

APRA Licence Application CINEMA



Please complete the relevant section(s), sign and return to: PO Box 6315, Wellesley Street, Auckland 1141 or fax (09) 623 2174.

I/We the undersigned apply for a licence from APRA which, subject to the terms set out on this and the following page, authorises the performance in public of Works within APRA's repertoire at the locations set out in the Schedule by means of the exhibition of cinematograph films.

Annual Rates

The Annual Rate is **0.40% of Gross Box Office Receipts:**

1 July 2011 - 30 June 2013

0.40%

Cinema Name	Cinema Address
1.	
2.	
3.	
4.	
5.	

- This Licence agreement will commence and renew on 1 July each year until terminated
- All licence fees are subject to the minimum fee
- The minimum fee \$52.23 (+GST) is per six month period and is only subject to yearly increase in accordance with the Consumer Price Index (see clause 3.2)
- Amounts stated on this application are exclusive of 15% GST

I acknowledge that I have read the terms on the reverse of this application and agree to be bound by those terms should my application be accepted.

Name of Applicant

COMPANY/PARTNERSHIP/SOLE TRADER

Name of Business

BUSINESS NAME

Address

ADDRESS

POSTCODE

Address for
Correspondence

ADDRESS

EMAIL

Applicant's Companies
Office Number

POSTCODE

MOBILE

Date on which music
usage commenced

COMMENCEMENT DATE

PHONE

Signed by/on behalf
of the Applicant

SIGNATURE

FAX

DATE

PRINT NAME IN FULL

POSITION OF PERSON SIGNING

This application form will only constitute a Licence Agreement when the applicant receives a signed agreement from APRA. APRA may refuse to grant a Licence Agreement where the information contained in this application is incorrect or incomplete.

OFFICE USE ONLY

LICENCE NO

GST EXCLUSIVE FEE

RECEIVED

PREMISES TYPE CODE

DATE

APRA New Zealand Ltd

Address: Unit 113, Zone 23, 21-23 Edwin St, Mt Eden, Auckland **Mailing Address:** PO Box 6315, Wellesley St, Auckland 1141.
Tel: (09) 623 2173 or 0800 692 772 **Fax:** (09) 623 2174 **Email:** licencenz@apra.com.au **Web:** www.apra-amcos.co.nz

APRA Licence Agreement

CINEMA

1. SCOPE OF LICENCE

- 1.1 APRA grants the Applicant a licence to perform in public Works within APRA's repertoire at the Locations by means of: (a) the exhibition of cinematograph films; and (b) background recorded music in all public areas of the cinema.
- 1.2 The licence in clause 1.1 does not include or authorise:
- the communication to or the public reception of any performance beyond the precincts of the Locations; or
 - unless performed by means of cinematograph film:
 - the performance of Grand Right Works in their entirety;
 - the performance in whole or in part of any musical work in a Dramatic Context;
 - the performance in whole or in part of any music and associated words composed or used for ballet if accompanied by a visual representation of that ballet;
 - the performance of any choral work of more than 20 minutes' duration in its entirety;
 - the performance of any music and associated words so as to burlesque or parody the work;
 - the performance of any musical work with new or substituted lyrics, or any lyrics which have been notified by APRA as prohibited;
 - the performance of any sound recording; or
 - any other right not expressly granted under this agreement.

2. DURATION OF AGREEMENT

This agreement commences on the Commencement Date and after the expiry of the Initial Period continues for successive 1 year periods until terminated in accordance with clause 10.

3. CALCULATION OF AMOUNT PAYABLE

- 3.1 The Applicant must pay APRA, for each Licence Year, an amount equal to the amount calculated in accordance with the formula specified on the front of this agreement; and
- 3.2 On 1 July 2012 and each year thereafter, the GST exclusive minimum annual fee will be calculated by increasing the current GST exclusive minimum annual fee by the percentage increase in the Consumer Price Index between the last 2 March Quarters.

4. PAYMENT OF AMOUNT PAYABLE AND SUPPLY OF INFORMATION

The amount payable under clause 5 must be paid as follows:

- Within thirty working days of the completion of the first six-month period of the Licence Year, the Applicant will provide APRA with a statement, certified as correct by the principal accounting officer of the Applicant, showing the Applicant's gross box office receipts for this period. The Applicant must then pay the amount payable calculated in accordance with clause 5 within 14 days after the date of APRA's invoice stating the amount payable.
- Within thirty working days of the completion of the Licence Year, the Applicant will provide APRA with a statement, certified as correct by the principal accounting officer of the Applicant, showing the Applicant's gross box office receipts for the Licence Year and then deducting the gross box office receipts as reflected in (a) above. The Applicant must then pay the amount payable calculated in accordance with clause 5 within 14 days after the date of APRA's invoice stating the amount payable.

5. PAYMENT

- 5.1 In each Licence Period, APRA will calculate the Licence Fee and issue an invoice to the Applicant on receipt of the information in accordance with clause 4.

6. RECORDS

- 6.1 The Applicant must keep accurate books of account and other records in sufficient detail to ensure that all amounts payable to APRA under this agreement can be properly ascertained.
- 6.2 The Applicant must keep a record of the title of all films screened at each of the Locations during each Licence Period during the term of this agreement. These records must be kept for a period of 2 years after the end of the relevant Licence Period.

7. VERIFICATION

APRA shall:

- be entitled, upon not less than one month's notice to the Applicant, to require from the Applicant audited verification of the Applicant's accounting and other records for the purposes of verifying any information provided to it under clause 6.1 and 6.2, with the costs of such an audit to be borne by APRA unless there is disclosed by the audit an under-payment by the Applicant of not less than 5% of the fees payable in respect of the period to which the audit relates in which case such reasonable costs are to be borne by the Applicant;
- treat as strictly confidential all information relating to the Applicant's gross box office receipts supplied to APRA by the Applicant or its auditors under the provision of clause 4 and 7, and shall not use or disclose or authorise the use or disclosure of such information to any person, firm or company without the prior written consent of the Applicant.

8. INDEMNITY

Subject to the Applicant complying with its obligations under this agreement, APRA indemnifies the Applicant against all damages, losses, costs and expenses incurred by the Applicant arising out of any successful claim which may be made against it in respect of the performance in public of a Work within APRA's repertoire or represented by APRA to be within its repertoire within the terms of this agreement provided that the Applicant:

- notifies APRA of the claim as soon as possible; and
- permits APRA to conduct the defence to the claim in the name of the Applicant.

9. WORKS NOT IN REPERTOIRE

- APRA must notify the Applicant if it becomes aware that copyright musical works contained in a Cinematograph Film being or to be performed in public by the Applicant are not within

APRA's repertoire by reason of a relevant source licence.

- If at any time during the Term of this agreement there is a material reduction in APRA's repertoire with respect to the performance in public of musical works by the Applicant, APRA must notify the Applicant and must negotiate with the Applicant as to reasonable alternative licensing terms.

10. TERMINATION

- 10.1 Either party may terminate this agreement by giving to the other party at least 1 month's notice of termination effective on the next 30 June.
- 10.2 Either party may terminate this agreement by giving 30 days' notice to the other party if that other party:
- fails to pay any sum due under this agreement within 30 days after the due date;
 - breaches any other material term of this agreement and fails to remedy the breach within 21 days after being requested in writing to do so by the party not in breach;
 - being a corporation, goes into liquidation, has a receiver or receiver and manager appointed to it or any part of its assets, enters into a scheme of arrangement with creditors or suffers any other form of external administration; or
 - being an individual, commits any act of bankruptcy or enters into a scheme of arrangement with creditors.

11. DEFINITIONS

In this agreement:

Application means the Application form attached to this agreement and completed by the Applicant;

Cinematograph Film has the same meaning as in the Copyright Act 1994;

Commencement Date means the first day of the calendar month closest to the date on which music use commenced, as set out in the Application;

Consumer Price Index means the Index of that title All Groups published by the New Zealand Department of Statistics, and March Quarter means quarter year ending 31 March;

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

Grand Right Work means an opera, operetta, musical play, revue or pantomime insofar as it consists of words and music written expressly for it;

Gross Box Office Receipts means the total amount paid for admission to screenings of Cinematograph Films at all Locations (including the value of all tickets sold or redeemed), excluding government taxes or other charges;

Initial Period means the period commencing on the Commencement Date and ending on the next 30 June;

Licence Fee in any Licence Period means the amount calculated in accordance with clause 3;

Licence Period means the Initial Period or a Licence Year, as the case may be;

Licence Year means any 12 month period ending on the 30th June during the term of this agreement;

Location means the cinema premises listed in the Application;

Works within APRA's repertoire means all musical works, including any words normally associated with those works by the copyright owner for New Zealand, the right of public performance of which is owned or controlled by APRA for New Zealand.

12. DISPUTE RESOLUTION

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

13. NOTICES

- 13.1 A notice under this agreement must be in writing and may be given to a party by:
- delivering it to the address of the party;
 - sending it by pre-paid post to the address of the party; or
 - 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.
- 13.2 A facsimile is deemed to have been received on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the party.

14. MISCELLANEOUS

- 14.1 No waiver by APRA 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.
- 14.2 This agreement is personal to the Applicant. The Applicant is not entitled to assign any of its rights without APRA's prior written consent.
- 14.3 This agreement may only be varied by the written agreement of the parties.
- 14.4 APRA agrees that it will not seek to vary any material term of this scheme until after 30 June 2016.
- 14.5 This agreement must be construed in accordance with the laws in force in New Zealand and the parties agree to submit to the jurisdiction of New Zealand Courts.

15. PRIVACY NOTICE

The information you are providing may be personal information under the Privacy Act. Information collected is only for the business purposes of APRA and will not be disclosed to any third parties except in accordance with the privacy policy of APRA. The privacy policy can be obtained from APRA.

OFFICE USE ONLY

SIGNED AS AGREED BY APRA

APRA accepts the application and grants a licence on the terms set out in this Licence Agreement.

For and on behalf of APRA
by its duly authorised officer

SIGNATURE

DATE