those terms in sections 52(4) or 108(5) of the Act as applicable.

"special meeting" means any meeting (other than an annual meeting) of Shareholders entitled to vote on an issue and so voting, called at any time by the Board, or by any other person who is authorised by the Board to call meetings of Shareholders.

"special resolution" means a resolution of Shareholders approved by seventy five (75) per cent or more of the votes of those Shareholders entitled to vote and voting on the question.

"TS Director" means a director appointed under clause 11.3.

"TS Share" means a Threshold Share in the company as defined in clause 3.2.

"TS Shareholder" means the registered holder of a TS Share.

"working day" means a day of the week other than:

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, Waitangi Day, or any other public holiday in New Zealand;
- (b) a day in the period commencing with the 25th day of December in any year and ending with the 5th day of January in the following year;
- (c) if the 1st day of January in any year falls on a Friday, the following Monday; and
- (d) if the 1st day of January in any year falls on a Saturday or Sunday, the following Monday and Tuesday.

1.2 Interpretation: In this constitution unless the context otherwise requires:

- (a) headings are inserted for convenience only and shall be ignored in construing this constitution;
- (b) the singular includes the plural and vice versa;
- (c) one gender includes the other genders;
- (d) a reference to a person includes an individual, partnership, firm, company, corporation, association, trust, estate, state or agency of a state, government or government department or agency, municipal or local authority and any other entity, whether or not incorporated and whether or not having separate legal personality;
- (e) "written" and "in writing" includes any means of reproducing words, figures or symbols:
 - (i) in a tangible and visible form in any medium; or
 - (ii) in a visible form in any medium by electronic means that enables them to be stored in a permanent form and be retrieved and read; and
- (f) "signature" includes, in relation to a document in electronic form, an electronic signature created by a method which identifies the signatory and indicates the signatory's approval of the information contained in the document; and
- (g) a reference to a clause is to that clause in this constitution unless stated otherwise.

1.3 Notices: Any notice given on a day that is not a working day, or given after 5:00pm on a working day, is deemed to be given at 9:00 am on the next working day.

1.4 Act: Subject to this clause 1, words and expressions contained in this constitution bear the same meaning as specified in the Act as amended from time to time (and if a definition in the Act is in all material respects repeated in this constitution, and that definition in the Act is changed, then the definition in the Act shall prevail). Otherwise, if there is any conflict between the provisions of the Act and this constitution, then (to the extent permitted by law and unless specified otherwise) the provisions of this constitution will prevail.

1.5 Changes to Act: If the Act changes in a way that would, but for this clause, cause section 31 of the Act to apply to any clause then that clause shall be deemed to be amended in the same manner as the change in the Act so that the constitution does not contravene or become inconsistent with the Act.

1.6 **Electronic Means:** Where a legal requirement under the Act is reproduced in this constitution, the provision of this constitution which reproduces that legal requirement may be met by using electronic means in accordance with the Electronic Transactions Act 2002 in the same manner as is required by the Electronic Transaction Act 2002 to meet the legal requirement under the Act. In this clause the term “legal requirement” has the meaning given to it by the Electronic Transaction Act 2002 (section 15(2)).

1.7 **Electronic Transactions Act:** For the purposes of section 11 of the Electronic Transactions Act 2002, a document under this constitution, which is sent in electronic form and via an electronic communication is to be taken to be received:

- (a) if sent by the company, on the working day that it is sent or the next working day if sent after 5:00pm, provided that the electronic communication was correctly addressed to the address provided by the addressee for the receipt of electronic communications and no error message was received by the information systems used by the company to send the electronic communication; and
- (b) if sent to the company, at the time the electronic communication comes to the attention of the addressee or such other time as the sender and the company may agree in writing.

To avoid doubt, any document so sent may be in any widely used electronic form.

2. CAPACITY AND POWERS OF COMPANY

2.1 **Rights, powers and duties:** The company, the Board, each director and each Shareholder shall have the rights, powers, duties and obligations set out in the Act except to the extent that they are negated or modified, in accordance with the Act, by this constitution.

2.2 **Full capacity:** Subject to this constitution, the Act, and any other applicable law, the company has, both within and outside New Zealand, full capacity, rights, powers and privileges to carry on or undertake any business or activity, do any act, or enter into any transaction.

3. SHARES

3.1 **Power to issue Shares and existing Shares:**

- (a) Unless the terms of issue of any class of Shares specifically otherwise provide, the Board may issue Shares that rank or would rank (including as to voting rights, distribution rights, liquidation preference or redemption terms, or all or some of those) equally with or prior to existing Shares without any requirement that the Shares be first offered to existing shareholders, and such an issue is not an action affecting the rights attached to the existing Shares.
- (b) The one hundred (100) shares in the company in existence at the date of adoption of this constitution will be allocated and / or reclassified by the Board as Shares governed by this constitution as they see fit (provided that they may only be so allocated or reclassified once).

3.2 **Threshold Shares:** Subject to the Act and this constitution, the Board will issue a Threshold Share (“**TS Share**”) to any person:

- (a) meeting the eligibility requirements set out in clause 3.3; and
- (b) making an application, and accepted by the Board, for admission as a TS Shareholder under clause 3.4.

3.3 **Eligibility to be a TS Shareholder:** A person is eligible to apply for admission as a TS Shareholder, and to remain a TS Shareholder if the person is designated as a TS Shareholder on or about the date of adoption of this constitution or:

- (a) the person is a Licensor; and
- (b) the person is a New Zealand citizen, a person legally resident in New Zealand or legally incorporated in New Zealand under the Act; and
- (c) distributions made by the company under an Input Agreement executed by the relevant Licensor total at least six (6) per cent of the aggregate Distributable Sum paid by the company to Licensors in each of

the three (3) financial years immediately prior to the date of that Licensor's application for admission as a TS Shareholder.

3.4 Application to be a TS Shareholder:

- (a) Any person who is eligible to be a TS Shareholder under the eligibility requirements set out in clause 3.3 above may apply to the Board for admission as a TS Shareholder.
- (b) An application for membership must be made in writing, signed by the applicant, and in a form specified by, or otherwise acceptable to, the Board.
- (c) The Board may require the relevant Licensor to supply such evidence of eligibility as the Board considers necessary, in its absolute discretion.
- (d) When the Board is satisfied that the relevant Licensor is eligible to be admitted as a TS Shareholder, the Board shall accept the relevant application and either:
 - (i) issue the applicant no more than one (1) TS Share; or
 - (ii) transfer to the applicant any TS Share (once again one (1) only) held by the company.

3.5 Rights attaching to a TS Share: Each TS Share has the following rights and restrictions:

- (a) the right to receive notice of and to attend a general or special meeting of the Shareholders, and to receive other notices provided to Shareholders generally;
- (b) the right to receive notices that are specifically for the TS Shareholders;
- (c) the right to vote at any Shareholder meeting.

For the avoidance of doubt, the number of TS Shares to which each TS Shareholder may be entitled is limited to one (1).

3.6 Voting rights attaching to a TS Share: Notwithstanding that each TS Shareholder can hold no more than one (1) TS Share:

- (a) the voting rights attaching to a TS Share at a general or special meeting of all Shareholders will be the percentage of the Distributable Sum that that TS Shareholder received as a total of the Distributable Sum paid to all Shareholders in the previous financial year; and
- (b) the voting rights attaching to a TS Share at a special meeting held for the TS Shareholders will be the percentage of the Distributable Sum that that TS Shareholder received as a total of that part of the Distributable Sum paid to all TS Shareholders in the previous financial year.

3.7 Independent Shares: Subject to the Act and this constitution, the Board will issue an Independent Share to any person:

- (a) meeting the eligibility requirements set out in clause 3.8; and
- (b) making an application, and accepted by the Board, for admission as an Independent Shareholder under clause 3.9.

3.8 Eligibility to be an Independent Shareholder: A person is eligible to apply for admission as an Independent Shareholder, and to remain an Independent Shareholder, if the person is designated as an Independent Shareholder on or about the date of adoption of this constitution or:

- (a) the person is a Licensor; and
- (b) is a New Zealand citizen, a person legally resident in New Zealand or legally incorporated in New Zealand under the Act; and
- (c) is not a TS Shareholder.

3.9 Application to be an Independent Shareholder:

- (a) Any person who is eligible to be an Independent Shareholder may apply to the Board for admission as an Independent Shareholder.
- (b) An application for membership must be made in writing, signed by the relevant Licensor, and in a form specified by or acceptable to, the Board.
- (c) The Board may require the relevant Licensor to supply such evidence of eligibility as the Board considers necessary, in its absolute discretion.

- (d) When the Board is satisfied that the relevant Licensor is eligible, the Board will accept the relevant application and will either:
 - (i) issue the Licensor no more than one (1) Independent Share; or
 - (ii) transfer to the applicant any Independent Share (once again one (1) and one (1) only) held by the company.

3.10 Rights attaching to the Independent Shares: Each Independent Share has the following rights and restrictions:

- (a) the right to receive notice of and to attend a general or special meeting of the Shareholders, and to receive other notices provided to Shareholders generally;
- (b) the right to receive notices that are specifically for Independent Shareholders;
- (c) the right to vote only as follows:
 - (i) in accordance with clause 11.7(a), but subject to sub-clause (ii), an Independent Shareholder irrevocably appoints (and is deemed to have irrevocably appointed for all purposes) the Independent Director as their proxy to vote at any Shareholder meeting (and the Independent Shareholder has no right to exercise such a vote themselves);
 - (ii) an Independent Shareholder may vote directly:
 - (A) to appoint the Independent Director and/or the Artist Representative Director; and
 - (B) on any proposal that affects the rights attached to the Independent Shares at any meeting held to consider that, or on any vote held to consider that by any other means, and whether at a meeting of Shareholders generally or at a meeting of Independent Shareholders only.

For the avoidance of doubt, the number of Independent Shares to which each Independent Shareholder may be entitled is limited to one (1).

3.11 Voting rights attaching to an Independent Share: Notwithstanding that each Independent Shareholder can hold no more than one (1) Independent Share, the voting rights attaching to an Independent Share at:

- (a) a general or special meeting of all Shareholders, shall be the percentage of the Distributable Sum that Independent Shareholder received as a total of that part of the Distributable Sum paid to all Shareholders in the previous financial year; and
- (b) a special meeting of all Independent Shareholders, shall be the percentage of the Distributable Sum that Independent Shareholder received as a total of that part of the Distributable Sum paid to all Independent Shareholders in the previous financial year.

3.12 Consolidation and subdivision of Shares:

- (a) The Board may authorise:
 - (i) the consolidation and division of Shares or any class of Shares in proportion to those Shares or the Shares in that class; and
 - (ii) the subdivision of the Shares or any class of Shares in proportion to those Shares or the Shares in the class.
- (b) In such a case, the Board may need to arrange to have the Shareholders make due amendment to the terms of this constitution on the basis it was on its initial adoption prescribing that there be only one (1) Share per Licensor.

3.13 Joint holders of Shares: Where two or more persons are registered as the holders of a Share they hold it as joint tenants with rights of survivorship subject to the following provisions:

- (a) the company is not bound to register more than three (3) of those persons as joint holders of the Share;
- (b) each of those persons and their representative legal or personal representatives are liable severally as well as jointly for all payments which ought to be made in respect of the Share;

- (c) on the death of any one of them the company is entitled to recognise the survivor or survivors as the only person or persons who have any title to the Share; and
- (d) the company is not bound to issue more than one certificate for the Share and delivery of a certificate to any one of those persons is sufficient delivery to all of them.

3.14 Trust not to be registered or recognised:

- (a) No notice of a trust, whether express, implied, or constructive, may be entered on the register.
- (b) Except as required by law, no person will be recognised by the company as holding any Share upon trust or holding any interest in a Share (whether equitable, contingent, future or partial) except the absolute legal right to the entirety of the Share vested in the registered holder.
- (c) A personal representative of a deceased holder of Shares is entitled to be entered in the register as the holder of such Shares as a personal representative.
- (d) The registration of a trustee, executor or administrator as a personal representative of a deceased Shareholder does not constitute notice of a trust.

3.15 No interests: A Shareholder must not create or permit to subsist any mortgage, charge or other encumbrance or third party interest of any nature over any of the Shares (or any interest in those Shares).

4. PURCHASE OF OWN SHARES

The company may purchase or otherwise acquire its Shares in accordance with, and subject to, sections 58 to 65, 107, 108 and 110 to 112 of the Act, and may hold the acquired Shares in accordance with sections 67A to 67C of the Act.

5. FORFEITURE AND CANCELLATION OF SHARES

5.1 If any of the following events occur, the Board may determine that the relevant Shareholder immediately forfeits the Share in the company registered in their/its name:

- (a) in the case of a TS Shareholder, distributions made by the company to that TS shareholder fail to maintain an average of at least six (6) per cent of the Distributable Sum over any continuous period of three (3) financial years, or ceasing to meet the eligibility criteria in clause 3.3(a) or (b);
- (b) in the case of an Independent Shareholder, the Independent Shareholder ceasing to meet the eligibility criteria in clause 3.7;
- (c) the Shareholder (being a company) becomes insolvent or goes into compulsory or voluntary liquidation, except in cases of corporate reconstruction or amalgamation;
- (d) the Shareholder is held by any Court, exercising either civil or criminal jurisdiction, to have contravened any statutory provision relating to an infringement of copyright;
- (e) the Shareholder (being a company), becomes a Related company of a company whose interests or primary business is, in the opinion of the Board (in its sole discretion), contrary to the interests of the company or its Shareholders taken as a whole;
- (f) the Shareholder (being an individual), becomes associated with any person whose interests or primary business is, in the opinion of the Board (in its sole discretion), contrary to the interests of the company or its Shareholders taken as a whole;
- (g) the Shareholder in the opinion of the Board (in its sole discretion), has wilfully and persistently refused to perform its obligations towards the company or conducted itself so as to bring discredit on the company or the recorded music industry or to disrupt or affect the activities of the company and to make continued holding of a Share in the company undesirable in the best interests of the company or of other Shareholders. The company shall not make a determination upon any motion pursuant to this sub-clause (f) until at least 14 days after the relevant Shareholder has been notified of the complaint against it. The Shareholder will be entitled to answer the complaint either in writing delivered to the

company prior to the date on which the company is to deliberate on such a motion or by appearing before the company at the appropriate time; or

(h) the Shareholder has declined to pay any sum due and payable to the company.

5.2 **One (1) Share:** Unless the Board unanimously resolves otherwise, a Shareholder who at any time holds more than one Share (by acquisition or otherwise), forfeits all Shares in the company registered in its name, other than the one Share held by that Shareholder and in respect of which the Board is then satisfied that the Shareholder meets the applicable eligibility criteria, such that no Shareholder may hold more than one (1) Share at any time.

5.3 **Rights suspended:** Immediately upon a Share becoming forfeited under clauses 5.1 or 5.2, the rights attaching to that Share are suspended and the Board may (in its sole discretion):

- (a) cancel that Share in accordance with the Act and remove the name of that Shareholder from the company register; or
- (b) deem that Share to be sold back to the company for the sum of \$1 and any share so repurchased will be held by the company as treasury stock, subject to the Act permitting that to occur at the applicable time.

6. TRANSFER OF SHARES

6.1 No Disposal of Shares:

- (a) Subject to any rights or restrictions attached to any Share or class of Shares, a TS Shareholder or Independent Shareholder may only dispose of a TS Share or an Independent Share in the manner allowed by this clause 6.
- (b) A TS Shareholder may transfer its TS Share to a Related company of the TS Shareholder, provided that the Related company satisfies the eligibility criteria set out in clause 3.3.
- (c) An Independent Shareholder may transfer its Independent Share to a Related company of the Independent Shareholder, provided that the Related company satisfies the eligibility criteria set out in clause 3.8.

6.2 **Entry in register:** Subject to clause 6.1, Shares may be transferred by entry of the name of the transferee(s) on the register.

6.3 **Signed transfer:** For the purpose of transferring Shares, a form of transfer meeting the requirements of clause 6.4 signed by the present holder of the Share or the holder's personal representative must be delivered to the company or to the agent of the company who maintains the register.

6.4 Form of transfer:

- (a) The form of transfer may be in the form set out in the First Schedule to the Securities Transfer Act 1991 or in any usual or common form, or any other form approved by the Board.
- (b) The form of transfer must be signed by the transferee(s) if registration as holder of the Share would impose a liability to the company on the transferee(s).

6.5 Board's right to refuse or delay registration of transfer:

- (a) The Board may, within thirty (30) working days of the receipt of a form of transfer of Share, refuse or delay the registration of the transfer if:
 - (i) the Board considers that to effect the transfer would result in a breach of the law or this constitution; or
 - (ii) the Board does not consider that the transferee is eligible to be a Shareholder on which matter the Board shall have absolute discretion in its decision; or
 - (iii) clause 6.3 has not been complied with or the form of transfer has not been properly executed or does not comply with clause 6.4.

- (b) A resolution of the Board to refuse or delay a transfer of a Share must set out in full the reason for doing so, and a copy of the resolution must be sent to the transferor and transferee(s) within ten (10) working days of the date of the resolution being passed.

6.6 **Registration of transfer:** Subject to clause 6.1 and on receipt of a duly completed form of transfer complying with this constitution, the company must enter the name of the transferee(s) on the register as holder of the Share, unless the Board has resolved in accordance with clause 6.5 to refuse or delay the registration of the transfer of the Share.

6.7 **Transmission of a Share:**

- (a) In the case of the death of a Shareholder, the only persons the company will recognise as having any title to the deceased Shareholder's Share or any benefits accruing in respect of that Share are:
 - (i) the legal personal representative of the deceased where the deceased was a sole holder; and
 - (ii) the survivor or survivors where the deceased was a joint holder,
 - (iii) provided that the person meets the eligibility set out in clause 3.3 in the case of a TS Shareholder, or clause 3.8 in the case of an Independent Shareholder.
- (b) Nothing in sub clause (a) releases the estate of a deceased Shareholder from any liability in respect of a Share, whether that Share was held by the deceased solely or jointly with other persons.
- (c) A person who becomes entitled to a Share as a result of a transmission may elect:
 - (i) to be registered as the holder of the Share by signing and serving on the company a notice in writing stating that election; or
 - (ii) to nominate some other person to be registered as the transferee of the Share by executing or otherwise effecting a transfer of the Share to that other person provided that the person to be registered as the holder of a TS Share satisfies the eligibility criteria set out in clause 3.3 in the case of a TS Shareholder, or clause 3.8 in the case of an Independent Shareholder, and provided that the person produces any evidence the directors require to prove that person's entitlement to the relevant Share.
- (d) The provisions of this constitution relating to the right of transfer, and the registration of transfers of, a Share apply, so far as they can and with such changes as are necessary, to any transfer under sub clause (c) (ii) above as if the relevant transmission had not occurred and the transfer were executed or effected by the registered holder of the Share.
- (e) If two or more persons become jointly entitled to a Share under a transmission, on registration as the holders of the Share, those persons are taken to hold the Share as joint tenants subject to clause 3.11.

6.8 **Transmission of a Share:** Notwithstanding clause 6.1, the assignee of the property of a bankrupt Shareholder is entitled to be registered as the holder of a Share held by the bankrupt.

7. SHARE REGISTER

7.1 **Maintain register:**

- (a) The company must maintain a register which records all Shares issued by the company and which states:
 - (i) whether, under this constitution or the terms of issue of any Shares, there are any restrictions or limitations on their transfer; and
 - (ii) where any document that contains the restrictions or limitations may be inspected.
- (b) The company may appoint an agent to maintain the register.

7.2 **Contents of register:** The register must state, with respect to each class of Shares:

- (a) the names (alphabetically arranged) and the latest known address of each person who is, and each person who has been within the last ten (10) years, a Shareholder;
- (b) the number of Shares (which in each instance should only be one (1)) held by each Shareholder within the last ten (10) years; and

- (c) the date of any:
 - (i) issue of a Share to;
 - (ii) repurchase or redemption of a Share from; or
 - (iii) transfer of a Share by or to;
 each Shareholder within the last ten (10) years; and in relation to the transfer, the name of the person to or from whom the Share was transferred.

7.3 **Directors' duty to supervise register:** It is the duty of each director to take reasonable steps to ensure that the register is properly kept and that the transferees' names are promptly entered on it in accordance with clause 7.1.

7.4 **Register prima facie evidence:** Subject to section 91 of the Act, the entry of the name of a person in the register as holder of a Share is prima facie evidence that the legal title to the Share is vested in that person.

7.5 **Register evidence of rights:** The company may treat the registered holder of a Share as the only person entitled to:

- (a) exercise any right to vote attaching to the Share;
- (b) receive notices in respect of the Share;
- (c) receive any distribution in respect of the Share; and
- (d) exercise the other rights and powers attaching to the Share.

8. TRANSITIONAL PROVISIONS

Notwithstanding any other provision of this constitution:

8.1 **Initial TS Shareholders:** On adoption of this constitution, the TS Shareholders shall be those persons meeting the criteria in clause 3.3 who prior to the meeting at which this constitution is adopted ("**Approval Meeting**") have applied to the company to become a TS Shareholder, and have been so confirmed at that meeting.

8.2 **Initial Independent Shareholders:** On adoption of this constitution, the Independent Shareholders shall be those persons meeting the criteria in clause 3.7 who prior to the Approval Meeting have applied to the company to become an Independent Shareholder and have been so confirmed at that meeting.

8.3 **Initial TS Directors:** On adoption of this constitution, the initial TS Directors shall be those persons notified by the TS Shareholders at or prior to the Approval Meeting.

8.4 **Initial Independent Director and Artist Representative Director:** On adoption of this constitution, the Independent Director and the Artist Representative Director shall be those persons nominated and elected by the Independent Shareholders prior to the Approval Meeting.

8.5 **Initial chairperson:** On adoption of this constitution, the initial chairperson shall be Henri Eliot.

9. MEETINGS OF SHAREHOLDERS

9.1 **The First Schedule:** The provisions of the First Schedule to the Act are deleted and replaced by this clause 9.

9.2 **Annual meeting:**

- (a) The Board must, in accordance with section 120 of the Act, call an annual meeting of Shareholders to be held:
 - (i) not later than six (6) months after the balance date of the company; and
 - (ii) not later than fifteen (15) months after the previous annual meeting.
- (b) The company must hold the annual meeting on the date on which it is called to be held.
- (c) It is not necessary for the company to hold an annual meeting if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in accordance with sections 122(2) and 122(3) of the Act.

9.3 **Resolution in lieu of meeting:**

- (a) Subject to clause 9.3(c) following, a resolution in writing signed by not less than seventy five (75) per cent of the Shareholders who would be entitled to vote on that resolution at a meeting of Shareholders, who together hold not less than seventy five (75) per cent of the votes entitled to be cast on that resolution, is as valid as if it had been passed at a meeting of those Shareholders.
- (b) Any such resolution may consist of one (1) or more documents in similar form (including letter, , facsimiles, electronic mail, or other similar means of communication) each signed or assented to by or on behalf of one or more of the Shareholders entitled to vote on the resolution.
- (c) A resolution pursuant to section 196(2) of the Act to not appoint an auditor may be passed as provided above, provided that the resolution must be signed by all the Shareholders entitled to vote on the resolution.
- (d) Within five (5) working days of a resolution being passed under this clause 9.3, the company must send a copy of the resolution to every Shareholder who did not sign the resolution or on whose behalf the resolution was not signed.

9.4 Chairperson of meetings of Shareholders:

- (a) The chairperson, if present at a meeting of Shareholders, must chair the meeting.
- (b) If the chairperson is not present within fifteen (15) minutes of the time appointed for the commencement of the meeting, the Shareholders present may choose one of their number to chair the meeting.

9.5 Shareholders entitled to notice of meeting:

- (a) The Shareholders entitled to receive notice of a meeting of shareholders are those Shareholders of each relevant class:
 - (i) if the Board has fixed a date for the purpose of establishing an entitlement to receive notice of meeting, whose names are registered in the register on that date; or
 - (ii) if the Board does not fix a date for the purpose of establishing an entitlement to receive the notice of meeting, whose names are registered in the register at the close of business on the day immediately preceding the day on which the notice is given.
- (b) A date fixed by the Board under clause 9.5(a)(i) must not precede by more than thirty (30) working days nor less than ten (10) working days the date on which the meeting is to be held.

9.6 Notice of meeting:

Written notice of the time and place of a meeting of Shareholders must be sent to every Shareholder entitled to receive notice of the meeting, and to every director and the auditor of the company, not less than ten (10) working days before the meeting.

9.7 Contents of notice: The notice referred to in clause 9.6 above must state:

- (a) the nature of the business to be transacted at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgment in relation to it;
- (b) the text of any special resolution to be submitted to the meeting;
- (c) the postal (or electronic) address to which postal votes may be sent and the name or office of the person to whom they may be sent; and
- (d) that the postal vote must be received by the person referred to in paragraph (c) at least forty eight (48) hours prior to the start of the meeting,

and each Shareholder shall also receive, prior to the applicable meeting, notice of that Shareholder's percentage voting rights for the meeting (except in the case of a vote on which the Independent Director will act as proxy for the Independent Shareholders in accordance with this constitution, in which case notice of only the total percentage of the vote which that Independent Director represents will be given).

9.8 Irregularities in notice:

- (a) An irregularity in a notice of a meeting is waived if all the Shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Shareholders agree to the waiver.
- (b) The accidental omission to give notice of a meeting to, or a failure to receive notice of a meeting by, a Shareholder does not invalidate the proceedings at that meeting.

9.9 **Method of holding meeting:** A meeting of Shareholders may be held either:

- (a) by a number of Shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- (b) by means of audio, or audio and visual, communication by which all Shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

9.10 **Adjournments:**

- (a) The chairperson of a meeting of Shareholders may, at the request of those Shareholders present in person or by proxy who are between them able to exercise a majority of the votes able to be cast at the meeting, adjourn the meeting.
- (b) No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) If a meeting of Shareholders is adjourned for less than thirty (30) days, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned. In any other case, notice of the adjourned meeting shall be given in accordance with clauses 9.6 and 9.7 above.

9.11 **Minutes:**

- (a) The Board must ensure that accurate minutes are kept of all proceedings at meetings of Shareholders.
- (b) Minutes which have been signed as correct by the chairperson of the meeting are prima facie evidence of the proceedings.

9.12 **Other proceedings:** Except as provided in this constitution, the Shareholders may otherwise regulate the meetings as they see fit.

9.13 **Admission to meetings:**

- (a) The chairperson of a Shareholder meeting may refuse admission to a person or require that person to leave and remain out of the meeting, if that person:
 - (i) has a camera, tape recorder or video camera, or another audio or visual recording device;
 - (ii) has a placard or banner;
 - (iii) has an article which the chair considers to be dangerous, offensive or liable to cause disruption;
 - (iv) refuses to produce or to permit examination of any article, or the contents of any article, in the person's possession;
 - (v) behaves or threatens to behave in a dangerous, offensive or disruptive manner; or
 - (vi) is not:
 - (A) a Shareholder or a proxy of a Shareholder;
 - (B) a director;
 - (C) an auditor of the company;
 - (D) a legal adviser to the company; or
 - (E) a person requested by the Board to attend the meeting.
- (b) A person requested by the Board or the chair to attend a general meeting is entitled to be present, whether the person is a Shareholder or not.

10. VOTING AT MEETINGS

10.1 Quorum:

- (a) Subject to the separate requirements for a postal meeting of the Independent Shareholders to appoint the Independent Director and the Artist Representative Director (see clause 11.7 of this constitution), a quorum for a meeting of Shareholders is present if those Shareholders who have cast postal votes or who are present, or their proxies or other legal representatives who are present, are between them able to exercise a majority of the votes to be cast on the business to be transacted by the meeting.
- (b) Subject to clause 10.1(c) and the requirements for a postal meeting of the Independent Shareholders to appoint the Independent Director (see clause 11.7 of this constitution), no business may be transacted at a meeting of Shareholders if a quorum is not present.
- (c) If a quorum is not present within thirty (30) minutes after the time appointed for the meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time and place as the directors may appoint.

10.2 Voting:

- (a) In the case of a meeting of Shareholders held under clause 9.9(a), unless a poll is demanded, voting at the meeting shall be by whichever of the following methods is determined by the chairperson of the meeting:
 - (i) voting by voice; or
 - (ii) voting by show of hands.
- (b) In the case of a meeting of Shareholders held under clause 9.9(b) unless a poll is demanded, voting at the meeting shall be by the Shareholders signifying individually their assent or dissent by voice.
- (c) A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact, unless a poll is demanded in accordance with clause 10.2(d).
- (d) At a meeting of Shareholders, a poll may be demanded by:
 - (i) not less than two (2) Shareholders having the right to vote at the meeting; or
 - (ii) a Shareholder or Shareholders representing not less than six (6) per cent of the total voting rights of all Shareholders having the right to vote at the meeting; or
 - (iii) the chairperson of the meeting.
- (e) A poll may be demanded either before or after the vote is taken on a resolution.
- (f) If a poll is taken, votes must be counted according to the votes attached to the Shares of each Shareholder present (in person or by proxy) and voting.
- (g) The chairperson of a Shareholders' meeting is not entitled to a casting vote.
- (h) For the purposes of this clause, the instrument appointing a proxy to vote at a meeting confers authority to demand or join in demanding a poll and a demand by a person as proxy for a Shareholder has the same effect as a demand by the Shareholder.

10.3 Proxies and representatives:

- (a) A Shareholder may exercise the right to vote either by being present or by proxy.
- (b) A proxy for a Shareholder is entitled to attend, be heard, and vote at a meeting of Shareholders as if the proxy were the Shareholder.
- (c) A proxy must be appointed by notice in writing signed by the Shareholder, and the notice must state whether the appointment is for a particular meeting or a specified term.
- (d) No proxy is effective in relation to a meeting unless a copy of the notice of appointment is delivered to the company no later than forty eight hours (48) hours before the meeting.
- (e) A body corporate which is a Shareholder may appoint a representative to attend a meeting of Shareholders on its behalf in the same manner as that in which it could appoint a proxy.

10.4 Postal votes:

- (a) A Shareholder may exercise the right to vote at a meeting by casting a postal vote in accordance with the provisions of this clause 10.4.
- (b) The notice of a meeting at which Shareholders are entitled to cast a postal vote must state the name of the person authorised by the Board to receive and count postal votes at that meeting.
- (c) If no person has been authorised to receive and count postal votes at a meeting, or if no person is named as being so authorised in the notice of the meeting, every director is deemed to be so authorised.
- (d) A Shareholder may cast a postal vote on all or any of the matters to be voted on at the meeting, by sending a notice of the manner in which his or her Shares are to be voted to a person authorised to receive and count postal votes at that meeting. The notice must reach that person not less than forty eight (48) hours before the start of the meeting.
- (e) It is the duty of the person authorised to receive and count postal votes at a meeting:
 - (i) to collect together all postal votes received by him or her, or by any other authorised person, or by the company;
 - (ii) in relation to each resolution to be voted on at the meeting, to count:
 - (A) the number of Shareholders voting in favour of the resolution and the number of votes cast by each Shareholder in favour of the resolution; and
 - (B) the number of Shareholders voting against the resolution, and the number of votes cast by each Shareholder against the resolution;
 - (iii) to sign a certificate stating that he or she has carried out the duties set out in paragraph (e)(i) and (e)(ii) of this clause and which sets out the results of the counts required by paragraphs (e)(ii) of this clause; and
 - (iv) to ensure that the certificate required by paragraph (e)(iii) of this clause is presented to the chairperson of the meeting.
- (f) If a vote is taken at a meeting on a resolution on which postal votes have been cast, the chairperson of the meeting must:
 - (i) on a vote by show of hands, count each Shareholder who has submitted a postal vote for or against the resolution; or
 - (ii) on a poll, count the votes cast by each Shareholder who has submitted a postal vote for or against the resolution.
- (g) The chairperson of a meeting must call for a poll on a resolution on which the chairperson holds sufficient postal votes that if a poll were taken the result could differ from that obtained on a show of hands.
- (h) The chairperson of a meeting must ensure that a certificate of postal votes held by the chairperson is annexed to the minutes of the meeting.

10.5 **Votes of joint holders:** Where two or more persons are recorded in the register as the holder of a Share, the vote of the person named first in the register and voting on a resolution will be accepted to the exclusion of the votes of the other joint holders.

10.6 **Unpaid sums:** If a sum due to the company in respect of a Share has not been paid, that Shareholder may not vote at a Shareholders' meeting.

11. APPOINTMENT AND REMOVAL OF DIRECTORS

11.1 Number of directors:

- (a) Subject to clause 12.11, the number of directors will not be fewer than three (3).
- (b) If a Shareholder is a Related company of another Shareholder, then notwithstanding any other provision of this constitution both the Related company and that other Shareholder shall together only be entitled to appoint one Shareholder director.

11.2 **The Board will comprise:**

- (a) Those directors appointed by each of the TS Shareholders under clause 11.3; and
- (b) The two (2) directors to be appointed by the Independent Shareholders under clause 11.7 (the Independent Director and the Artist Representative Director); and
- (c) The director to be appointed as the chairperson under clause 11.11.

11.3 **TS Directors Provisions: Appointment and removal of TS Directors by notice:**

- (a) Each TS Shareholder is entitled to appoint one (1) TS Director by notice in writing signed by the relevant TS Shareholder appointing that TS Director.
- (b) Each TS Director must be the Chief Executive Officer/Country Manager of or hold an equivalent position with the TS Shareholder appointing him or her its director.
- (c) A TS Director holds office until his or her resignation, disqualification, expiration of notified term (if any) or removal in accordance with this constitution.
- (d) A TS Director may be removed from office at any time by a notice in writing signed by the TS Shareholder who appointed that TS Director.
- (e) A notice given under clauses 11.3(a) or 11.3(d) takes effect upon receipt of it at the registered office of the company (including the receipt of a facsimile or electronic copy) unless the notice specifies a later time at which such time the notice will take effect.

11.4 **Disqualification and removal of a TS Director:** A person will be disqualified from holding the office of a TS Director

- (a) upon expiry of the term of that TS Director if any was set out in the notice of appointment given pursuant to clause 11.3(a); or if he or she:
- (b) is removed under clause 11.3(d); or
- (c) resigns in writing under clause 11.5 and is not then reappointed in accordance with this constitution; or
- (d) if the TS Director ceases to be a Chief Executive Office/Country Manager of or hold an equivalent position with the TS Shareholder who appointed him or her;
- (e) if the TS Shareholder who appointed that TS Director has forfeited its TS Share, had its TS Share bought back by the company, or otherwise ceases to be entitled to be a TS Shareholder; or
- (f) becomes disqualified from being a director pursuant to section 151 of the Act; or
- (g) is prohibited from being a director or promoter of or being concerned with or taking part in the management of a company under section 382, section 383 or section 385 of the Act; or
- (h) dies; or
- (i) becomes a protected person under the Protection of Personal and Property Rights Act 1988; or
- (j) is under 18 years of age; or
- (k) is an un discharged bankrupt; or
- (l) is prohibited by the Act from being a director or would be so prohibited but for the repeal of that statute; or
- (m) otherwise vacates his or her office in accordance with this constitution; or
- (n) becomes bankrupt or insolvent or makes any arrangement or compromise with his or her creditors generally; or
- (o) is convicted of an indictable offence and the TS Shareholder which appointed that TS Director does not within one (1) month of that conviction resolve to confirm that TS Director's appointment as its TS Director or otherwise; or
- (p) fails to attend meetings of the Board for more than three (3) consecutive meetings without leave of absence from the Board.

11.5 **Resignation of TS Directors:** A TS Director may resign office by signing a written notice of resignation and delivering it to the company. The notice takes effect upon the later of the receipt of it at the registered office of

the company (including receipt of a facsimile or electronic copy), the expiry of any term of appointment or any later time specified in the notice (provided not beyond the term).

11.6 **Shareholding qualification:** TS Directors: A TS director is not required to hold a Share of any kind.

11.7 **Independent Director and Artist Representative Director Provisions:** Appointment and removal of the Independent Director and the Artist Representative Director by notice:

- (a) The directors appointed to represent all the Independent Shareholders are:
 - (i) the Independent Director who must be a current Independent Shareholder as required under clause 11.10; and
 - (ii) the Artist Representative Director, who need not be an Independent Shareholder.
- (b) Subject to clause 11.7(e), the Independent Director and the Artist Representative Director will be those persons specified as such in the latest notice in writing signed by the company confirming the relevant persons that received the most votes from the Independent Shareholders voting and entitled to vote to be appointed as the Independent Director and the Artist Representative Director in accordance with this constitution.
- (c) Subject to clause 11.7(e), the vote to be held to appoint the Independent Director and the Artist Representative Director will be a postal vote (and no physical meeting is required, unless otherwise determined by the Board in its discretion) conducted every three (3) calendar years by the company and otherwise as it sees fit but will ensure due and reasonable notice and other procedures be followed as prescribed in this constitution for meetings of Shareholders.
- (d) Subject to clause 11.7(e), the Independent Director and the Artist Representative Director will each be appointed for a term of three (3) years but may be re-elected for a further term or terms.
- (e) The Independent Director and the Artist Representative Director each hold office until his or her resignation, disqualification, expiry of term (clause 11.7(d)) or removal in accordance with this constitution.
- (f) Either of the Independent Director or the Artist Representative Director may be removed from office at any time by a postal vote of Independent Shareholders undertaken for the purpose of removing that person.
- (g) A notice given under clauses 11.7(b) or 11.7(f) takes effect upon receipt of it at the registered office of the company (including the receipt of a facsimile or electronic copy) unless the notice specifies a later time at which the notice will take effect, but in any event will be no later than the term the relevant Director was originally appointed for. The notice may comprise one or more similar documents separately signed by either the company in the case of the situation set out in clause 11.7(b) or the relevant Independent Shareholders giving the notice in the case of the situation envisaged in clause 11.7(f).

11.8 **Disqualification and removal of the Independent Director and the Artist Representative Director:** A person will be disqualified from holding the office of the Independent Director or the Artist Representative Director upon expiry of the term of their appointment as set out in the notice given pursuant to clause 11.7(b); or earlier if he or she:

- (a) resigns in writing under clause 11.9 and is not reappointed in accordance with this constitution; or
- (b) in the case of the Independent Director, the Director ceases to be an Independent Shareholder (or a confirmed principal of an Independent Shareholder) as is the requirement under clause 11.10; or
- (c) is removed in accordance with the notice given by the Independent Shareholders pursuant to clause 11.7(f) above; or
- (d) becomes disqualified from being a director pursuant to section 151 of the Act; or
- (e) is prohibited from being a director or promoter of or being concerned with or taking part in the management of a company under section 382, 383 or section 385 of the Act; or
- (f) dies; or

- (g) becomes a protected person under the Protection of Personal and Property Rights Act 1988; or
- (h) is under 18 years of age; or
- (i) is an undischarged bankrupt; or
- (j) is prohibited by the Act from being a director or would be so prohibited but for the repeal of that statute; or
- (k) otherwise vacates office in accordance with this constitution; or
- (l) becomes bankrupt or insolvent or makes any arrangement or composition with his or her creditors generally; or
- (m) is convicted of an indictable offence and the Board (other than the applicable Director) does not within one (1) month of that conviction resolve to confirm the applicable Director's appointment or re-election (as the case may be) to the office of Independent Director or Artist Representative Director, as applicable; or
- (n) fails to attend meetings of the Board for more than three (3) consecutive meetings without leave of absence from the Board.

11.9 Resignation of Independent Director or the Artist Representative Director: The Independent Director or the Artist Representative Director may resign office by signing a written notice of resignation and delivering it to the company. The notice takes effect upon the later of the receipt of it at the registered office of the company (including receipt of a facsimile or electronic copy) and any later time specified in the notice provided within the term of original appointment of the relevant Director.

11.10 Shareholding qualification of Independent Director and Artist Representative Director: An Independent Director must be an Independent Shareholder, or, where that shareholder is not an individual, a principal of an Independent Shareholder. In the case of a principal, the relevant Independent Shareholder must confirm to the company that the person is a principal, and both the principal and that shareholder must advise the company immediately upon the person ceasing to be a principal. There is no shareholding requirement for the Artist Representative Director.

11.11 Independent Director to be proxy for the Independent Shareholders at any shareholders meeting: Notwithstanding clause 10 or any other provision of this constitution to the contrary, as a condition of the company accepting their application to become Independent Shareholders, all Independent Shareholders are deemed to have irrevocably appointed the Independent Director as their proxy to vote at all Shareholder meetings, other than meetings at which the Independent Shareholders have a right to vote themselves in respect of the matters referred to in clause 3.11. The Independent Shareholders will still maintain the right to attend all Shareholder meetings and receive notices of them.

11.12 Appointment and removal by notice of the chairperson:

- (a) The chairperson will be appointed as a director for a term of three (3) years by the TS Directors, the Independent Director and the Artist Representative Director ("Appointing Directors of the chairperson") by a notice in writing signed by a majority of the Appointing Directors of the chairperson.
- (b) Upon the expiry of the term of the person serving as the chairperson, that person may be reappointed by the then relevant Appointing Directors of the chairperson for a further term or terms by notice in writing signed by the Appointing Directors of the chairperson.
- (c) The chairperson holds office until his or her resignation, disqualification, expiry of the relevant term or removal in accordance with this constitution.
- (d) The chairperson may be removed by notice in writing by the Appointing Directors of the chairperson if either:
 - (i) in their unanimous reasonable opinion the chairperson is no longer considered "independent" having regard to the definition of the chairperson set out in clause 11.15(b); or
 - (ii) they unanimously agree.

- (e) A notice given under clause 11.12(a), clause 11.12(b) or clause 11.12(c) takes effect upon receipt of it at the registered office of the company (including the receipt of a facsimile or electronic copy) unless the notice specifies a later time at which the notice will take effect. The notice may comprise one or more similar documents separately signed by the Appointing Directors of the chairperson giving the notice.

11.13 **Disqualification and removal of the chairperson:** A person will be disqualified from holding the office of the chairperson upon the expiry of the term as set out in the notice pursuant to clause 11.12(a); or if he or she:

- (a) is removed under clause 11.12(c); or
- (b) resigns in writing under clause 11.14 and is not reappointed in accordance with this constitution; or
- (c) becomes disqualified from being a director pursuant to section 151 of the Act; or
- (d) is prohibited from being a director or promoter of or being concerned with or taking part in the management of a company under section 382, 383 or section 385 of the Act; or
- (e) dies; or
- (f) becomes a protected person under the Protection of Personal and Property Rights Act 1988; or
- (g) is under 18 years of age; or
- (h) is an undischarged bankrupt; or
- (i) is prohibited by the Act from being a director or would be so prohibited but for the repeal of that statute; or
- (j) otherwise vacates office in accordance with this constitution;
- (k) in the reasonable opinion of the Appointing Directors of the chairperson, the chairperson acts contrary to the best interests or reputation of the recorded music industry;
- (l) becomes bankrupt or insolvent or makes any arrangement or composition with his or her creditors generally; or
- (m) is convicted of an indictable offence and the Board (other than the chairperson) does not within one month of that conviction resolve to confirm the chairperson's appointment or election (as the case may be) to the office of director; or
- (n) fails to attend meetings of the Board for more than three (3) consecutive meetings without leave of absence from the Board.

11.14 **Resignation of the chairperson:** The chairperson may resign from office as chairperson by signing a written notice of resignation and delivering it to the company. The notice takes effect upon the later of the receipt of it at the registered office of the company (including receipt of a facsimile or electronic copy) and any later time specified in the notice provided it is no later than the term for which the chairperson was appointed.

11.15 **Shareholding qualification and independence of chairperson:**

- (a) The chairperson may not hold a Share of any kind.
- (b) It is a requirement of this constitution that the chairperson must be:
 - (i) independent of the management of the company; and
 - (ii) independent of any Shareholder; and
 - (iii) otherwise free from any business or other relationship or circumstance that could materially interfere with the exercise of independent judgement and impartiality by the director appointed as the chairperson of the company.

11.16 **Liability Continues:** Notwithstanding the vacation of office, a person who held office as a director remains liable under the provisions of this Act that impose liabilities on directors in relation to acts and omissions and decisions made while that person was a director.

12. PROCEEDINGS OF DIRECTORS

12.1 **Third Schedule:** The provisions of the third schedule to the Act are deleted and replaced by this clause 12.

12.2 **Chairperson:**

- (a) The chairperson of the Board shall be the person appointed under clause 11.2.

- (b) If at a meeting of the Board the chairperson is not present within fifteen (15) minutes after the time appointed for the commencement of the meeting or there is no chairperson, the directors present may (by majority vote) choose one of their number to be the chairperson at the meeting.

12.3 Remuneration of directors:

- (a) Each director is entitled to remuneration out of the funds of the company as the Board determines.
- (b) The remuneration of directors:
 - (i) may be a fixed sum for attendance at each meeting of directors or both; or
 - (ii) may be a share of a fixed sum determined by the company in general meetings to be the remuneration payable to all directors which is to be divided between the directors in the proportions agreed between them or, failing agreement, equally;
 and, if it is a share of a fixed sum under this clause 12.3(b)(ii), it will be taken to accrue from day to day.
- (c) In addition to the directors remuneration under clause 12.3(a) and clause 12.3(b), if any, the Board may determine that each director is also entitled to be paid all travelling and other expenses properly incurred by him or her in conjunction with the affairs of the company, including:
 - (i) attending and returning from general meetings of the company or meetings of the directors or of committees of the directors; or
 - (ii) carrying out authorised company business agreed in advance by the Board.
- (d) If a director renders or is called on to perform extra services or to make any special exertions in connection with the affairs of the company, the directors may arrange for a special remuneration to be paid to that director, either in addition to or in substitution for that director's remuneration paid pursuant to clause 12.3(a) and clause 12.3(b).
- (e) Nothing in the above provisions of this clause 12.3 restricts the remuneration to which a director may be entitled as an officer of the company or of a Related company in a capacity other than director, which may be either in addition to or in substitution for that director's remuneration under this clause 12.3.

12.4 Convening: A director may, whenever the director thinks fit, convene a meeting of the directors.

12.5 Notice of meetings of directors:

- (a) A director or, if requested by a director to do so, an employee of the company, may convene a meeting of the Board by giving two (2) working days' notice in accordance with this clause 12.5.
- (b) Subject to this constitution, notice of a meeting of directors must be given to each person who is at the time of giving the notice:
 - (i) a director, other than a director on leave of absence approved by the directors; or
 - (ii) an alternate director appointed under clause 13.
- (c) A notice of a meeting of directors:
 - (i) must specify the time and place of, or form of technology for, the meeting;
 - (ii) need not state the nature of the business to be transacted at the meeting;
 - (iii) may be given in person, by post or, subject to the Act, by a form of technology; and
 - (iv) will be taken to have been given to an alternate director if it is given to the director who appointed that alternate director.
- (d) A director or alternate director may waive notice of a meeting of directors by notifying the company to that effect in person, by post or by a form of technology.
- (e) The non-receipt of notice of a meeting of directors by, or a failure to give notice of a meeting of directors to, a director does not invalidate any act, matter or thing done or resolution passed at the meeting if:
 - (i) the non-receipt or failure occurred by accident or error;
 - (ii) before or after the meeting, the director or an alternate director appointed by the director:

- (A) has waived or waives notice of that meeting under clause 12.5(c); or
- (B) has notified or notifies the company of his or her agreement to that act, matter, thing or resolution personally, by post or by a form of technology; or
- (iii) the director or an alternate director appointed by the director attended the meeting.
- (f) Attendance by a director or his or her alternative at a meeting of directors waives any objection that person have had to a failure to give notice of the meeting.

12.6 **Quorum:**

- (a) Subject to clause 12.6(d), no business may be transacted at a meeting of directors unless there is a quorum of directors at the time the business is dealt with.
- (b) A quorum consists of four (4) directors, consisting of:
 - (i) at least two (2) TS Directors (or if there are less than two (2) TS Directors, then such lesser number); and
 - (ii) any two (2) of the chairperson, the Independent Director and the Artist Representative Director.
- (c) In accordance with clause 13.1, an alternate director present at a meeting will be included for the purpose of establishing a quorum.
- (d) Subject to sub-clause (e), no business may be transacted at a meeting of Directors if a quorum is not present.
- (e) If a quorum is not present within thirty (30) minutes after the time appointed for the meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other later date, time and place as the directors present may appoint.
- (f) If there is a vacancy in the office of a director, the remaining director or directors will act promptly to fill such vacancy or vacancies provided that, if the number of remaining directors is not sufficient to constitute a quorum at a meeting of directors, the remaining director or directors may act only in an emergency; for the purpose of appointing a new directors or directors; increasing the number of directors to a number sufficient to constitute a quorum or to convene a general meeting of the company.

12.7 **Voting:**

- (a) Every director has one (1) vote.
- (b) The chairperson does not have a casting vote.
- (c) A resolution of the Board is passed if it is agreed to by all directors present without dissent, or if a majority of the votes cast are in favour of it.
- (d) A director present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of, a resolution of the Board, unless he or she expressly dissents from (or votes against) the resolution at the meeting.
- (e) A director may vote in respect of any transaction in which the director is interested and if the director does so the director's vote will be counted and the director will be counted in the quorum present at the meeting.
- (f) An alternate director may attend and vote at meetings of the Board in accordance with and subject to clause 13.1 if the director that has appointed the alternate director is absent from the meeting.

12.8 **Minutes:**

- (a) The Board must ensure that accurate minutes are kept of all proceedings at meetings of the Board.
- (b) Minutes of proceedings of the Board which have been signed correct by the chairperson are prima facie evidence of such proceedings.

12.9 **Unanimous resolution:**

- (a) A resolution in writing, signed or assented to by all directors then entitled to receive notice of a Board meeting, is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.

- (b) Any such resolution may consist of several documents (including facsimile, electronic or other similar means of communication) in like form each signed or assented to by one or more directors.
- (c) A copy of any such resolution must be entered in the minute book of Board proceedings.

12.10 **Proceedings:**

- (a) The directors may hold meetings for the despatch of business and adjourn and otherwise regulate their meetings as they think fit.
- (b) Subject to the Act and this constitution, the contemporaneous linking together by a form of technology of a number of the directors sufficient to constitute a quorum, constitutes a meeting of the directors and all the provisions in this constitution relating to meetings of the directors apply, so far as they can and with such changes as are necessary, to meetings of the directors held using a form of technology.

12.11 **Share qualification:** A director who is not required to have a share qualification (see section 11) is entitled to attend and speak at any meeting of Shareholders even if he or she is not a Shareholder of the company.

12.12 **Interested directors:**

- (a) A director, other than the chairperson, may hold any directorship, other office or place of profit, other than auditor, in the company or a Related company in conjunction with his or her directorship. A director, other than the chairperson, may be appointed to that office or place of profit on the terms as to remuneration, tenure of office and otherwise as the Board thinks fit.
- (b) A director, other than the chairperson, of the company may be a director of a body corporate in which the company is interested, as shareholder or otherwise, or be otherwise interested in any of those bodies corporate. Such a director is not accountable to the company for any remuneration or other benefits received by the director as a director or officer of that body corporate or from having an interest in that body corporate.
- (c) The Board, other than the chairperson, may exercise the voting rights conferred by shares in any such body corporate held or owned by the company as the Board thinks fit. This includes voting in favour of any resolution appointing a director as a director or other officer of that body corporate, or voting for the payment of remuneration to the directors or other officers of that body corporate. A director may, if permitted by law, vote in favour of the exercise of those voting rights even if he or she is, or may be about to be appointed, a director or other officer of that other body corporate.
- (d) A director, other than the chairperson, is not disqualified merely because of being a director from contracting with the company in any respect including, without limitation:
 - (i) selling any property to, or purchasing any property from, the company;
 - (ii) lending any money to, or borrowing any money from, the company with or without interest and with or without security;
 - (iii) guaranteeing the repayment of any money borrowed by the company for a commission or profit; and
 - (iv) being employed by the company or acting in any professional capacity, other than auditor, on behalf of the company.
- (e) No contract made by a director with the company and no contract or arrangement entered into by or on behalf of the company in which any director may be in any way interested is avoided or rendered voidable merely because the director holds office as a director or because of the fiduciary obligations arising out of that office.
- (f) No director, other than the chairperson, contracting with the company or being interested in any arrangement involving the company is liable to account to the company for any profit realised by or under a contract or arrangement of that kind merely because the director holds office as a director or because of the fiduciary obligations arising out of that office.

- (g) A director must, forthwith after becoming aware of the fact that he or she is interested in a transaction or proposed transaction with the company, cause to be entered in the interests register, and disclose to the Board:
 - (i) if the monetary value of the director's interest is able to be quantified, the nature and monetary value of that interest; or
 - (ii) if the monetary value of the director's interest cannot be quantified, the nature and extent of that interest.
- (h) A director is not required to comply with clause 12.12(g) if:
 - (i) the transaction or proposed transaction is between the director and the company; and
 - (ii) the transaction or proposed transaction is or is to be entered into in the ordinary course of the company's business and on usual terms and conditions.
- (i) For the purposes of clause 12.12(h), a general notice entered in the interests register or disclosed to the Board to the effect that a director is a Shareholder, director, officer or trustee of another named company or other person and is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that company or person, is a sufficient disclosure of interest in relation to that transaction.

13. ALTERNATE DIRECTORS, COMMITTEES OF DIRECTORS

13.1 Alternate Directors:

- (a) Except for the chairperson (who may not appoint an alternate), a director may, by notice given in writing to the company, appoint any person (including any other director) to act as an alternate director in the director's place in respect only of a specified meeting during the director's absence from that meeting. Such notice must be given at least 24 hours prior to the meeting, and must state the name of the alternate, their contact details (including mobile phone number and email address), and the specific meeting for which they are appointed. The relevant notice must be filed with the Companies Office in accordance with the Act.
- (b) An alternate director may, while acting in the place of the appointing director, represent, exercise and discharge all the powers, rights, duties and privileges of the appointing director. The alternate director is subject in all respects to the same terms and provisions as the appointing director, except as regards remuneration and except as regards the power to appoint an alternate director under this constitution.
- (c) For the purpose of establishing a quorum of the Board, an alternate director is deemed to be the director appointing him or her, and if the alternate director is a director he or she can count separately in both capacities.
- (d) An alternate director does not have a right to attend, speak or vote at a meeting of the Board while his or her appointing director is present.
- (e) An alternate director's appointment lapses upon the expiry of the relevant meeting for which he or she has been appointed, or if sooner, his or her appointing director ceasing to be a director.
- (f) The notice of appointment of an alternate director must include an address for service of notice of meetings of the Board. Failure to give an address will not invalidate the appointment, but notice of meetings of the Board need not be given to the alternate director until an address is provided to the company.
- (g) An alternate director will not be the agent of his or her appointer, and will exercise his or her duties as a director independently of his or her appointer.

13.2 Committees of directors:

- (a) The directors may resolve to delegate any of their powers to a committee or committees consisting of such number of directors or other persons as they think fit.

- (b) A committee to which any powers have been so delegated must exercise the powers delegated in accordance with any directions of the directors.
- (c) The provisions of this constitution applying to meetings and resolutions of directors apply, so far as they can and with such changes as are necessary, to meetings and resolutions of any committee of directors.
- (d) Membership of a committee of directors may be treated as an extra service or special exertion performed by the members of the committee for the purposes of clause 12.3(c) if:
 - (i) the Board resolve to do so; and
 - (ii) the total amount fixed by the company for remuneration of non-executive directors under clause 12.3(b) will not be exceeded.
- (e) A committee may second in a person or persons from the recorded music industry to assist the committee from time to time provided the Board approves such secondment and any remuneration for such persons.

14. INDEMNITY AND INSURANCE

14.1 Indemnity of directors and employees:

- (a) The Board will cause the company to indemnify a director or employee of the company or a Related company for costs incurred by him or her in any proceeding:
 - (i) that relates to liability for any act or omission in his or her capacity as a director or employee; and
 - (ii) in which judgment is given in his or her favour or in which he or she is acquitted, or which is discontinued.
- (b) The Board will cause the company to indemnify a director or an employee of the company or a Related company in respect of:
 - (i) liability to any person other than the company or a Related company for any act or omission in his or her capacity as a director or employee; or
 - (ii) costs incurred by the director or employee in defending or settling any claim or proceeding relating to any liability under clause 14.1(a) above;
 not being:
 - (iii) criminal liability; or
 - (iv) liability for the breach of section 131 of the Act; or
 - (v) liability for breach of any fiduciary duty owed to the company or Related company.

14.2 Insurance of directors and employees:

- (a) The Board may, subject to section 162 of the Act, cause the company to effect insurance for directors and employees of the company or a Related company in respect of:
 - (i) liability, not being criminal liability, for any act or omission in his or her capacity as a director or employee; or
 - (ii) costs incurred by such directors or employees in defending or settling any claim or proceeding relating to any such liability; or
 - (iii) costs incurred by a director or employee in defending any criminal proceedings that have been brought against the director or employee in relation to any act or omission in his or her capacity as a director or employee and in which he or she is acquitted.
- (b) The directors who vote in favour of authorising the effecting of insurance under clause 14.2(a) must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the company.
- (c) The directors must ensure that particulars of any indemnity given to, or insurance effected for, any director or employee of the company or related company are forthwith entered in the interests register.

- 14.3 **Definitions:** For the purpose of this clause 14, “director” includes a former director and “employee” includes a former employee.

15. **POWERS AND DUTIES OF THE BOARD**

15.1 **Powers of the Board:**

- (a) Subject to clause 15.1(b) and any restrictions in the Act or this constitution, the business and affairs of the company must be managed by or under the direction or supervision of the Board.
- (b) The Board has, and may exercise, all the powers necessary for managing, directing and supervising the management of the business and affairs of the company except to the extent that this constitution or the Act expressly requires those powers to be exercised by the Shareholders or any other person.

15.2 **Delegation by Board:**

- (a) The Board may delegate to a committee of directors, a director, an employee of the company, or any other person any one or more of its powers, other than the powers referred to in the following sections of the Act:
 - (i) section 23(1)(c) (change of company name);
 - (ii) section 42 (issue of other Shares);
 - (iii) section 44 (Shareholder approval for the issue of Shares);
 - (iv) section 49 (consideration for the issue of options and convertible securities);
 - (v) section 47 (consideration for the issue of Shares);
 - (vi) section 52 (distributions);
 - (vii) section 54 (Shares in lieu of dividends);
 - (viii) section 55 (Shareholder discounts);
 - (ix) section 60 (offers to acquire Shares);
 - (x) section 61 (special offers to acquire Shares);
 - (xi) section 63 (stock exchange acquisitions subject to prior notice to shareholders);
 - (xii) section 65 (stock exchange acquisitions not subject to prior notice to Shareholders);
 - (xiii) section 69 (redemption of Shares at the option of the company);
 - (xiv) section 71 (special redemptions of Shares);
 - (xv) section 76 (provision of financial assistance);
 - (xvi) section 78 (special financial assistance);
 - (xvii) section 80 (financial assistance not exceeding five (5) per cent of Shareholders’ funds);
 - (xviii) section 84(4) (transfer of Shares);
 - (xix) section 187 (change of registered office);
 - (xx) section 193 (change of address for service);
 - (xxi) section 221 (manner of approving an amalgamation proposal); and
 - (xxii) section 222 (short form amalgamations).
- (b) The Board is responsible for the exercise of a power by any delegate (where that power is delegated under this clause 15.2) as if the power had been exercised by the Board, unless the Board:
 - (i) believed on reasonable grounds at all times before the exercise of the power that the delegate would exercise the power in conformity with the duties imposed on the directors by the Act and this constitution; and
 - (ii) has monitored, by means of reasonable methods properly used, the exercise of the power by the delegate.

15.3 **Directors to act in good faith:**

- (a) A director, when exercising powers or performing duties, must act in good faith.
- (b) A director must also act in what the director believes to be the best interests of the company.

- 15.4 **Major transactions:** The Board may not procure or permit the company to enter into a major transaction unless the transaction is:
- (a) approved by a special resolution; or
 - (b) made contingent on approval by a special resolution.
- 16. AUTHORITY TO BIND**
- 16.1 **Method of contracting:**
- (a) A contract or other enforceable obligation may be entered into by the company as follows:
 - (i) an obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the company in writing signed under the name of the company by:
 - (A) two (2) or more directors of the company; or
 - (B) a director or any other person or class of persons authorised by the Board for that purpose whose signature or signatures must be witnessed; or
 - (C) one (1) or more attorneys appointed by the company in accordance with clause 17.2; and
 - (ii) an obligation which, if entered into by a natural person, is by law, required to be in writing, may be entered into on behalf of the company in writing by a person acting under the company's express or implied authority; and
 - (iii) an obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the company in writing or orally by a person acting under the company's express or implied authority.
 - (b) A copy of a resolution of the Board authorising a person to enter into a contract or other enforceable obligation on behalf of the company will be proof of such authority notwithstanding that the authority may have been subsequently revoked.
- 16.2 **Attorneys:**
- (a) The company may, by an instrument in writing executed in accordance with clause 16.1(a)(i), appoint a person as its attorney either generally or in relation to a specified matter.
 - (b) An act of the attorney in accordance with the instrument binds the company.
- 17. LIQUIDATION**
- 17.1 **Appointment of liquidator:** A liquidator of the company may be appointed by a special resolution of the Shareholders.
- 17.2 **Distribution of surplus assets:** Subject to the terms of issue of any Shares, upon the liquidation of the company, any assets of the company remaining after payment of the debts and liabilities of the company and the costs of liquidation shall be distributed among the Shareholders in the proportions of the Distributable Sum received by each Shareholder in the financial year immediately before such surplus asset distribution.
- 17.3 **Removal from New Zealand register:**
- (a) Subject to sections 318 and 320 of the Act, a director, who has been authorised by the Board to do so, may request the Registrar to remove the company from the New Zealand register on the grounds that:
 - (i) the company has ceased to carry on business, has discharged in full its liabilities to all its known creditors, and has distributed its surplus assets in accordance with this constitution and the Act; or
 - (ii) the company has no surplus assets after paying its debts in full or in part, and no creditor has applied to the court under section 241 of the Act for an order putting the company into liquidation.

- (b) For the purposes of clause 17.3(a) the company shall have distributed its surplus assets in accordance with this constitution if the company does so in accordance with clause.

Dated this 23rd day of May 2013.

RECORDED MUSIC NZ STRUCTURE

THRESHOLD SHAREHOLDERS

INDEPENDENT SHAREHOLDERS



Limited liability company

BOARD OF DIRECTORS
CHAIRMAN = NON SHAREHOLDING INTEREST

CEO AND RECORDED MUSIC NZ STAFF

LICENSING

Radio
Television
Digital & Webcast
Public performance (via OneMusic)
Education

MEMBER SERVICES

Data collection & analysis
Royalty distribution
NZ Top 40 Chart
NZ Music Awards
NZ Music Hall of Fame
Music Grants

PROMUSIC

Legal Services
Facts and statistics
Promotion
Government liaison
Media liaison
Legislative deterrents

EXPLANATORY MEMORANDUM ON SHAREHOLDING AND BOARD STRUCTURE

- (a) **Two classes of Shares:**
- **Threshold Shares:** to qualify to hold Threshold Shares, you must have received at least 6% of the last three years' distributions made by Recorded Music NZ and satisfied the other eligibility criteria in the Constitution.
 - **Independent Shares:** to qualify to hold an Independent Share, you must have a current signed Input Agreement with Recorded Music NZ, have made an election to hold a share and satisfied the other eligibility criteria in the Constitution.
- (b) **The Board:**
- **Threshold Shareholders:** may appoint 1 Director each.
 - **Independent Shareholders:** may together appoint the "Independent Director" and the "Artist Representative Director". This is done by postal/email vote (not an actual meeting) every 3 years, and is determined by a majority of those entitled to vote and voting. The Independent Director must be an Independent Shareholder.
 - **Chairperson:** The Chairperson is appointed by a majority of all of the other directors.
 - **Term:** The Chairperson, the Artist Representative Director and the Independent Director are each appointed for a term of 3 years.
- (c) **Shareholder Votes:**
- **Threshold Shareholders:** their voting right is determined as a percentage calculated by their share of the overall Recorded Music NZ distributions made in the prior financial year.
 - **Independent Shareholders:** the Independent Director is appointed by the Independent Shareholders in the Constitution as their proxy to vote at shareholder meetings (other than in certain very limited cases). The Independent Shareholders' voting right (through the Independent Director) is determined as a percentage calculated by their share of the overall Recorded Music NZ distributions made in the prior financial year.
 - **Ordinary shareholders' resolutions:** require the vote of the majority of all shareholders voting to be passed.
 - **Special resolutions:** require 75%.
- (d) **Board Meetings:**
- **Quorum:** 4 directors comprising 2 Threshold Directors and any 2 of the Chairperson, the Artist Representative Director or the Independent Director.
 - **Board Resolutions:** are passed by a majority, provided a quorum is present.
 - **The Chairperson:** does NOT have a casting vote.

THIS FORM CAN BE COMPLETED ON SCREEN.

Once completed, save to your desktop and then email to memberservices@recordedmusic.co.nz.

1. MASTER RIGHTS AGREEMENT

This acceptance of the Master Rights Agreement is dated and commences from the **1st day of January 2019** (Commencement Date).

BETWEEN

A. **RECORDED MUSIC NEW ZEALAND LIMITED**

a duly incorporated company having its registered office at Level 1, 2a Hakanoa Street, Grey Lynn, Auckland **"Recorded Music NZ"**
AND

B.

Insert name of artist/band name or label/company name.

(**"Licensor"**) having the following contact details:

Postal address:

Phone Number:

Mobile Number:

Email Address:

Contact name:

By ticking the box below, you acknowledge that you have read and understood, and you agree to be bound by, all of the terms and conditions of the Master Rights Agreement.

MASTER RIGHTS AGREEMENT ACCEPTED for

by:

Full name of director or authorised representative

*Insert name of artist/band name
or label/company name.*

 **ACCEPTANCE**

PLEASE COMPLETE ALL OF SECTION 1 BEFORE PROCEEDING TO SECTION 2.

2. INDEPENDENT SHAREHOLDER

I confirm and agree I wish to be an Independent Shareholder of Recorded Music NZ and will comply with the provisions of the Constitution.

SHAREHOLDING ACCEPTED for

by:

*Full name of director or authorised representative or tick box
if details are the same as in Section 1 above:*

*Insert name of artist/band name
or label/company name.*

 **ACCEPTANCE****OFFICE USE ONLY**

ACCEPTED by RECORDED MUSIC NEW ZEALAND LIMITED by:

ACCEPTANCE



RECORDING ARTIST FORM FOR REGISTRATION IN THE DIRECT-TO-RECORDING ARTIST DISTRIBUTION SCHEME

Postal address: Private Bag 78850, Grey Lynn, Auckland 1245 **Registered office:** Level 1, 2a Hakanoa Street, Grey Lynn, Auckland 1021
Free phone: 0800 88 77 69 **Phone:** (09) 360 5085 **Email:** memberservices@recordedmusic.co.nz

PART A: DETAILS OF RECORDING ARTIST (SOLO OR GROUP); MASTER RIGHTS HOLDER; NOMINATED CLAIMANT; BANK ACCOUNT; GST AND EXECUTION

1. Definitions and Interpretation: In this Form, if not otherwise stated:

- a. **Business Day** means any day other than a Saturday, Sunday or public holiday in New Zealand;
- b. **Distribution** means the sums of money due and payable by Recorded Music to the Master Rights Holder (being that relevant part of the Total Remuneration less any Recorded Music Expenses) for each Financial Year;
- c. **Distribution Period** means the period in each Financial Year that Recorded Music has completed the analysis of data from the preceding Financial Year and is in a position to make Distributions due to, among others, the Registered Recording Artist under and pursuant to the Scheme;
- d. **Distribution Policy** means Recorded Music's policy for the calculation, allocation and payment of Distributions, as approved by and varied from time to time by Recorded Music's board of directors and published on its website at www.recordedmusic.co.nz;
- e. **Financial Year** means the period from 1 January to 31 December;
- f. **Form** means this form, comprising this Part A; the further terms and conditions set out in Part B following execution as well as the list of Relevant Recordings set out in Part C;
- g. **Master Rights Holder** means that artist/band name or label/company name noted on and who has executed this Form and who exclusively owns or controls rights in New Zealand, or is authorised to grant rights to third parties in New Zealand, in Sound Recordings and Music Videos and who then grants a licence to Recorded Music for Recorded Music to use and sub-licence those rights such that they are then Controlled Recordings and Controlled Videos;
- h. **Nominated Claimant** The Nominated Claimant will be the party that receives the Distributions from Recorded Music because they are either the Registered Recording Artist or because they have been appointed by the Registered Recording Artist to be the recipient of Distributions on its behalf and will, if not the Registered Recording Artist, be responsible for onward payment of such Distributions to the Registered Recording Artist as is agreed between and among them, and of which agreements or arrangements, Recorded Music is not privy. However, to ensure sufficient authority and transparency, the Nominated Claimant will execute this Form by way of confirmation and acknowledgement by both parties of such authority;
- i. **Master Rights Agreement** means that agreement signed by the Master Rights Holder as a licensor to Recorded Music as downloadable from Recorded Music's website at www.recordedmusic.co.nz and which, for the time being, is called an "Input Agreement";
- j. **Music Video** means a film (as that term is defined in the Copyright Act 1994) that embodies a Sound Recording or a sound track which, if made separately from the film, would be a Sound Recording and **Controlled Video** means all of the Music Videos which the Master Rights Holder exclusively owns or controls the rights in New Zealand, or is authorised to grant rights to third parties in New Zealand, which may vary from time to time;
- k. **Recording Artist** means the artist, solo or group, noted on the label copy or metadata for any given Controlled Recording or Controlled Video;
- l. **Recorded Music Expenses** means those expenses or reserves incurred in properly managing the business of Recorded Music and as more specifically described in the Master Rights Agreement;
- m. **Relevant Recording** means those Controlled Recordings or Controlled Videos listed in Part C of this Form and updated and added to from time to time;

- n. **Scheme** means the scheme for making Distributions directly (i.e. rather than via the Master Rights Holder) by Recorded Music to the Registered Recording Artist, certain terms and conditions pertaining to which are either set out in this Form (which will take priority) or other details pertaining to the Scheme as published on Recorded Music's website at www.recordedmusic.co.nz. For the purposes of further clarification, Recorded Music has previously called the Scheme the "**RAP Fund**" and more latterly the "**Direct-to-Artist Scheme**" but it is now/will be called the "**Direct-to-Recording Artist Scheme**";
- o. **Sound Recording** means:
- i. A recording of sounds, from which the sounds may be reproduced; or
 - ii. 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 and **Controlled Recording** means all the Sound Recordings the Master Rights Holder exclusively owns or controls the rights in New Zealand, or is authorised to grant rights to third parties in New Zealand, which may vary from time to time;
- p. **Total Remuneration** means all the sums received by Recorded Music by way of licence fees or otherwise in carrying on its business and as more specifically described in the Master Rights Agreement;
- q. A reference to the **singular** includes the **plural** and vice versa;
- r. A **person** includes a natural person, partnership, joint venture, association, corporation of other body corporate; and
- s. Any **legislation** is a reference to that legislation as amended, consolidated or replaced.
2. **Completion and Execution of this Form:** This Form may be completed and submitted by another person on behalf of both the Recording Artist and the Master Rights Holder. However, this Form (in order for the registration into the Scheme to be effective) **MUST** be executed by **BOTH** the Recording Artist and the Master Rights Holder.
3. **Nominated Claimant must also Execute if not the Registered Recording Artist:** If the Nominated Claimant is not the Registered Recording Artist, then the Nominated Claimant must also execute this Form.
4. **Details of the Recording Artist:**
- Name of Recording Artist : _____
- Email of Recording Artist : _____
- Phone of Recording Artist : _____
- [Note: Once this Form is duly completed and executed by both/all parties, the Recording Artist is then generally referred to as the Registered Recording Artist]**
5. **Details of the artist/band name or label/company name:**
- Name of the Master Rights Holder : _____
- Email of the Master Rights Holder : _____
- Phone of the Master Rights Holder : _____

6. Details of the Nominated Claimant:

Name of the Nominated Claimant : _____

Address of the Nominated Claimant : _____

Email of the Nominated Claimant : _____

Phone of the Nominated Claimant : _____

7. Bank account details for the Registered Recording Artist or, if applicable, the Nominated Claimant:

| | | | | | | | | | | | | | | |
|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|
| | | | | | | | | | | | | | | |
|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|

Bank account name: _____

8. GST number (if applicable) of the Registered Recording Artist or, if applicable, the Nominated Claimant:

9. **Acknowledgement, Agreement and Execution by the Registered Recording Artist, the Master Rights Holder and, if applicable, the Nominated Claimant:** Both or each of the Registered Recording Artist, the Master Rights Holder and, if applicable, the Nominated Claimant:

- a. Confirm they have read and understood the terms and conditions as set out in this Form; and
- b. Confirm they have read and understood the terms and conditions of the Scheme; and
- c. Warrant that the information detailed in this Form is true and correct; and
- d. Have agreed to the payment of Distributions to the Registered Recording Artist in accordance with the terms and conditions set out in this Form and the Scheme; and
- e. Accept that all decisions made by Recorded Music regarding the operation of the Scheme will be final and binding.

EXECUTION:

Name of the Recording Artist : _____

Execution by the Recording Artist : _____

Date : _____

Name of the Master Rights Holder : _____

Execution by the Master Rights Holder : _____

Date : _____

Name of the Nominated Claimant (if applicable) : _____

Execution by the Nominated Claimant : _____

Date : _____

PART B : OTHER TERMS AND CONDITIONS

9. **Eligibility - NZ Citizen or Resident:** To be eligible for entry into the Scheme, the Recording Artist must be either a New Zealand citizen or a permanent resident of New Zealand. Recorded Music may therefore request verification of citizenship or residency at any time and reserves the absolute discretion to not accept the registration by the Recording Artist if this requirement is not met to its satisfaction in all respects.
10. **The Scheme is Not Retrospective:** All Distributions, including those Distributions made as part of the Scheme, are made annually and Recorded Music does not retain funds prior to any current Distribution. As such, Recorded Music is unable to pay any Distributions on a retrospective basis.
11. **Distribution Period:** The period for calculating any Distribution due to the Registered Recording Artist pursuant to its registration in the Scheme is in each Financial Year.
12. **Distribution Payments:**
 - a. Recorded Music will endeavour to make payments in relation to Distributions twice (but different pools in each case) per year for the Financial Year immediately prior to the Distribution Period (**Distribution Payments**);
 - b. Recorded Music will make every effort to make Distribution Payments as soon as possible following the end of a Financial Year, however, the Registered Recording Artist acknowledges and accepts that, due to variable elements from year to year (such as the timing of receipt of the Total Remuneration), a set date for Distributions Payments cannot be guaranteed; yet
 - c. Notwithstanding subclause b. above, Recorded Music will endeavour to give the Registered Recording Artist advance notice of when the Distribution Payments will occur in each current year.
13. **Discretion as to Distribution Payments:**
 - a. Recorded Music has the absolute right to determine the minimum payment to be made under the Scheme;
 - b. Where a Registered Recording Artist is licensed or otherwise contracted to the Master Rights Holder, payment can only be made to that Registered Recording Artist if the Master Rights Holder:
 - i. Is also registered with Recorded Music via the Master Rights Holder's entry into and execution of the Master Rights Agreement (Input Agreement); and
 - ii. Has also executed this Form; and
 - c. If, in the event Recorded Music makes any overpayments of Distributions, for whatever reason, it reserves the right to recover these payments at any time by requesting return of monies paid or by deducting monies from future Distributions.
14. **Disputes:** If any dispute shall arise between Recorded Music and any of the parties concerning the construction of this agreement as detailed in this Form or the Scheme, such dispute will be subject to the disputes process and procedures of Recorded Music set out on its website at www.recordedmusic.co.nz.
15. **Notification of Changes:** Both or all parties each undertake and agree that they will promptly, and in event no later than **14** Business Days in each case, notify Recorded Music of any change to any of the particulars detailed in this Form.
16. **Termination and Date of Effect:**
 - a. If any party wishes to terminate the Registered Recording Artist's registration in the Scheme, then this must be effected in writing and delivered per the notice provision set out below.
 - b. If there are at least **90** days left in the Financial Year at the time the other party and Recorded Music 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.
 - c. Following termination, Recorded Music will continue to account to the parties after the termination date for any Distributions that are duly payable in accordance with its Distribution Policy.

17. **Notices:** A notice under the terms and conditions detailed in this Form and the Scheme must be in writing and must be given to a party by:
- a. Delivering it to the address of the other parties; or
 - b. Sending it by pre-paid post to the address of the other parties; or
 - c. By electronic communication to the email addresses of the other parties; and
 - d. The notice will be deemed to have been received by each relevant party **5** Business Days after sending.
18. **Privacy Notice:** The information provided by the parties in this Form may be personal information under the Privacy Act 1993. Information so collected is only for the legitimate business purposes of Recorded Music and will not be disclosed to any third parties except in accordance with the privacy policy of Recorded Music as detailed on its website at www.recordedmusic.co.nz.
19. **Indemnity:**
- a. The Registered Recording Artist represents and warrants to Recorded Music on an ongoing basis that:
 - (i) It is the Registered Recording Artist of each of the Controlled Recordings or Controlled Videos; and
 - (ii) It is not infringing the copyright or other rights of any other person.
 - b. The Registered Recording Artist also indemnifies, defends and holds harmless both Recorded Music and the Master Rights Holder, and their respective directors, officers, employees, agents and contractors (each an **Indemnified Person**), from and against any direct or indirect 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 the operation of the Scheme and any claim arising under or pursuant to this agreement (as set out in this Form and the Scheme).

PART C : LIST OF RELEVANT RECORDINGS

1. **Each Relevant Recording** : This Part C must be completed for every Controlled Recording or Controlled Video for which the Registered Recording Artist is claiming Distributions in respect of and made under and pursuant to the Scheme:
2. **Separate form (Part C) for each** : If the Registered Recording Artist is registering multiple products (for example an album of Controlled Recordings and a Controlled Video) please fill out a separate form (Part C) for each different product.
3. **Registered Recording Artist** : _____
4. **Configuration** : ☐ Album ☐ Single ☐ Video
5. **Distribution (if any)** : _____
6. **Agreement type** : ☐ Exclusive Agreement ☐ Non-Exclusive Agreement ☐ Distribution Agreement
7. **Name of album, EP, DVD etc.** : _____
8. **Track (Controlled Recording) Details** :

| | DURATION | ISRC CODE (if known) |
|-----|----------|----------------------|
| 1. | | |
| 2. | | |
| 3. | | |
| 4. | | |
| 5. | | |
| 6. | | |
| 7. | | |
| 8. | | |
| 9. | | |
| 10. | | |
| 11. | | |
| 12. | | |
| 13. | | |
| 14. | | |
| 15. | | |
| 16. | | |
| 17. | | |
| 18. | | |
| 19. | | |
| 20. | | |

THIS FORM CAN BE COMPLETED ON SCREEN.

Once completed, save to your desktop and then email to memberservices@recordedmusic.co.nz.

1. MASTER RIGHTS AGREEMENT

This acceptance of the Master Rights Agreement is dated and commences from the **1st day of January 2019** (Commencement Date).

BETWEEN

A. **RECORDED MUSIC NEW ZEALAND LIMITED**

a duly incorporated company having its registered office at Level 1, 2a Hakanoa Street, Grey Lynn, Auckland **"Recorded Music NZ"**

AND

B.

Insert name of artist/band name or label/company name.

(**"Licensor"**) having the following contact details:

Postal address:

Phone Number:

Mobile Number:

Email Address:

Contact name:

By ticking the box below, you acknowledge that you have read and understood, and you agree to be bound by, all of the terms and conditions of the Master Rights Agreement.

MASTER RIGHTS AGREEMENT ACCEPTED for

by:

Full name of director or authorised representative

*Insert name of artist/band name
or label/company name.*

 **ACCEPTANCE**

PLEASE COMPLETE ALL OF SECTION 1 BEFORE PROCEEDING TO SECTION 2.

2. INDEPENDENT SHAREHOLDER

I confirm and agree I wish to be an Independent Shareholder of Recorded Music NZ and will comply with the provisions of the Constitution.

SHAREHOLDING ACCEPTED for

by:

*Full name of director or authorised representative or tick box
if details are the same as in Section 1 above:*

*Insert name of artist/band name
or label/company name.*

 **ACCEPTANCE****OFFICE USE ONLY**

ACCEPTED by RECORDED MUSIC NEW ZEALAND LIMITED by:

ACCEPTANCE



AMENDED DISTRIBUTION PAYMENT PERCENTAGES TO APPLY BETWEEN THE REGISTERED RECORDING ARTIST AND THE MASTER RIGHTS HOLDER FOR THE DIRECT-TO-RECORDING ARTIST DISTRIBUTION SCHEME

Postal address: Private Bag 78850, Grey Lynn, Auckland 1245 **Registered office:** Level 1, 2a Hakanoa Street, Grey Lynn, Auckland 1021
Freephone: 0800 88 77 69 **Phone:** (09) 360 5085 **Email:** memberservices@recordedmusic.co.nz

To: Recorded Music New Zealand Limited, Level 1, 2a Hakanoa Street, Grey Lynn, Auckland 1021
(Recorded Music)

- 1. From:** _____ **(Registered Recording Artist)**
- 2. And From:** _____ **(Master Rights Holder)**
- 3. And From:** _____ **(Nominated Claimant, if applicable)**

The Registered Recording Artist, the Master Rights Holder and, if applicable, the Nominated Claimant, both or each acknowledge and agree that the percentages set out below shall, from the date of last execution, apply to all future Distributions due to the Registered Recording Artist from the Master Rights Holder as part of the Scheme and as listed in Schedule A attached:

| | | |
|-----------|-----------------------------|---------------------|
| A: | Registered Recording Artist | = [] % |
| B: | Master Rights Holder | = [] % |
| | | Total = 100% |

Executed by the Registered Recording Artist:

Date:

Executed by the Master Rights Holder:

Date:

Signed by Nominated Claimant:

Date:

For definitions, see your Executed Registered Recording Artist Form.

Acknowledged and Accepted by Recorded Music New Zealand Limited:

Name of authorised signatory: _____

Date:

SCHEDULE A

LIST OF RELEVANT RECORDINGS

1. **Each Relevant Recording** : This must be completed for every Controlled Recording or Controlled Video for which the Registered Recording Artist is claiming amended Distributions in respect of and made under and pursuant to the Scheme:
2. **Separate form (Schedule A) for each:** If the Registered Recording Artist has registering multiple products (for example an album of Controlled Recordings and a Controlled Video) please fill out a separate amendment form for each different product.

3. **Registered Recording Artist :**

4. **Configuration :** ☐ Album ☐ Single ☐ Video

5. **Distribution (if any) :**


6. **Agreement type :** ☐ Exclusive Agreement ☐ Non-Exclusive Agreement ☐ Distribution Agreement

7. **Name of album, EP, DVD etc. :**

8. **Track (Controlled Recording) Details :**

| | ISRC CODE (if known) |
|-----------|----------------------|
| 1. _____ | _____ |
| 2. _____ | _____ |
| 3. _____ | _____ |
| 4. _____ | _____ |
| 5. _____ | _____ |
| 6. _____ | _____ |
| 7. _____ | _____ |
| 8. _____ | _____ |
| 9. _____ | _____ |
| 10. _____ | _____ |
| 11. _____ | _____ |
| 12. _____ | _____ |
| 13. _____ | _____ |
| 14. _____ | _____ |
| 15. _____ | _____ |
| 16. _____ | _____ |



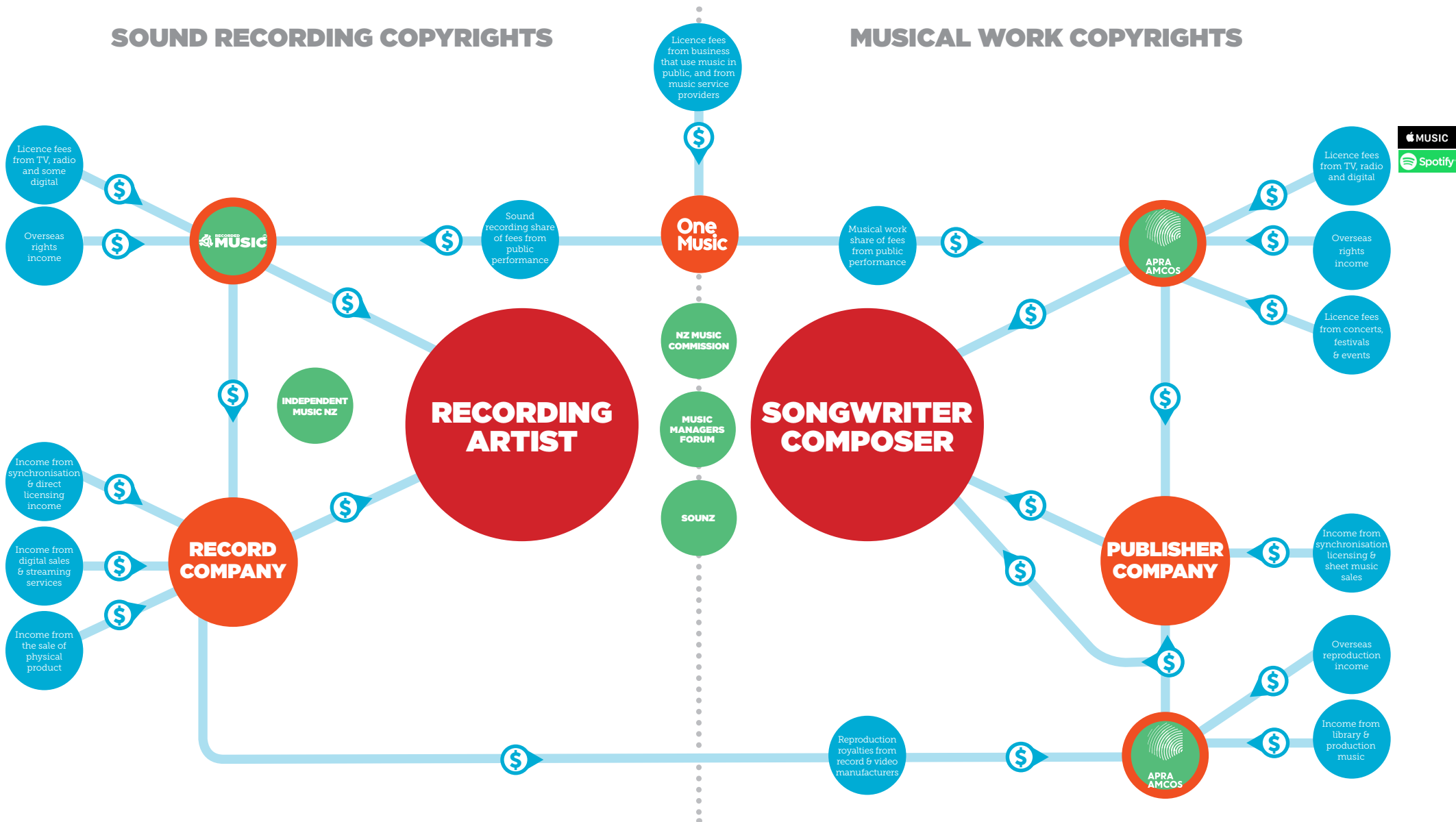
| LICENCE TYPE | Radio | Television | Non-Interactive Webcasting (Online Radio) | Audio Visual Communications | Public Performance via OneMusic | Public Performance direct  | Semi - Interactive Webcasting | Certain Limited Reproduction Licensing |
|----------------------------|---|---|---|--|---|--|---|---|
| LICENSED ACTIVITIES | <p><i>*Terrestrial radio broadcast and internet simulcast to a NZ audience.</i></p> <p><i>*Communication of limited, on-demand podcasts to a domestic NZ audience.</i></p> <p><i>*Reproduction to create playlists for the purposes of broadcast and simulcast.</i></p> | <p><i>*Terrestrial and satellite TV broadcast.</i></p> <p><i>*Reproduction to compile programming and reproduction for incidental use in programming.</i></p> | <p><i>*Communicate live sound recordings online (non-interactive) to a domestic NZ audience.</i></p> <p><i>*Reproduction to compile playlists and reproduction of associated artwork.</i></p> | <p><i>*Communicate recordings to a domestic NZ audience in audio communications.</i></p> <p><i>*Communicate recordings to a domestic NZ audience in audio-visual communications.</i></p> | <p><i>*Playing recorded music and music videos in public (i.e. hospitality and retail businesses, exercise facilities, dance schools and many more businesses and organisations)</i></p> <p><i>*Reproduction to create playlists for the purposes of playing background music.</i></p> <p><i>*Reproduction and communication of music on hold services.</i></p> | <p><i>*Playing or showing sound recordings and music videos in public in bespoke or confined areas i.e. airlines, cinema, the territory of Fiji and certain events/uses in a dramatic context.</i></p> | <p><i>*Semi-interactive music services and multi-channel webcasting from a single platform.</i></p> | <p><i>*The reproduction of incidental or semi-featured recordings in independent programming (on an "opt-in" basis only).</i></p> |

**"domestic audience" means an audience who has agreed to listen or view the relevant content for their private or domestic use only.*

NZ MUSIC MAP

SOUND RECORDING COPYRIGHTS

MUSICAL WORK COPYRIGHTS



KEY

- Income sources
- Artists
- Commercial services
- Commercial services, advocacy & representative organisations (non-profit)
- Representative organisations (non-profit)

What is RadioScope?

RadioScope is a data collection and analysis service set up in 1999 by Paul Kennedy and New Zealand company Media Sauce. Originally focussed on radio play, over the years RadioScope has expanded its services and tapped new sources of music-related data to help its clients and partners in the broadcasting and music industry understand their environment. Today RadioScope is part of the data division of Recorded Music NZ and produces the Official NZ Top40 charts as well as radio, TV, music sales and streaming reports for record labels, distributors, retailers, broadcasters and bodies such as NZ On Air, the NZ Music Commission, IMNZ and RBA.

What Radio Data is collected?

We currently source playlists from 56 stations each week (see list below). All commercial music stations run by MediaWorks and NZME, all of the b.net stations, the Rhema Group, all iwi stations, all major independent commercial operators and some of the more significant LPFM stations are included. In terms of contemporary music listenership, we capture data covering around 95% of all the music heard each day on New Zealand radio. We also collate non-radio data from all the music television channels broadcasting in New Zealand, physical and digital sales data from the leading retailers and music streaming information from services such as Spotify, GooglePlay, Xbox Music etc

Confidentiality

All data we collate is presented in such a way that individual suppliers are not identifiable. This is a condition of supply for many contributors, but as a courtesy to everyone we work with, no subscriber to the RadioScope data is able to isolate individual data sources in a way which might compromise their independence or commercial competitiveness.

Data Weighting

Around 90,000 unique radio plays are logged each week. Spins (plays) of songs are entered into a central database where they are allocated 'points' based on the number of times they were played **AND** the size of the audience of the station on which those spins occurred.

This points system is in place to reflect the fact that getting a song played on a large network - with thousands of listeners nationwide - gives it a much greater 'reach' than getting it added on a smaller station with fewer listeners.

In this regard we are less concerned with discovering the '**most played**' (a straight measure of raw spins) songs necessarily, but more interested in the '**most heard**' (audience-weighted reach). As subtle as that difference may seem.

Audience figures are sourced from Gfk and based on latest official radio surveys (10+, midnight-midnight, Mon-Sun, audience cume), or in the case of unsurveyed stations, by estimating the likely upper and lower limit of the market in which they broadcast. Weightings are updated after each survey (twice a year).

Stations are split into 10 tiers, the top stations (those with more than 300,000 cume) generating 9 points per play, the next tier (250,000 to 299,999 cume) generating 8 points per play and so on.

By adding up all the points for a song across all radio, or a combination of stations (eg. all Pop stations gives is a Pop chart), we get a tally on which the various RadioScope Airplay Charts are based.

Current RadioScope Contributing Stations

- 1 The Edge
- 2 More FM
- 3 The Breeze
- 4 ZM
- 5 The Hits
- 6 The Rock
- 7 Coast
- 8 Mai FM
- 9 The Sound
- 10 Radio Hauraki
- 11 Flava
- 12 George FM
- 13 Magic FM
- 14 Mix FM
- 15 Niu FM
- 16 bFM
- 17 Radio Rhema
- 18 Life FM
- 19 Pulzar
- 20 1XX
- 21 Bayrock
- 22 Port FM
- 23 531 PI
- 24 Peak FM
- 25 Central FM
- 26 Coast FM (West Coast)
- 27 QFM
- 28 Southern Star
- 29 Active 88.6FM
- 30 rdu
- 31 Radio 1
- 32 Radio Control
- 33 The Most
- 34 Tahu FM
- 35 Tainui FM
- 36 Radio Waatea
- 37 Atiawa Toa
- 38 Awa FM
- 39 Kia Ora FM
- 40 Maniapoto FM
- 41 Moana AM
- 42 Nga Iwi FM
- 43 Ngati Hine FM
- 44 Ngati Porou
- 45 Radio Kahungunu
- 46 Raukawa FM

- 47 Sun FM
- 48 Tautoko FM
- 49 Te Arawa FM
- 50 Te Hiku O Te Ika
- 51 Te Korimako
- 52 Te Upoko O Te Ika
- 53 Tumeke FM
- 54 Turanga FM
- 55 Tuwharetoa FM
- 56 The Heat

SCHEDULE 12: PRIVACY POLICY

PRIVACY POLICY

General

This policy sets out how Recorded Music NZ collects personal information. It also describes how we maintain, use and disclose personal information. We respect the privacy of individuals and do not release personal information except in response to a legal requirement or at the direction of the Chief Executive Officer. In all other circumstances, this policy governs the collection, use and disclosure of your personal information.

Collection of your personal information

Where we collect personal information it is collected for Recorded Music NZ's business purposes, which are detailed generally on this website at www.recordedmusic.co.nz

Where we require personal information Recorded Music NZ will state the purposes of this requirement and to whom the personal information may be disclosed.

Use of your personal information

We may, from time to time, send you material that Recorded Music NZ considers will be useful to you. We may also send you material about our services and activities. If you do not wish to receive this information, you can let us know and we will not send it to you. This does not apply to information that we are legally required to send, or information regarding the rights of our master rights holders and registrants (members) in relation to our licensing activities.

We use the personal information to collect to fulfil our legal obligations and to keep our members and licensees informed of Recorded Music NZ's services and activities that it provides to our members and licensees.

Disclosure of your personal information

Recorded Music NZ will only disclose your personal information to external parties where such disclosure is directly related to the purpose for which the information was obtained. Depending on the service, your personal information may be disclosed to:

- External service providers (on a confidential basis and such service providers will be limited in their use of your information to the purpose of Recorded Music NZ's activities only;
- Overseas and local collecting societies, such as APRA, or music licensing companies that collect and distribute rights royalties and that have a reciprocal agreement with Recorded Music NZ or joint/common licensing activities with Recorded Music NZ;
- Collecting societies or music licensing companies which Recorded Music NZ is a member for the purpose only of distributing money to Recorded Music NZ members;
- Certain licensees where disclosure is required as part of their funding contracts – e.g. Te Mangai Paho. Release will nonetheless be noted as confidential for their internal use only;
- Specialist advisers to Recorded Music NZ will have been engaged to provide Recorded Music NZ with legal, administrative, financial, insurance, research, marketing or other services; or

- Any other person authorised by you, as specified by you, such as your agent, manager or designated recipient.

Notification

We may at other times notify you about our disclosure practices in relation to specific services that we provide in relation to our activities.

Security of your personal information

We take all reasonable steps to protect your personal information from loss, unauthorised access, modification, disclosure or other misuse.

Sensitive personal information

We do not generally collect any sensitive information as that term is used in the Privacy legislation (including information relating to your racial or ethnic origin, membership of political bodies, religion or trade unions, sexual preferences or activities, criminal record, state of health or medical history) If Recorded Music NZ holds any sensitive or personal information about you, that information will only be used and disclosed by Recorded Music NZ for the purpose that it was provided by you.

Access to your personal information

At any time, you may request access to personal information about you that Recorded Music NZ holds. We will process your request within a reasonable time, and if we are unable to give you a copy of the information, will let you know generally the sort of information we hold about you.

Correction of personal information

You should promptly notify us if there are any changes to your personal information. You may ask us at any time to correct personal information we hold about you.

We may amend this policy from time to time, and the policy will be published on this website.

SCHEDULE 11:

FEEDBACK, COMPLAINTS AND DISPUTES

Recorded Music NZ also recognises that there are a variety of issues that may arise in relation to the collection of data and the distribution of funds.

When Recorded Music NZ becomes aware of such an issue, we seek to contact all the parties involved and in most cases request that each party set out their position in writing and provide any supporting documentation. Where possible, we will then meet with the parties involved, with the aim to agree a mutually acceptable solution.

In the rare case where an issue cannot be resolved, then the parties involved may wish to work through Recorded Music NZ's alternative dispute resolution process.

COMPLAINTS

How to make a complaint

If you have a complaint about any aspect of Recorded Music NZ's business or operations, you should make your complaint in writing. You should address the complaint to:

Damian Vaughan and Dean Cameron
Recorded Music NZ Complaints
Private Bag 78850
Grey Lynn
AUCKLAND 1245
Email: damian@recordedmusic.co.nz and dean@recordedmusic.co.nz

Your complaint must include:

- Your name and contact details, and/or the name and contact details of your organisation. Recorded Music NZ will not investigate anonymous complaints;
- The nature and reason of the complaint;
- The outcome you hope to achieve; and
- Any material that supports your complaint.

Dealing with complaints

- We will acknowledge receiving the complaint within **7** days of receiving it.
- If the complaint involves another person, we will forward the complaint and any supporting material to that person for comment.
- We will respond to the complaint in writing within **14** days of acknowledging receipt. However, if the complaint involves another person, we will respond as soon as practicable after receiving that person's comments on the complaint.
- We will maintain a register of all complaints received and the response we have made.
- All responses will provide you with the opportunity to take the matter further.
- You will have a further **21** days to make any comments on or respond to our response.
- If you are not satisfied with the explanation that has been provided, you will have a further **14** days to request that the matter be referred to alternative dispute resolution.

DISPUTE RESOLUTION

Alternative Dispute Resolution

As a copyright owner / music rights holders, artist, licensee or potential licensee, there are a range of options available to you to resolve disputes, should one arise.

In some circumstances, licensees and potential licensees may also be able to seek a determination from the Copyright Tribunal in relation to the licence fee and other terms and conditions applying to their licence. Either you or Recorded Music NZ may choose to pursue these options at any time.

Recorded Music NZ also offers mediation as an independent, low-cost and efficient dispute resolution process to deal with any disputes. The key elements are set out below, but you should feel free to contact us for further information.

There are a few important threshold principles that apply:

- We will generally only agree to participate in mediation if you have already made a complaint to Recorded Music NZ in the manner outlined above, and you have given us sufficient time to consider the issues you have raised and provide a response.
- We will only agree to participate in mediation if we are satisfied that there is a genuine dispute between the parties as to matters of substance and that you are committed to achieving a resolution of those matters through mediation. We will not agree to participate if we reasonably believe that you are merely using the process as a means to pursue other objectives (for example, to delay Recorded Music NZ taking action in an infringement matter).
- If you do not comply with any of your obligations in relation to mediation or if we reasonably form the view at any time that you are no longer genuinely committed to achieving a resolution of the matters in dispute, we may withdraw from the mediation and treat the dispute as closed.

Mediation

Mediation is a form of structured, assisted negotiation in which the parties find their own solution to a dispute with the help of a mediator. The mediation will be administered in accordance with the Mediation Protocol of the Arbitrators' and Mediators' Institute of New Zealand Inc (AMINZ).

www.aminz.org.nz

Costs

Recorded Music NZ does not impose any charges for accessing mediation. We also will not seek to recover any costs we incur ourselves as a result of our participation in mediation (e.g. fees for

professional advice, costs of management time, etc). Similarly, you will need to cover all of your own costs of participating in a mediation.

You and Recorded Music NZ will share equally all of the external third party costs involved in a mediation. These costs will usually include:

- The professional fees charged by the mediator, together with any travel, accommodation or other incidental costs they pass on to us; and
- The costs of hiring a venue – although Recorded Music NZ will always be happy to make available (at no charge to you) a meeting room at its offices in Auckland, as a means of helping keep your costs down.

You will be required to pay your share of the estimated external third party costs as a security deposit to AMINZ (as contemplated in their Mediation Protocol). As the costs are incurred, they will be recovered from the security deposit. You may be required to pay a further security deposit if the costs look like exceeding the estimate.

At the conclusion of the mediation, the mediator will provide you with a statement of the actual costs incurred (and any relevant supporting documentation), together with a reconciliation against the security deposit(s) you have paid.