

PARTIES

AUSTRALASIAN PERFORMING RIGHT ASSOCIATION LIMITED ABN 42 000 016 099 of 16 Mountain Street, Ultimo, NEW SOUTH WALES, 2007 (**APRA**)

AUSTRALASIAN MECHANICAL COPYRIGHT OWNERS' SOCIETY LIMITED ABN 78 001 678 851 of 16 Mountain Street, Ultimo, NEW SOUTH WALES (**AMCOS**)

AUSTRALIAN CLOGGING ASSOCIATION INCORPORATED ABN 79 623 300 580 of 2 Mancini Place, Burpengary, QUEENSLAND, 4505 (**Licensee**).

BACKGROUND

- A. APRA owns or controls for Australia the exclusive right of public performance in relation to a large number of musical works and associated lyrics.
- B. AMCOS is the exclusive licensee in Australia of the right to reproduce the AMCOS Works in certain circumstances.
- C. The Licensee's members are dance instructors and require licences for the conduct of their respective businesses.
- D. APRA AMCOS have agreed to license the Licensee on the terms of this agreement.

AGREEMENTS

1. DEFINITIONS

Where commencing with a capital letter:

Advertisement means an announcement designed to attract the attention of the public or any part of it to a product, service, person, organisation or line of conduct.

AMCOS Work means a Work in respect of which AMCOS is entitled to administer the right of reproduction for the Territory, or represents to the Licensee that it is entitled to grant the licence in clause 2.2.

APRA AMCOS means APRA and AMCOS.

APRA Work means a Work in respect of which APRA owns or controls the right of public performance for the Territory, or represents to the Licensee that it is entitled to grant the licence in clause 2.1.

Category A Participating Member means a member of the Licensee who by agreement in writing with the Licensee is authorised by the Licensee to publicly perform APRA Works in the course of Classes only, and whose name is notified to APRA AMCOS by the Licensee from time to time in accordance with clause 6.1.

Category B Participating Member means a member of the Licensee who by agreement in writing with the Licensee is authorised by the Licensee to publicly perform APRA Works in the course of Classes only and to reproduce up to 500 AMCOS Works for the purpose of Classes only, and whose name is notified to APRA AMCOS by the Licensee from time to time in accordance with clause 6.1.

Classes means dancing classes conducted by a Participating Member.

Commencement Date means 1 August 2014.

Consumer Price Index means the Index of that title All Groups Sydney published from time to time by the Australian Bureau of Statistics or any body substituted by Statute, related to base year 1989-90 equals 100, and September Quarter means the quarter year ending 30 September.

Dramatic Context means in conjunction with acting, costumes, scenic accessories, scripted dialogues or other dramatic effects, or as a ballet.

Grand Right Work means an opera, operetta, musical play, revue or pantomime to the extent it consists of musical works and associated lyrics written expressly for it.

Licence Year means any consecutive period of 12 months commencing on 1 August during the term of this Agreement.

Participating Member means a member of the Licensee that is either a Category A Participating Member or a Category B Participating Member.

Production Music means any musical work for which AMCOS is also granted the right to license the reproduction of the sound recording of that work.

Record includes a disc, tape, paper, electronic file or other device in which sounds are embodied.

Territory means Australia

2. LICENCE

- 2.1 Subject to the terms of this Agreement, APRA grants to the Licensee a licence to authorise the performance in public by any means by Participating Members of APRA Works in the course of Classes conducted in the Territory by the Participating Member.
- 2.2 Subject to the terms of this Agreement, AMCOS grants to the Licensee a licence to authorise the reproduction in the Territory by Category B Participating Members of AMCOS Works for the purpose of public performance in Classes conducted in the Territory by the Category B Participating Member.

3. SCOPE OF LICENCE

This licence does not include or authorise:

- (a) The transmission or public reception of any performance beyond the precincts of the Participating Member's premises;
- (b) The performance of Grand Right Works in their entirety;
- (c) The performance in whole or in part of any musical work in a Dramatic Context;
- (d) The performance in whole or in part of any music and associated words composed or used for a ballet if accompanied by a visual representation of that ballet;
- (e) The performance of any choral work of more than 20 minutes' duration in its entirety;
- (f) The performance of any music and associated words so as to burlesque or parody the work;
- (g) The performance or reproduction of any musical work with new or substituted lyrics, or any lyrics which have been notified by the APRA AMCOS as prohibited;
- (h) The performance of any sound recording (this permission is obtained from the Phonographic Performance Company of Australia Limited);
- (i) The reproduction of any musical work into an Advertisement;

- (j) The reproduction of any musical work into any film;
- (k) The reproduction of any musical work or lyrics in a graphic form;
- (l) The reproduction of any sound recording;
- (m) The reproduction of any Production Music; or
- (n) Any other right not expressly granted under this agreement.

4. DURATION OF THE LICENCE

This Agreement commences on the Commencement Date and continues for an initial period of 12 months. After the expiry of the initial period, the agreement continues for successive 12-month periods until terminated by either party on at least 1 month's notice terminating 31 July in the year of the notice.

5. LICENCE FEES

5.1 APRA AMCOS acknowledges that individual Participating Members may be current licensees of APRA AMCOS and have paid an annual licence fee. If the term of this licence coincides with the term of such a licence agreement with a Participating Member, APRA AMCOS agrees to credit a pro rata proportion of licence fees paid under the earlier agreement to the relevant Participating Member.

5.2 The Licensee must, in accordance with clause 6.2, pay to APRA AMCOS the licence fee for the Licence Year commencing 1 August 2014 and each subsequent Licence Year calculated in accordance with clause 5.3.

5.3 The licence fee for the Licence Year commencing 1 August 2014 is the sum of the amount calculated by multiplying \$57.03 (**A Rate**) including GST by the number of Category A Participating Members and the amount calculated by multiplying \$205.58 (**B Rate**) including GST by the number of Category B Participating Members.

5.4 The **A Rate** and the **B Rate** for each Licence Year following the initial 12 month period shall be calculated by increasing the Rate (exclusive of GST) current immediately prior to the Licence Year in question by the percentage increase, if any, in the Consumer Price Index between the last two September Quarters preceding that same Licence Year.

5.5 The licence fee for each Licence Year following the initial 12 month period is the sum of the amount calculated by multiplying the **A Rate** including GST by the number of Category A Participating Members and the amount calculated by multiplying the **B Rate** including GST by the number of Category B Participating Members.

6. SUPPLY OF INFORMATION AND METHOD OF PAYMENT

6.1 Within 31 days after the end of each Licence Year, the Licensee must provide to APRA AMCOS a true and accurate statement specifying:

- (a) the name of each Participating Member;
- (b) the name of the organisation (if any) through which the Participating Member conducts Classes;
- (c) whether the Participating Member is Category A or B; and
- (d) the date the Participating Member joined the Licensee.

6.2 On receipt of the statement referred to in clause 6.1, APRA AMCOS must notify the Licensee of the licence fee payable and the Licensee must pay that fee to APRA AMCOS within 28 days after that notification.

7. RECORDS

The Licensee must keep accurate books of account and other records in sufficient detail to ensure that all amounts payable to APRA AMCOS under this agreement can be properly ascertained.

8. AUDIT OR EXAMINATION

8.1 APRA AMCOS may on 7 days' notice to the Licensee audit or examine the Licensee's books of account and other records to:

- (a) determine the correctness of any report or payment under this agreement; or
- (b) in the case of a failure by the Licensee to provide information in accordance with clause 6.1, to obtain information required to be provided under that clause.

8.2 The Licensee must pay the cost of the audit or examination if it:

- (a) establishes that the information provided by the Licensee resulted in the amounts payable under this agreement being understated by more than 5%; or
- (b) is undertaken under clause 8.1(b).

9. BREACH OF LICENCE

APRA AMCOS may immediately terminate this agreement by notice to the Licensee if the Licensee:

- (a) Fails to pay any sum when due under this agreement within 30 days after the due date;
- (b) Breaches any other term of this agreement and fails to remedy the breach within 7 days after being required in writing to do so by APRA AMCOS.

10. DISPUTE RESOLUTION

If any dispute arises out of or in connection with this agreement, either party may submit that dispute to APRA AMCOS' alternative dispute resolution mechanism. Information about the mechanism can be obtained from APRA AMCOS.

11. MISCELLANEOUS

11.1 A notice under this agreement must be in writing and may be given to a party by:

- (a) delivering it to the address of the party;
 - (b) sending it by pre-paid post to the address of the party; or
 - (c) sending it by facsimile to the facsimile number of the party,
- and the notice will be deemed to have been received by the party on receipt.

11.2 A facsimile is deemed to have been received on production of a transmission report by the machine from the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the party.

11.3 No waiver by APRA AMCOS of any breach of any provision of this agreement operates as a waiver of another breach of the same or of any other provision of this agreement.

11.4 This agreement is personal to the Licensee. The Licensee is not entitled to assign any of its rights without the prior written consent of APRA AMCOS.

11.5 This agreement may only be varied by the written agreement of the parties.

11.6 The Applicant must pay to APRA AMCOS within 28 days after the date of an invoice issued by APRA AMCOS an amount on account of stamp duties and taxes, including any goods and services tax, arising in respect of this agreement.

11.7 This agreement must be construed in accordance with the laws in force in the State of New South Wales and the parties agree to submit to the jurisdiction of New South Wales Courts.

11.8 Unless the context otherwise requires, a word which denotes the singular denotes the plural and vice versa.

Signed for and on behalf of **Australasian Performing Right Association Limited:**

.....
Signature of witness

.....
Signature of authorised person

.....
Name of witness (print)

.....
Office held

.....
Name of authorised person (print)

Signed for and on behalf of **Australasian Mechanical Copyright Owners' Society Limited:**

.....
Signature of witness

.....
Signature of authorised person

.....
Name of witness (print)

.....
Office held

.....
Name of authorised person (print)

Signed for and on behalf of **Australian Clogging Association Incorporated** in the presence of:

.....
Signature of witness

.....
Signature of authorised person

.....
Name of witness (print)

.....
Office held

.....
Name of authorised person (print)