

Australian Music Radio Airplay Project - Community Radio Station & Program Maker Terms and Conditions



The Parties agree as follows:

1 Interpretation

1.1 In this Agreement, unless the context otherwise requires:

"Account" means the personalised account created by You (including but not limited to Your employee, agent, representative or servants) on the Website enabling the ordering of Content.

"Agreement" means these Amrap community radio station and program maker terms and conditions.

"Amrap" means the CBAA's Australian Music Radio Airplay Project.

"Application" means the application provided to You by the CBAA for application to use the Services as either a Program Maker or a Community Radio Station Admin User.

"APRA AMCOS" means the Australasian Performing Right Association ABN 42 000 016 099 (APRA) and the Australasian Mechanical Copyright Owners Society Limited ABN 78 001 678 851 (AMCOS).

"Artist" means the artist featured on the Content.

"Artwork" means album cover artwork and any other artwork relating to the Master Recordings, the Artist, Music and Video Recordings.

"Breach" has the meaning given by clause 8.1(a).

"Program Maker" means a person who presents a radio program on a Community Radio Station and has registered to use the Services.

"CBAA" means Community Broadcasting Association of Australia ACN 003 180 030 of Level 3, 44-54 Botany Road, Alexandria NSW 2015 Australia, and includes its respective parents, subsidiaries, affiliates, successors, assignees, employees, agents, directors and officers.

"Community Radio Station" means a radio station located in Australia allocated either a permanent community broadcast license or a temporary community broadcast license in accordance with the Broadcast Services Act (1992) and approved by the CBAA to use the Services.

"Community Radio Station Admin User" means Community Radio Station personnel responsible for reviewing and maintaining the Station Audio Catalogue, and approved by the CBAA and the Community Radio Station to use the Service for the purpose of populating the Station Audio Catalogue with Content and has registered to use the Services.

"Content" means the Master Recordings (including eMasters), Music, Support Material, and any other material available to the Registered Users from the

Services and Website.

"Credit" means the credit issued by the CBAA in its sole discretion to You to order Content.

"eMasters" means copies of the Master Recordings in digital format which are suitable to be downloaded by Registered Users via the Website.

"Execute" means to execute in accordance with clause 15 and Executed and Execution have corresponding meaning;

"Format" means the specific format in which Master Recordings can be reproduced and delivered by the CBAA to Registered Users. This may include compact disc format that is physically delivered or digital audio file format that is delivered electronically.

"Master Recordings" means the Master Recordings owned and/ or controlled by the Owner, including eMasters.

"Music" means the musical compositions embodied on the eMasters, Master Recordings or Video Recordings.

"Owner" means the person or company that owns and controls the Content.

"Party" means either the CBAA or You, as the context requires, and **"Parties"** is a reference to both.

"Performers" means any party who has contributed to the creation of the Master Recording and associated Artwork including without limitation producers, artists, remixers, musicians, vocalists, actors, photographers and graphic designers but excluding any party who has contributed to the musical works (and associated lyrics) embodied in the Content.

"Personnel" means agents, contractors, directors, employees, subcontractors, members and officers.

"PPCA" means Phonographic Performance Company of Australia Limited.

"Privacy Policy" means CBAA's privacy policy.

"Radio Program" means the radio program or programming that a Registered User broadcasts on the Community Radio Station.

"Registered Users" means the Program Makers and Community Radio Station Admin Users who maintain an account with Amrap and are bound by the Agreement.

"Second Party" has the meaning given by clause 14.9.

"Services" means the services provided by the CBAA as part of Amrap from time to time.

"Station Audio Catalogue" means a physical or digital music library where a Community Radio Station stores Content to preview and broadcast.

"Streamed Material" means an eMaster streamed (but not downloadable) at low bit rate on the Website for preview, sampling or evaluation purposes.

"Support Material" means any material relating to the Master Recordings, Artists or Performers delivered to Amrap by the Owner including but not limited to promotional material, photos, artwork, Video Recordings and track listings, but excluding Master Recordings.

"Term" means the term of this Agreement, as set out in clause 3.1.

"Territory" means Australia provided that where there is public performance or communication of the Content outside Australia, the territory shall automatically extend to the world to accommodate the exercise of such rights.

"Video Recordings" means any cinematograph film created to promote the Master Recordings.

"Website" means the internet site located at www.amrap.org.au and any website of the CBAA for the Services, including those used to submit, host, display and distribute Content in accordance with this Agreement.

"You" and **"Your"** means the Registered User, being either the Program Maker or the Community Radio Station Admin User indicated by You at the time You submit Your Application Form.

1.2 In this Agreement, unless the context otherwise requires:

- (a) any reference in this Agreement to the singular includes the plural;
- (b) any reference to any gender includes all genders;
- (c) any reference to any act or statute includes any act or statute which supersedes, replaces or modifies any earlier act or statute;
- (d) any reference to persons includes all bodies and associations both corporate and incorporated and vice versa;
- (e) paragraph headings are for reference purposes only; and
- (f) all references to clauses are to clauses in this Agreement.

2 Grant of licence

- 2.1 Subject to Your strict compliance with this Agreement, the CBAA grants You a limited, non-exclusive, revocable, non-assignable and non-transferable licence during the Term and throughout the Territory to:
- (a) stream the eMaster from the Website for the purpose of previewing the Master Recordings; and
 - (b) if You are a Community Radio Station Admin User, order and download Content from the Website for the purposes of review, and populating Your Community Radio Station's Station Audio Catalogue with the Content for storage and broadcast; or

- (c) if You are a Registered User, order and download Content from the Website for the purposes of sampling, reviewing, and broadcast of the Master Recording Your Community Radio Station, and storing Content in Your personal or Station music library.

2.2 Unless specifically permitted herein or otherwise permitted by applicable law, any copy of the Content that You order and receive is exclusively for Your use for the purposes of review and broadcast on a Community Radio Station.

2.3 For the avoidance of doubt, the licence granted under this Agreement does not grant You the right to sell the Content, publish the Content (including making Content available on the internet), or distribute the Content.

2.4 Subject to the prior rights of APRA AMCOS and PPCA, the Agreement does not grant You the right to publicly perform the Content or otherwise exploit the Content beyond broadcast on Your Community Radio Station.

2.5 You hereby grant the CBAA for the Term and in the Territory a non-exclusive licence to use Your name, the name of the Radio Program (in the case of a Program Maker) and/or Your photos, Your logos and Your trade marks (whether registered or not) on the Website for the sole purpose of promoting the Service.

3 Term

3.1 The term of this Agreement shall commence on the date that the CBAA accepts your Application Form and continues until terminated in accordance with clause 8.

4 Your obligations

4.1 You must:

- (a) comply with any error corrections, or reissues of the Content, as provided by the CBAA from time to time. Any error corrections or reissues of the Content shall be considered as part of the Content for the purposes of this Agreement;
- (b) comply with any specific broadcast terms indicated on the Website at the time You order the Content;
- (c) comply with the *Copyright Act 1968* (Cth) and any copyright notices sent by the CBAA or the Owners from time to time; and
- (d) notify the CBAA immediately if any changes occur to the details which You specified in the Application Form.

4.2 Program Makers must:

- (a) back announce any public performance of the Content on the Radio Program;

4.3 For the avoidance of any doubt, the obligation under clause 4.2 does not apply to Community Radio Station Admin Users.

5 Amrap services

- 5.1 The CBAA will provide You with access to the Website and certain Content through Your Account for the purposes of You reviewing, ordering, broadcasting and promoting the Content.
- 5.2 You will be permitted to order Content in the available Format(s) through Your Account.
- 5.3 The CBAA may create a mechanism on the Website to promote the Artist and Master Recordings. The mechanism may include distilled Support Material. This information may be distributed to You for the purposes of promoting and reviewing the Artist at the CBAA's sole discretion.

6 Intellectual property

- 6.1 The Owner owns or controls all right, title and interest, including, without limitation, all intellectual property rights in the Content.
- 6.2 Unless expressly permitted under this Agreement or otherwise by applicable law, You must not:
 - (a) do anything with the Content that is not authorised in this Agreement (including reproduce, adapt, modify, perform, sell, distribute, display, transfer, share, rent or otherwise deal with or exploit the Content or allow or assist anyone else to do the same);
 - (b) attempt to circumvent or modify any technological measure used by the CBAA or the Owner;
 - (c) do anything with Streamed Material other than streaming it. Specifically, You must not attempt to circumvent or modify any technological measure used to prevent reproductions or downloading of Streamed Material (or assist anyone else to do the same);
 - (d) insert any code, product or material to manipulate the Content in any way that affects any end user's experience; or
 - (e) reproduce or seek to reproduce or "rip" any Content from the Website or any part of the Services unless authorised under this Agreement.
- 6.3 The CBAA owns or controls all right, title and interest, including, without limitation, all intellectual property rights related to the Website, Services, Amrap's technology, logos, trademarks and service marks.

7 Warranties/indemnities

- 7.1 You warrant and represent that:
 - (a) You are either a Program Maker or a Community Radio Station Admin User;
 - (b) to the best of Your knowledge, the Community Radio Station holds the necessary licences, including APRA AMCOS and PPCA licences, to operate as a Community Radio Station;

- (c) You will comply with the terms of this Agreement; and
- (d) You are free to enter into this Agreement and that You are under no disability or obligation and are not bound by any previous contact or arrangement which may interfere with or prevent the performance of the Agreement.
- 7.2 You hereby agree to hold the CBAA, its directors, officers, employees, affiliates, agents, contractors and licensors harmless from and to keep the CBAA fully and effectively indemnified against all losses, claims, expenses, damages and demands (including reasonable legal fees and costs) arising out of or as a consequence of any Breach by You of any warranty, undertaking, representation or agreement on Your part contained in this Agreement.

8 Termination, removal or suspension

- 8.1 Either party may terminate this Agreement any time during the Term by giving the other party seven (7) days written notice.
 - (a) if the other Party commits a breach of any of the warranties, undertakings, representations or agreements contained herein ("Breach") and fails to rectify the Breach within thirty (30) days of receiving written notice from the non-breaching Party outlining the Breach; or
 - (b) CBAA may also, at its sole discretion, terminate or suspend Your access to the Services for any reason at any time, including if You engage in behavior that the CBAA reasonably believes may create a risk to any CBAA officer's health and safety.
 - (c) The CBAA may terminate this Agreement in writing with immediate effect if a Program Maker is in breach of clause 4.0.
 - (d) The expiration or termination of this Agreement shall not affect the rights exercised by CBAA prior to the expiration or termination of the Agreement.
- 8.2 Upon termination of this agreement, all rights and licences granted to CBAA under this agreement will cease.

9 Account

- 9.1 You must create an Account before using the Services.
- 9.2 You warrant that all information and data provided by You in the creation of Your Account is accurate and up to date at all times.
- 9.3 You must provide a password for Your Account. You undertake to ensure that Your password remains confidential. You are responsible for all uses of Your Account, password, and for Content ordered from the Website through Your Account. You must notify the CBAA immediately if You become aware of any unauthorised use of Your password or of any other security breach relating to Your Account.
- 9.4 You are responsible for having and paying for all necessary hardware, software and internet access to use the Services and the Website.

- 9.5 You must only access, order or use (or attempt to access or use) Content on the Website in accordance with this Agreement.

10 Communications

- 10.1 The CBAA may provide notices to you via either email or regular mail.
- 10.2 You agree to notify the CBAA of any change to Your email address. You may also notify the CBAA if You withdraw Your consent to receive electronic communication; however, the CBAA reserves the right to suspend or terminate Your access to the Services if You withdraw that consent.

11 Disclaimer

- 11.1 Your use of the Website is at Your sole risk. The Website is provided on an "as is" and "as available" basis. The CBAA is not obliged to notify You of any malfunction in the Website, or if any part of the Website feature is limited, restricted or ceases.
- 11.2 The CBAA cannot warrant that the Content or Website will function in accordance with related documentation in every combination of hardware platform (including CD players), software environment, and Content configuration. You acknowledge that software bugs are likely to be identified when the Content is used in Your particular application. You accept the responsibility of satisfying Yourself that the Content is suitable for Your intended use. The CBAA is not responsible for media defects that result from accident or abuse. The CBAA has no obligation under this Agreement to provide maintenance, support or training.
- 11.3 To the maximum extent permitted by applicable law, the CBAA disclaims all warranties, express or implied, including but not limited to:
- (a) uninterrupted or continuous availability of the Website; and
 - (b) implied warranties of merchantability or fitness for a particular purpose with respect to the Services under this Agreement.
- 11.4 Although the CBAA intends to take reasonable steps to protect the integrity and reliability of the Website and the Content contained on the Website and despite any step taken, the CBAA does not warrant that the Website, or any part of those Services on the Website, including Streamed Material, or any information or other material accessible through the Website will be uninterrupted, timely, reliable, secure, error-free or is free of any virus, worm, trojan horse or other harmful component.
- 11.5 Certain Content and available via the Services include materials from third parties (including but not limited to copyright material, links to third party websites, and trademarks). By providing You with these Services, the CBAA is merely acting as a passive conduit for the distribution of the Content. You acknowledge and agree that the CBAA is not responsible for nor has a duty to examine or evaluate the Content, including but not limited to examining whether the Content complies with relevant laws such as the Copyright Act 1968 (*Cth*), State and Federal defamation laws

or classification laws, or the accuracy of any such third-party material or websites. The CBAA does not warrant or endorse and does not assume and will not have any liability or responsibility for any Content, third-party materials or websites, or for any other materials, or services of third parties. Links to other websites are provided solely as a convenience to You.

- 11.6 To the maximum extent permitted by law, in no case shall the CBAA, its directors, officers, employees, affiliates, agents, contractors or licensors be liable for any loss or damage caused by the CBAA or its Personnel:
- (a) where there is no breach of a legal duty of care owed to You by the CBAA or its employees or agents;
 - (b) where such loss or damage is not a reasonably foreseeable result of any such breach; or
 - (c) to the extent that any increase in loss or damage results from breach by You of any term of this Agreement.
- 11.7 The CBAA will not be liable for any loss of income, business or profits, or for any loss or corruption of data in connection with Your use of the Services.

12 Data protection and security

- 12.1 The CBAA uses commercially viable measures to protect the confidentiality and security of communications transmitted by the CBAA's Website and Services and information stored on servers controlled by the CBAA. You shall under no circumstances:
- (a) violate or attempt to violate the security of Amrap;
 - (b) access data or materials which are not intended for Registered Users;
 - (c) log into a server or account which Registered Users are not authorised to access;
 - (d) attempt to probe, scan or test the vulnerability of Amrap's servers, system or network or breach the data security or authentication measures of Amrap; or
 - (e) attempt to interfere with Amrap's services to any user, host or network by any means, including without limitation, hacking Amrap's servers or systems, submitting a virus, overloading, "mailbombing", "flooding" or "crashing" or by means of using electronic tools, including spiders, robots (bots), crawlers, data mining tools, or any other automated means on Amrap's Website or services regardless of the purpose and/ or technical configuration of such electronic tools.
- 12.2 The CBAA reserves the right to investigate occurrences that may involve such violations and may involve and co-operate with law enforcement authorities in prosecuting any and all Registered Users who have participated in such violations.

13 Reservation of rights

- 13.1 The CBAA reserves the right to block, remove or delete Content, communications, posting and

other data or information if the CBAA, in its sole discretion, has reason to believe that such Content or other data or information may infringe the rights of a third party, in particular if the CBAA deems such Content and data and information to be misleading, fraudulent, deceptive, defamatory, abusive or obscene; or to be in violation of the rights of any third party or any other law or regulations.

13.2 The CBAA may change or modify the functionalities of the Website or upgrade to the latest version of the Service at any time without notice.

13.3 You agree that the CBAA shall not be liable to You or to any third party for any changes or modifications of the Website.

14 Miscellaneous

14.1 The terms and conditions of this Agreement are confidential between the Parties.

14.2 This Agreement may only be amended by:

- (a) written agreement between You and the CBAA; or
- (b) Your online acceptance of an amended Agreement.

14.3 You acknowledge that registration may be required for the use of certain Services and portions of the Website. In some instances, this Agreement and any separate end user licence agreements or terms of use that set forth additional conditions may apply to Services or products offered via the Website. To the extent there is a conflict between this Agreement and the terms of any applicable end user licence or similar agreement, the end user licence or similar agreement will prevail, unless the additional conditions expressly state that this Agreement will prevail. In cases where there are no additional terms or conditions stated for any such registrations, services or products, this Agreement will prevail.

14.4 The CBAA may assign its rights and obligations under this Agreement to another party without Your prior written approval. You are not entitled to assign this Agreement or any of the rights granted herein without the prior written consent of the CBAA.

14.5 You acknowledge and confirm that You have been advised of Your rights to seek independent legal advice prior to signing and being bound by the terms of this Agreement.

14.6 Nothing in this Agreement shall constitute a joint venture or partnership between the Parties.

14.7 Should one or more provision of this Agreement be unlawful, void or unenforceable, such provision(s) shall be deemed severable and will not affect the validity or enforceability of the remaining provisions of the Agreement and the remainder of the Agreement will remain in full force and effect.

14.8 This Agreement is to be construed in accordance with the state laws of New South Wales, Australia

and the courts of New South Wales, Australia shall be deemed to be the Courts of competent jurisdiction.

14.9 Any disputes arising in connection with this Agreement must be dealt with in accordance with this clause 14.9 as follows:

- (a) Any party claiming that a dispute exists must notify the other party to the dispute ("**Second Party**") in writing of the nature of the dispute;
- (b) If the dispute is not resolved within fourteen (14) days of the Second Party receiving the notice referred to in clause 14.9(a), either party may refer the matter to mediation conducted by a mediator agreed between the parties within a further fourteen (14) days or failing agreement within that period, as appointed by the executive director for the time being of the Australian Disputes Centre. The costs of the mediator must be borne equally by the disputing parties. The chosen mediator must determine the procedures for the mediation. The chosen mediator will not have the power or authority to make any other determination in relation to the dispute;
- (c) If the parties have not mediated a resolution of the dispute within twenty-eight (28) days of the selection of a mediator, neither party must be obliged to continue any attempt at mediation under this clause, and either party may then commence such legal proceedings as it thinks fit in relation to the dispute.

14.10 This Agreement together with Your Application Form and the Privacy Policy constitute the entire agreement between the CBAA and You in respect of the Website and Services and supersedes any prior agreement between the CBAA and You.

15 Execution & changes to Agreement

15.1 CBAA reserves the right, at its sole discretion, to change, modify, add, or remove portions of this Agreement at any time by providing notice to you. CBAA may do so by publishing the amended Agreement to the Website and in Amrap News bulletins. It is your responsibility to check this Agreement periodically for changes. Your continued use of the Services following the posting of changes will mean that you accept and agree to the changes

15.2 CBAA has Executed this document by providing this Agreement to the Registered User, along with a tick box.

15.3 The Registered User Executes this agreement by ticking the box agreeing to these Terms and Conditions, and then submitting it online.

Effective: 25th May 2020