UNIVERSITIES AGREEMENT

between

The music societies whose names and addresses appear in Schedule "A" of the Agreement

and

Australian Vice-Chancellors' Committee

(ACN 008 502 930)

and

The Universities whose names and addresses appear in Schedule "B" of the Agreement
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UNIVERSITIES AGREEMENT

This agreement is made on the 3rd day of June, 2005.

Between

Each of the music societies whose names and addresses appear in Schedule "A" of the Agreement (individually and collectively referred to as "Licensors")

and

Australian Vice-Chancellors' Committee (ACN 008 502 930) of 1 Geils Court, Deakin, Australian Capital Territory, ("AVCC")

and

Each of the Universities whose names and addresses appear in Schedule "B" of the Agreement ("Participating Universities").

Recitals

A. AVCC is the peak body representing 38 Australian Universities.

B. AMCOS is a collecting society whose members have appointed it to administer certain rights in all of the musical works they own or control in Australia.

C. APRA is a performing right collecting society whose members have assigned to it the rights of performance in public and communication to the public.

D. PPCA is a collecting society and is the non exclusive licensee of certain rights in the PPCA Sound Recordings.

E. ARIA is a trade association and is the non-exclusive licensee of certain rights in the ARIA Sound Recordings.

F. The Participating Universities wish to:

(i) reproduce AMCOS Works;

(ii) reproduce ARIA Sound Recordings;

(iii) synchronise AMCOS Works and ARIA Sound Recordings with video recordings of University Events;

(iv) communicate APRA works and transmit PPCA Sound Recordings as music on hold;

(v) perform APRA works and PPCA Sound Recordings in public;
(vi) communicate APRA Works and transmit PPCA Sound Recordings by means of Intranet in Participating Universities for their Educational Purposes.

G. AMCOS, APRA, PPCA and ARIA wish to grant the Participating Universities a licence on the terms of this agreement.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

Where commencing with a capital letter:

**Affiliated Institutions** means each institution listed in Schedule H together with any educational institution providing higher and further education which after the Commencement Date becomes affiliated with and controlled or administered by a Participating University;

**Agreed Rate** means the rate of interest at the overdraft rate for commercial overdrafts of $100,000 or more charged by the National Australia Bank Limited plus 1% calculated at daily rests;

**AMCOS Members** means a full member of AMCOS as at the date of this agreement as set out in Schedule C, and any person who becomes a member of AMCOS during the term of this agreement. Schedule C indicates where AMCOS does not control all of the relevant member’s rights;

**AMCOS Works** means all musical works and associated lyrics for which AMCOS has the authority to grant the licence referred to in clause 2, including those works represented by virtue of reciprocal arrangements with overseas collecting agencies, but does not include Production Music Works;

**APRA Member** means a person who has assigned to APRA the rights of public performance and communication of musical works in which that person owns the copyright;

**APRA Works** means the musical and associated literary works in which the rights of communication and public performance in Australia are owned or controlled by APRA, including those works represented by virtue of reciprocal arrangements with overseas collecting agencies;

**ARIA Labels** means the record labels notified by ARIA from time to time as being the record labels owned or operated by ARIA Licensors. As at the date of this agreement these labels are listed in Schedule E;
ARIA Licensors means the entities notified by ARIA from time to time as being the parties who have licensed to ARIA the rights licensed by ARIA under this agreement. As at the date of this agreement these licensors are listed in Schedule D;

ARIA Sound Recordings means all Sound Recordings for which ARIA has the authority from the ARIA Licensors to grant the licence referred to in clause 2;

Broadcast has the same meaning as in the Copyright Act 1968 (as amended as at the date of this agreement) ("the Act");

Choral Work means a musical work written to be sung by a choir or other group of singers, with or without any instrumental accompaniment;

Commencement Date means 1 January 2005;

Consumer Price Index means the All Groups Consumer Price Index Number for the 8 capital cities published on a quarterly basis by the Australian Bureau of Statistics or any other price index substituted for it by the Australian Bureau of Statistics or any other Australian Government body, and September Quarter in that respect means the quarter year ending 30 September;

Distance Education Students means those students whose attendance at university is not on a regular basis such that it involves special arrangements whereby lesson materials, assignments, etc. are delivered to the student, and any associated attendance at the institution is of an incidental, irregular, special or voluntary nature.

Download means the process of making a digital copy of audio or audio visual materials from the Intranet onto a storage device including but not limited to a personal computer hard drive, server, mobile phone or any peripheral device;

Dramatic Context means use in conjunction with:

(a) acting;
(b) costumes;
(c) scenic accessories; and
(d) scripted dialogue or other dramatic effects,
or as a ballet;

Educational Purposes means the sole purpose of using in connection with a particular course of instruction or course of study and/or research of the Participating University, including the necessary administration and assessment of that course of instruction or study, but not including commercial activities and commercial research;
Excluded ARIA Sound Recordings means any Sound Recordings that are notified by ARIA from time to time as being excluded from this agreement under clause 4.4;

Format means:

(a) in relation to audio recordings, cassettes, compact discs, CD Recordable and DVD Recordable and IT system drives; and

(b) in relation to video recordings, video cassettes in the VHS or Betamax formats, DVD Recordable and CD Recordable and IT system drives;

Grand Right Work means an opera, operetta, musical play, ballet, review or pantomime to the extent that it consists of words and music written expressly for it;

GST means goods and services tax or similar value added tax levied or imposed in Australia pursuant to the A New Tax System (Goods and Services Tax) Act 1999, or otherwise, on a supply;

Insolvency Event means the happening of any of these events:

(a) an application is made to a court for an order that the relevant party be wound up, declared bankrupt or that a provisional liquidator be appointed (unless the application is withdrawn, struck out or dismissed within 14 days of it being made);

(b) a liquidator is appointed to the relevant party;

(c) a resolution is passed or a decision taken to appoint an administrator to the relevant party or there is a controller appointed in respect of any of its assets;

(d) except to reconstruct or amalgamate while solvent, the relevant party enters into, or resolves to enter into, an arrangement or composition with, or assignment for the benefit of, all of any of its creditors, or it, or anyone on its behalf, proposes a reorganisation, moratorium, deed of company arrangement or other administration involving any of them or the winding up or dissolution of that party;

(e) the relevant party is, states that it is or is presumed under any applicable law to be, insolvent;

(f) the relevant party becomes an insolvent under administration as defined in section 9 of the Corporations Act or action is taken which could result in that event;

(g) as a result of the operation of section 459F(1) of the Corporations Act, the relevant party is taken to have failed to comply with a statutory demand;
(h) anything having a substantially similar effect to any of the events specified above happens to the relevant party under the law of any jurisdiction;

Intranet means a secure network of interconnected computers accessible only to Students and/or Staff of that Participating University and unable to be accessed by members of the general public;

Licence Fee for calendar year 2005 means $1,137,195 for 33 universities and for each subsequent calendar year during the term of this agreement means the amount calculated in accordance with Clause 5;¹

Licensors means each of AMCOS, ARIA, PPCA and APRA;

Participating University means each University listed in Schedule B and its Affiliated Institutions; Participating University's Portion means the amount payable by that university as notified by the AVCC for that year;

PPCA Labels means the record labels notified by PPCA from time to time as being the record labels owned or operated by PPCA Licensors. As at the date of this agreement these labels are listed in Schedule G;

PPCA Licensors means the entities notified by PPCA from time to time as being the parties who have licensed to PPCA the rights licensed by this agreement. As at the date of this agreement these licensors are listed in Schedule F;

PPCA Sound Recordings means the sound recordings for which PPCA has the authority to grant the licence in clause 2;

Production Music Work means any musical work for which AMCOS is granted the right to license reproductions of the sound recording of that work;

Repertoire means, in respect of each Licensor, all works or other subject matter which, from time to time, come within the scope of the grant of any licence pursuant to this agreement;

Reproduction means a copy or any part thereof, of an ARIA Sound Recording or AMCOS Work;

Sound Recording has the same meaning as in the Act;

Staff means lecturers, teachers and other employees of the Participating University involved in teaching or administration of a course of instruction at the Participating University;

Student means a full-time or part-time student enrolled in a course of educational study at a Participating University (including TAFE students attending courses operated by a Participating University) during the current calendar year of the licence;

¹This amount is based on 38 Universities entering into the Agreement, and will be reduced, pro rata, in the event that fewer than this number of Universities take up the licence.
Survey means the survey which is set out in Schedule I;

Survey Data means all data, which is collected pursuant to the Survey;

University Event means an event at the Participating University (or some other venue) organised or authorised by the Participating University including live musical performances by Students or Staff.

1.2 Presumptions of interpretation

Unless the context otherwise requires:

(a) a word which denotes the singular denotes the plural and vice versa;

(b) any other agreement or document where amended or replaced means that agreement as amended or replaced;

(c) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meaning;

(d) a reference to a thing or an amount is a reference to the whole and each part of it; and

(e) a person includes an individual, a body corporate, and a government.

1.3 Liability is several

To the extent that the context allows, an agreement, warranty, representation or obligation which is expressed to bind or benefit two or more persons under this agreement binds or benefits each of those persons severally. Neither AVCC nor any of the Participating Universities will be jointly or severally liable for the performance by any other Participating University or party of its obligations under this agreement which will remain the responsibility of that other party alone. None of APRA, AMCOS, ARIA or PPCA will be jointly or severally liable for the performance by any other of them of its obligations under this agreement which will remain the responsibility of that other party alone.

2. Grant of licence

2.1 Subject to the limitations set out in clauses 3 and 4, AMCOS, APRA, PPCA and ARIA grant to each Participating University a non-exclusive licence to:

(a) make audio recordings of AMCOS Works and ARIA Sound Recordings in any Format for the Educational Purposes of the Participating University provided the audio recordings are:

(i) intended to be played at a University Event;

(ii) of a University Event; or
(iii) provided to Students and Staff for analysis by Students and/or Staff as part of a course of instruction or any other classroom related and based activities;

(b) make video recordings of AMCOS Works and ARIA Sound Recordings in any Format for the Educational Purposes of the Participating University provided the video recordings are

(i) of a University Event; or

(ii) made by the Students and/or Staff as part of a course of instruction and are only played at a University Event;

(c) authorise Students or Staff of the Participating University to make video recordings of AMCOS Works and ARIA Sound Recordings performed at University Events in any Format for their own private and domestic purposes;

(d) synchronise AMCOS Works and ARIA Sound Recordings with audio or video recordings made pursuant to clause 2.1(a) or 2.1(b) above, for the Educational Purposes of the Participating University;

(e) communicate APRA Works by means of music on hold;

(f) transmit PPCA Sound Recordings by means of music on hold;

(g) perform in public APRA Works and PPCA Sound Recordings for the Educational Purposes of the Participating University;

(h) perform in public APRA Works and PPCA Sound Recordings at University Events;

(i) perform in public APRA Works and PPCA Sound Recordings for the sole benefit of employees in the workplace of the Participating University; and

(j) subject to clause 4 do such ancillary acts and things as may from time to time be necessary to obtain the full benefit of the grant of licence set out at sub clauses (a) to (i) above,

on the terms contained in this agreement.

2.2 Subject to clause 4.1, a Participating University may allow Students and Staff access (including remote access for Staff and Distance Education Students) via its Intranets, to audio and video recordings made in accordance with clause 2.1 for Educational Purposes, provided that any access granted is username and password protected and the recording (or file heading) displays:

(a) the following notice:

This recording has been made by the [ ] University under the express terms of an educational licence between it, ARIA, AMCOS, APRA and
PPCA and may only be used as authorised by [ ] University pursuant to the terms of that licence; and

(b) the following information:

(i) the title of each musical work;

(ii) the name of each composer, lyricist and arranger of the musical work; and

(iii) if the recording is an ARIA Sound Recording, the artist/group name, and the record company label.

2.3 Each of the Licensors shall upon entering into the agreement provide the AVCC with notification of its Repertoire as at the Commencement Date. The AVCC acknowledges that in respect of AMCOS, ARIA and PPCA the information in the Schedules to this Agreement satisfies this requirement. In respect of the APRA Repertoire, APRA must notify the AVCC of the approximate number of works in its Repertoire as at the date of this Agreement.

3. Dealing with copies

3.1 A Participating University may supply recordings made under Clause 2.1 (a)(ii), 2.1 (b)(1) or 2.1 (d) either for no charge or at a cost which is calculated to be not greater than the cost of making the recording (including the cost of Format medium) only to Students or Staff and their immediate family for their private domestic listening or viewing (or both), provided the recording (or its packaging, labeling or file heading) displays:

(a) the following notice:

This recording has been made by the [ ] University under the express terms of an educational licence between it, AMCOS and ARIA and may only be used as authorised by [ ] University pursuant to the terms of that licence; and

(b) the following information:

(i) the title of each musical work;

(ii) the name of each composer, lyricist and arranger of the musical work; and

(iii) if the recording contains an ARIA Sound Recording, the artist/group name, and the record company label.

3.2 A Participating University may supply recordings made under Clause 2.1 (a)(iii) either for no charge or at a cost which is calculated to be not greater than the cost of
making the recording (including the cost of Format medium) only to Students or Staff provided the recording (or its packaging, labeling or file heading) displays:

(a) the following notice:

This recording has been made by the [ ] University under the express terms of an educational licence between it, AMCOS and ARIA and may only be used as authorised by [ ] University pursuant to the terms of that licence; and

(b) the following information:

(i) the title of each musical work;

(ii) the name of each composer, lyricist and arranger of the musical work; and

(iii) if the recording contains an ARIA Sound Recording, the artist/group name, and the record company label.

3.3 Advertising or promotional material, or any other matter intended to encourage the purchase, use or support of or indicate an association with particular goods or services, must not be included on any recording made under this agreement.

3.4 A Participating University that makes a recording under this agreement may retain copies of that recording for its archives provided always that access to the recording is restricted to Staff and Students, and complies with the terms of clause 2.2 and clause 4.1.

4. Limitations on the grant of licence

4.1 The access granted in clause 2.2 is for the purpose of listening only, and must not include the ability to Download any AMCOS Works, ARIA Sound Recordings or any part thereof.

4.2 The rights granted under this agreement do not include the right to:

(a) reproduce, Download or forward or otherwise convey to any other parties the whole or part or copy of any AMCOS Work or ARIA Sound Recording via the internet or email systems;

(b) reproduce, communicate, transmit or perform any infringing copy of any AMCOS Work, APRA Work, ARIA Sound Recording or PPCA Sound Recording;

(c) reproduce any cinematograph film or any literary, dramatic or artistic work (including the lyrics associated with musical works in graphic form);
(d) Broadcast any musical work or sound recording;

(e) make any unauthorised recordings or video recordings of performances contrary to Part XIA of the Act;

(f) make reproductions of AMCOS Works or ARIA Sound Recordings:
   (i) for the sole or dominant purpose of the delivery of these reproductions either via the Intranet or to the public via the Internet ('Prohibited Use');
   (ii) available to a student or a third party for a Prohibited Use;

(g) reproduce any sound recording other than ARIA Sound Recordings;

(h) make a video recording of a performance of a Grand Right Work or excerpts of that work;

(i) make a video recording of the performance of musical works and associated words composed for a ballet if that performance is accompanied by a visual representation of that ballet or excerpts of that ballet;

(j) make a video recording of a Choral Work of more than 20 minutes' duration or excerpts of that Choral Work; or

(k) make a video recording of a musical work or excerpts of that work performed in a Dramatic Context.

(l) perform in public APRA Works and PPCA Sound Recordings at any event or occasion where:
   (i) a fee for entry is charged; or
   (ii) the Participating University's premises have been let for hire or otherwise to a third party (including a Student) other than for the Educational Purposes of the Participating University;

(m) perform Grand Right Works in their entirety;

(n) perform in whole or in part any musical work in a Dramatic Context;

(o) perform in whole or in part any music and associated words composed or used for a ballet if accompanied by a visual representation of that ballet;

(p) perform any Choral Work of more than 20 minutes' duration in its entirety;

(q) perform any music and associated words so as to burlesque or parody the work; or

(r) perform any musical work with new or substituted lyrics, or any lyrics which have been notified by APRA as prohibited.
4.3 AMCOS (on behalf of AMCOS and APRA) or ARIA (on behalf of ARIA and PPCA) may (and will in the case of deletions which have the effect outlined in clause 4.5) from time to time notify the AVCC and the Participating Universities of works or sound recordings that are to be added to or deleted from the scope of this agreement as a result of membership changes, and such variation shall take effect one month from the date that AVCC and Participating Universities are notified in writing.

4.4 ARIA will from time to time notify the AVCC and the Participating Universities of additions to or deletions from the ARIA Labels and the PPCA Labels as a result of membership changes, and such variation shall take effect one month from the date that AVCC and Participating Universities are notified in writing. As at the Commencement Date, any Sound Recordings released on the ARIA Labels and the PPCA Labels are licensed by ARIA and PPCA respectively under this agreement, and any other Sound Recording is deemed to have been excluded from the scope of this agreement;

4.5 In the event that a Licensor notifies AVCC and the Participating Universities, in accordance with the terms of either Clause 4.3 or 4.4, of deletions from the scope of the agreement, deletions from the ARIA Labels or deletions from the PPCA Labels, then that Licensor shall, at the same time, notify the AVCC and the Participating Universities whether the deletion had the effect of causing that Licensor's Repertoire to fall below 95% of the Repertoire as at the Commencement Date.

4.6 In the event that a Licensor notifies the AVCC and the Participating Universities, in accordance with Clause 4.5, that its Repertoire has fallen below 95% of its Repertoire as at Commencement Date (as notified to the AVCC and the Participating Universities in accordance with the terms of Clause 2.3), then

(a) the Licensor and the AVCC (on behalf of the Participating Universities) shall negotiate, in good faith, with a view to reaching agreement on a reduction in the Licence Fee; and

(b) if, after one month, the Licensor and the AVCC are unable to reach agreement on such reduction, the AVCC shall be entitled to terminate the agreement on behalf of itself and the Participating Universities.

4.7 In the event that the AVCC terminates the agreement in accordance with the terms of Clause 4.6(b), the Licensor shall reimburse to Participating Universities that part of the Licence Fee, calculated pro rata, as relates to the balance of the year in which the termination occurs.

4.8 In the exercise of any right under this agreement a Participating University must not remove any electronic rights management information (as that term is defined in the Act) embodied in any Work or Sound Recording unless this would otherwise be permissible under the Act.
5. Remuneration and GST

5.1 For the calendar year commencing on 1 January 2005 the Participating Universities must pay the Licence Fee (excluding GST).

5.2 For the calendar year commencing on 1 January 2006 and each subsequent year during the term of this agreement, the Participating Universities must pay the Licence Fee (excluding GST) for the immediately preceding calendar year increased by the percentage increase in the Consumer Price Index between the last two September Quarters preceding the calendar year for which the Licence Fee is being paid.

5.3 The payments referred to in clauses 5.1 and 5.2 above must be made in accordance with clause 5.5.

5.4 By 31 January in each year during the term of this agreement, AVCC will notify the Licensors of the proportions of the total remuneration payable for which each Participating University should be invoiced.

5.5 By 28 February in each year during the term of this agreement, AMCOS (on behalf of AMCOS and APRA) and ARIA (on behalf of ARIA and PPCA) will issue a tax invoice to each of the Participating Universities with a copy to the AVCC at the same time stating the proportion of the Licence Fee payable to AMCOS or ARIA as the case may be for the then current calendar year and any GST payable.

5.6 The Participating Universities must pay any invoice referred to in clause 5.5 in two equal instalments payable by 31 March and 30 June in the calendar year in which the invoice is issued, except for the invoice for the first year of the Agreement which is payable in total within 2 months of the date of the Agreement.

5.7 The Participating Universities must pay interest at the Agreed Rate on any amounts outstanding under this agreement.

5.8 In consideration of the release in clause 6.1, the AVCC on behalf of the Participating Universities must pay to the Licensors the sum of $1,137,195 within 2 months of the execution of this agreement.

6. Warranties and Indemnities

6.1 Each of the Licensors agrees not to bring any action, claim, demand or proceeding, nor to make any application to any court, nor to directly or indirectly encourage such action, claim, demand or proceeding by any third person, against any Participating University or any Staff in respect of any activity which took place prior to the Commencement Date, provided that that activity would have otherwise been licensed by the terms of this agreement if it had been in force at the relevant time(s), and if the material, the subject of the alleged infringement, had been included in the Repertoire of the relevant Licensor.
6.2 Each of the Licensors warrants severally to the AVCC and to each Participating University that they are authorised to enter into this agreement, to grant the licence under clause 2 and to enter into the covenants and give the undertakings and indemnities granted in this agreement.

6.3 **AMCOS indemnifies** each Participating University against all damages, losses, costs and expenses, including reasonable legal fees, incurred by the Participating University arising out of any action, claim, demand or proceeding by any AMCOS Member or former AMCOS Member or any licensee of the AMCOS Member or former AMCOS Member in respect of:

(a) any activity which took place prior to the Commencement Date if that activity would have otherwise been licensed by the terms of this agreement if it had been in force at the relevant time(s), and if the material, the subject of the alleged infringement, had been included in the AMCOS Repertoire; and

(b) the copying or Reproduction of a Work under this agreement by the Participating University,

provided that:

(i) the Participating University promptly notifies AMCOS of the claim;

(ii) the Participating University has complied with the terms of this agreement; and

(iii) AMCOS is permitted to conduct the defence to the claim in the name of the relevant Participating University.

6.4 **APRA indemnifies** each Participating University against all damages, losses, costs and expenses, including reasonable legal fees, incurred by the Participating University arising out of any action, claim, demand or proceeding by any APRA Member or former APRA Member or any licensee of the APRA Member or former APRA Member in respect of:

(a) any activity which took place prior to the Commencement Date if that activity would have otherwise been licensed by the terms of this agreement if it had been in force at the relevant time(s), and if the material, the subject of the alleged infringement, had been included in the APRA Repertoire; and

(b) the public performance or communication of a Work under this agreement by the Participating University

provided that:

(i) the Participating University promptly notifies APRA of the claim;

(ii) the Participating University has complied with the terms of this agreement; and
(iii) APRA is permitted to conduct the defence to the claim in the name of the Participating University.

6.5 ARIA indemnifies each Participating University against all damages, losses, reasonable legal fees, and expenses incurred by the Participating University arising out of any action, claim, demand or proceeding by any ARIA Licensor or former ARIA Licensor or any licensee of the ARIA Licensor or former ARIA Licensor in respect of:

(a) any activity which took place prior to the Commencement Date if that activity would have otherwise been licensed by the terms of this agreement if it had been in force at the relevant time(s), and if the material, the subject of the alleged infringement, had been included in the ARIA Repertoire; and

(b) any reproduction or recording made in accordance with the terms of this agreement by the Participating University, provided that the Participating University

(i) notifies ARIA as soon as practicable of any claim, demand or legal action of which it becomes aware or which is made or threatened against it arising out of or as a result of the exercise of the licence under this agreement, including any allegation that the use of the licensed Sound Recordings infringes any third party rights;

(ii) not make any admission or settlement with respect to any claim, demand or legal action which might prejudice the position of ARIA or the relevant ARIA Licensor who owns or controls the ARIA Sound Recordings which are the subject of the claim, demand or legal action;

(iii) provide ARIA with the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of such claim, demand or legal action;

(iv) provide ARIA with such evidence relating to the claim, demand or legal action as it may have in its possession; and

(v) fully co-operate with any reasonable request of ARIA in its participation and control of any compromise, settlement or resolution or other disposition of such claim, demand or legal action.

6.6 PPCA indemnifies each Participating University against all damages, losses, reasonable legal fees, and expenses incurred by the Participating University arising out of any action, claim, demand or proceeding by any PPCA Licensor or former PPCA Licensor any licensee of the PPCA Licensor or former PPCA Licensor in respect of:

(a) any activity which took place prior to the Commencement Date if that activity would have otherwise been licensed by the terms of this agreement if it had been in force at the relevant time(s), and if the
material, the subject of the alleged infringement, had been included in the PPCA Repertoire; and

(b) any performance or transmission made in accordance with the terms of this agreement by the Licensed Body

provided that the Participating University

(i) notifies PPCA as soon as practicable of any claim, demand or legal action of which it becomes aware or which is made or threatened against it arising out of or as a result of the exercise of the licence under this agreement including any allegation that the use of the licensed Sound Recordings infringes any third party rights;

(ii) not make any admission or settlement with respect to any claim, demand or legal action which might prejudice the position of PPCA or the relevant PPCA Licensor who owns or controls the PPCA Sound Recordings which are the subject of the claim, demand or legal action;

(iii) provide PPCA with the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of such claim, demand or legal action;

(iv) provide PPCA with such evidence relating to the claim, demand or legal action as it may have in its possession; and

(v) fully co-operate with any reasonable request of PPCA in its participation and control of any compromise, settlement or resolution or other disposition of such claim, demand or legal action.

6.7 The indemnities in clauses 6.3 to 6.6 will have no effect in respect of Works or Sound Recordings, as the case may be, which AMCOS or ARIA have notified the AVCC and the Participating Universities are excluded from the agreement in accordance with the terms of clause 4.3 and clause 4.4, as from one month from the date that AVCC and the Participating Universities were notified in writing of the exclusion.

6.8 The indemnities provided in clause 6 survive termination of this agreement.

7. **Survey**

7.1 Each of the parties undertakes to comply with the terms of the Survey which is set out at Schedule 1 of this agreement.

7.2 No party may vary the terms of the Survey without agreement in writing of all parties to the agreement.

7.3 The parties record and agree that the sole purpose of the Survey is to provide the Licensors with the data necessary to distribute the Licence Fee.
7.4 Each of the Licensors warrants that it will not use any Survey Data for any purpose collateral to that provided for in Clause 7.3.

7.5 The obligations in Clause 7 survive termination of this agreement.

8. Term

This agreement commences on the Commencement Date and will continue until at least 31 December 2010 after which date it will continue unless terminated by not less than six months notice given by a party to the other parties to expire on 31 December in the year of the notice.

9. Termination

9.1 The Licensors may collectively but not individually terminate this agreement with respect to a Participating University if that Participating University commits a breach of any material term to this agreement and fails to remedy the breach within twenty eight days after being required in writing, by the Licensors or any of them, to do so.

9.2 In the event that the Licensors terminate this agreement in accordance with the terms of clause 9.1, in respect of a Participating University, the Licensors shall:

(a) in the event that more than one month of the relevant contract year remains in respect of the contract year in which the termination occurs, reimburse to the Participating University such part of that Participating University's Portion as relates to the balance of that contract year; and

(b) in respect of future contract years, reduce the annual Licence Fee (calculated in accordance with the terms of clause 5) by the amount of the Participating University's Portion.

9.3 Any Participating University may terminate this agreement, with respect to that Participating University, by notice in writing if:

(a) the Licensors or any of them breach this agreement in a material respect and fail to rectify such breach within 28 days of receiving written notice to do so;

(b) an Insolvency Event occurs in respect of the Licensors or any of them; or

(c) the Act is amended to incorporate any new statutory licensing scheme with respect to the works and other subject matter which are the subject of the grant of licence in clause 2 of this agreement, provided that the Participating Universities would be entitled to rely on such statutory
licensing scheme in order to engage in any of the activities which are licensed pursuant to this Agreement.

9.4 In the event that a Participating University terminates this agreement in accordance with the terms of clause 9.3, in respect of a Participating University, the Licensors shall, in respect of each Participating University which is terminating in reliance on the terms of clause 9.3:

(a) in the event that more than one month of the relevant contract year remains in respect of the contract year in which the termination occurs, reimburse to that Participating University such part of the Participating University's Portion as relates to the balance of that contract year; and

(b) in the event that not all Participating Universities terminate the Agreement, in respect of future contract years, reduce the annual Licence Fee (calculated in accordance with the terms of clause 5) by the amount of the Participating University's Portion.

9.5 The AVCC may terminate this agreement on behalf of the Participating Universities by notice in writing:

(a) if an Insolvency Event occurs with respect to the Licensors or any of them;

(b) if it has been terminated by or with respect to all Participating Universities; or

(c) in accordance with the terms of Clause 4.6(b).

9.6 After termination of this agreement insofar as it relates to ARIA Sound Recordings all copies of ARIA Sound Recordings made during the term of the licence and held by the university must be destroyed no later than 3 months after the date on which the termination took effect.

10. Dispute resolution

10.1 The parties must, without delay and in good faith, attempt to resolve any dispute which arises out of or in connection with this agreement prior to commencing any proceedings.

10.2 The AVCC and each of the Licensors (as relevant) must make their Chief Executive Officer (or nominee with equivalent delegated authority) available to meet for the purpose of this Clause.

10.3 If a party requires resolution of a dispute it must do so in accordance with the terms of this clause, and the parties acknowledge that compliance with these terms is a condition precedent to any entitlement to claim relief or remedy whether by way of proceedings in a court of law or otherwise in respect of such disputes.
10.4 The existence of a dispute or the commencement of proceedings does not affect the obligations of the parties to continue to perform their obligations under this agreement.

10.5 If a dispute is not resolved within 30 days of submission of the dispute by a party to the other parties, or within such other time as they agree in writing, the dispute must be submitted to mediation in accordance with and subject to The Institute of Arbitrators and Mediators Australia Mediation and Conciliation Rules.

10.6 A party may not commence proceedings in respect of the dispute unless the dispute is not settled by mediation within 30 days of submission to mediation pursuant to clause 10.5, or such other time as the parties agree in writing.

11. Miscellaneous

11.1 Entire agreement

This agreement embodies the entire understanding and agreement between the parties as to its subject matter. All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this agreement are merged in and superseded by this agreement.

11.2 Amendment

Other than as set out in this agreement, this agreement may only be varied by the written agreement of all parties.

11.3 Assignment

A party may not assign a right under this agreement.

11.4 Governing law

This agreement is governed by and construed in accordance with the laws in force in the State of New South Wales and the parties agree to submit to the exclusive jurisdiction of the courts of that State.

11.5 Waiver

(a) No waiver by AMCOS, APRA, PPCA or ARIA of any breach of any provision of this agreement shall operate as a waiver of another breach of the same or of any other provision of this agreement.

(b) No waiver by the Participating Universities or any of them as any breach of any provision in this agreement shall operate as a waiver of another breach of the same or of any other provision of this agreement.
11.6 Notices

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.

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.

Any notice by the Licensors or any of them to the Participating Universities or any of them must be copied by the Licensee(s) to the AVCC at the same time.

Any Participating University giving a notice under this agreement to the Licensors or any of them must on the same day give AVCC a copy of that notice.

11.7 GST

The Participating Universities must pay any goods and services taxes to the extent that any such taxes are payable in relation to this agreement. All such taxes are payable by the Participating Universities in addition to the Licence Fee itself, on receipt of a tax invoice from the Licensors as the case may be.

11.8 Notice of Affiliated Institutions

On or before 1 December each year during the term of this Agreement, each Participating University will give the AVCC notice specifying any amendment to its Affiliated Institutions as at the date of the notice. The AVCC will seek the Licensor's consent (such consent not to be unreasonably withheld) to such changes by giving notice of proposed changes to AMCOS (on behalf of itself and APRA) and ARIA (on behalf of itself and PPCA) on or before 31 January in the following year. AMCOS and ARIA will respectively notify the AVCC whether the Licensors consent to the proposed changes within 14 days of receipt of the AVCC's notice. In the event that the Licensors notify the AVCC that they do not consent to any proposed changes they will enter into good faith negotiations with the AVCC to find a resolution acceptable to all parties within 21 days of said notice.
SIGNED AS AN AGREEMENT

Signed by Australasian Mechanical
Copyright Owners Society Limited:

Signature of director:
DEAN ORMISTON
Name of authorised person (print)

Signed by Australasian Performing
Right Association Limited:

Signature of director:
DEAN ORMISTON
Name of authorised person (print)

Signed by Australasian Record Industry
Association:

Signature of sole director:
JASON McLENNAN
Name of authorised person (print)
Signed by **Phonographic Performance**

**Company of Australia Pty. Limited:**

[Signature]

Signature of witness

[Signature]

Signature of authorised person

**Head of Business & Legal Affairs**

[Signature]

Name of authorised person (print)

[Name of witness (print)]

Name of witness (print)

Signed for and on behalf of the by

**Australasian Vice-Chancellors Committee**

by its duly authorised representative in the presence of:

[Signature]

Signature of witness

[Signature]

Signature of authorised person

[Name of witness (print)]

Name of witness (print)

[Name of authorised person (print)]

Name of authorised person (print)

Signed for and on behalf of each of the

**Participating Universities** by its duly
authorised representative in the presence of:

__________________________  ________________________
Signature of witness  Signature of authorised person

Ross McLean  T S Millarvey
Name of witness (print)  Office held

Chief Executive Officer
Name of authorised person (print)