



AMRAP END USER AIRIT AGREEMENT SUMMARY

Australian Music Radio Airplay Project is a community radio initiative that works to generate airplay opportunities for contemporary Australian music on community radio. The project is funded by the Commonwealth Government through the Community Broadcasting Foundation and is managed by the Community Broadcasting Association of Australia ACN 003 108 030 of Level 3, 44-54 Botany Road, Alexandria NSW, Australia 2015 (“AMRAP”). AMRAP manages the website www.amrap.org (the “Website”).

AMRAP distributes ‘radio ready’ promotional copies of new music releases by Australian signed and independent artists (“Owner”) to all fully licensed community radio stations in Australia. AMRAP offers the AirIT service to eligible community radio stations. The AirIT service makes Content (including music and support material) available via the Website, which can only be accessed by eligible community stations. Eligible community station personnel are able to view Content online, and order Content in digital download and physical format (e.g. compact disc and printed support material manufactured by AMRAP). If instructed by the Owner, Broadcaster Users will be required to declare their intent to broadcast on their radio program any Content they order within 28 days of receiving the Content.

By completing Your Application Form, You agree that Your Application Form and the attached End User Terms and Conditions and Privacy Policy form a legally binding Agreement. When You submit Your Application Form or order Content from AMRAP, or by using or attempting to use AMRAP’s Services You are signifying Your agreement with and acceptance of all terms and conditions of this Agreement as well as the terms and conditions contained on our Website from time to time that govern Your legal and contractual relationship with AMRAP.

Please carefully read the End User Terms and Conditions and our Privacy Policy before submitting Your Application Form as the Application Form, End User Terms and Conditions and Privacy Policy (“Agreement”) sets out the terms on which AMRAP will provide the Services to You.

What can You do with the music (sound recordings) that You order from AirIT?

The music is provided to AirIT Users in good faith with the expectation that You are active in a Community Station and are able to broadcast the music, or enable others to do so. Tracks are individually coded as ordered by You. The table below outlines basic guidelines on what You can legally do with the music. The table does not replace the Terms & Conditions on the following page which you must read before applying for an Account.

Broadcaster Users Can	Station Admin Users Can	Both Users CANNOT
Broadcast the music on their Community Station	Broadcast the music on their Community Station	CANNOT copy music that was received on AirIT by someone else
Copy the music to a personal music player that you own for personal use and to broadcast	Allow any broadcaster to access the music from the Station Audio Catalogue to preview and broadcast, but not keep.	CANNOT sell the music or give the music away as a promotion or gift
Copy the music to a personal computer you own for personal use and to broadcast	Encourage personnel to become AirIT Broadcaster Users to order music for broadcast	CANNOT send the music electronically to other station personnel or any 3rd parties.
Copy the music to 1 blank CD you own to keep as a backup for personal use.	Copy the music to the Station Audio Catalogue for preview within the station and broadcast.	CANNOT publish the music (including uploading or displaying on the internet) or distribute the music
	Make 1 copy of the music for the sole purpose of creating a backup of the Station Audio Catalogue.	CANNOT make copies of the music to give to other station personnel or any 3rd parties.

The table in this information is extracted from the Australia Copyright Council’s ‘Permissions & Clearances’ document (G070v5) located at <http://www.copyright.org.au/information/cit006/wp0074>

AMRAP
COMMUNITY STATION & REGISTERED USERS TERMS AND CONDITIONS

The parties agree as follows:

Terms and Conditions

1 INTERPRETATION

1.1 In these terms and conditions:

“**Account**” shall mean the personalised account created by You on the Website enabling the ordering of Content.

“**AirIT**” shall mean an online portal located on the Website that is only available to Registered Users that allows them to view Support Material, Stream and order Content for the purpose of broadcasting on a Community Station in accordance with this Agreement.

“**Artist**” shall mean the artist featured on the Content.

“**Artwork**” shall mean album cover artwork and any other artwork relating to the Master Recordings, the Artist, Music and Video Recordings.

“**AMRAP**” shall mean the Australian Music Radio Airplay Project managed by Community Broadcasting Association of Australia ACN 003 108 030 of Level 3, 44-54 Botany Road, Alexandria NSW, Australia 2015 and include its respective parents, subsidiaries, affiliates, successors assignees, employees, agents, directors and officers.

“**Broadcaster User**” shall mean a radio program broadcaster who presents a radio program on an approved Community Station and has registered to use the Service.

“**Community Station**” shall mean a radio station located in Australia allocated a full-time community broadcast license by the Australian Media and Communications Authority (ACMA), and approved by AMRAP to use AMRAP Services.

“**Community Station Admin User**” shall mean Community Station personnel responsible for reviewing and maintaining the Station Audio Catalogue, and is approved by AMRAP and the Community Station to use the Service for the purpose of populating the Station Audio Catalogue with Content.

“**Content**” shall mean the Master Recordings (including eMasters), Support Material, and any other material available to the Registered Users from the Service and Website.

“**Credits**” shall mean the credit issued by AMRAP in its sole discretion to You to order Content from AirIT.

“**eMasters**” shall mean copies of the Master Recordings in digital format which are suitable to be downloaded by Registered Users via the Website.

“**Format**” shall mean the specific format that Master Recordings can be reproduced and delivered by AMRAP to Registered Users. This may include CD Format that is physically delivered or digital audio file Format that is delivered electronically.

“**Master Recordings**” shall mean the Master Recordings owned and/ or controlled by the Owner, including eMasters.

“**Music**” shall mean the musical compositions embodied on the eMasters, Master Recordings or Video Recordings.

“**Owner**” shall mean the person or company that owns and controls the Content.

“Performers” shall mean 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.

“Radio Program” shall mean the radio program that the Broadcaster User presents on the Community Station.

“Registered Users” shall mean the Broadcaster Users and Community Station Admin Users who maintain an account with AMRAP and are bound by the AirIT End Users Terms and Conditions.

“Services” shall mean the services provided by AMRAP, from time to time including AirIT.

“Station Audio Catalogue” shall mean a physical or digital music library where a Community Station stores Content to preview and broadcast.

“Stream” shall mean an eMaster streamed (but not downloadable) at low bit rate on the Website for preview, sampling or evaluation purposes by Registered Users.

“Support Material” shall mean 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.

“Territory” shall mean 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” shall mean any cinematograph film created to promote the Master Recordings.

“Website” shall mean the internet site located at www.amrap.org and any AMRAP website Services including those used to host, display and distribute Content in accordance with this Agreement.

“You” “Your” shall mean either a Broadcaster User or Community Station Admin User as indicated by You at the time You submit Your application to AMRAP to use the Service.

- 1.2 Any reference in this Agreement to the singular includes the plural; to any gender includes all genders; to any act or statute includes any act or statute which supersedes, replaces or modifies any earlier act or statute; to persons includes all bodies and associations both corporate and incorporated and vice versa. Paragraph headings are for reference purposes only and all references to clauses are to clauses in this Agreement unless otherwise specified.

2 GRANT OF LICENSE

- 2.1 Subject to Your strict compliance with this Agreement, AMRAP grants You a limited, non-exclusive, non-commercial, 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;
 - b. As a Community Station Admin User, order and download Content from the Website for the purposes of review, and populating Your Community Station’s Audio Catalogue with the Content for storage and broadcast;
 - c. As a Broadcaster User, order and download Content from the Website for the purposes of reviewing, publicly performing the Master Recording and Music via broadcast on Your Community Station, and storing Content in your personal 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 personal use for the purposes of review and broadcast on a Fully Licensed Australian Community Station.
- 2.3 For the avoidance of doubt the license granted under this Agreement does not grant You the

right to sell the Content, publish the content (including making Content available on the internet), distribute the Content.

- 2.4 Subject to the prior rights of APRA and PCCA the Agreement does not grant you the right to Publicly perform the Content or otherwise exploit the Content beyond broadcast on Your Community Station.
- 2.5 You hereby grant AMRAP for the Term and in the Territory a non-exclusive license to use Your name, the name of the Radio Program and/or logos, trade marks (whether registered or not), on the Website for the sole purpose of promoting the Service.

3 TERM

- 3.1 The Term shall commence on the date that You agree to this Agreement 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 AMRAP 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 AMRAP or the Owners from time to time; and
 - d. Notify AMRAP immediately if You cease to work or volunteer at the Community Station.
- 4.2 A Broadcaster User must:
 - a. Use best efforts to broadcast the Content on their Radio Program within 28 days of receiving the Content from AMRAP; and
 - b. Use best efforts to back announce any public performance of the Content on the Radio Program.

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

5 AMRAP's SERVICES

- 5.1 AMRAP 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. If Content is ordered in digital download format, AMRAP will issue You with a digital download key where You can securely download Content. If ordered in physical format AMRAP will make a compact disc format reproduction containing the ordered Content and may make a physical reproduction of the Content such as printed Support Material. The physical Content will be dispatched to the Registered User by AMRAP.
- 5.3 AMRAP may create a listing on AirIT to promote the Artist and Master Recordings. The listing may include distilled Support Material. This information may be distributed to You for the purposes of promoting and reviewing the Artist at AMRAP's sole discretion.
- 5.4 On occasion, technical problems or file sizes may delay or prevent delivery of the Content. Your exclusive and sole remedy with respect to Content that is not delivered within a reasonable period will be the replacement of such Content.

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 The Content contains a code which watermarks the Content that You transfer from the Content to unprotected formats (such as CD or unprotected MP3) (the "Watermark"). The Watermark includes Your Account identification and will mark any reproductions of the Content that You make. Accordingly, any unauthorised copies or reproductions of the Content can be traced to

Your Account.

- 6.3 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, display, 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 AMRAP 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. remove, alter or tamper with the watermark or any trademark, copyright or other proprietary rights notices which appear on the Content as originally provided by AMRAP or the Owner or any permitted copy You may make of the Content;
 - e. insert any code, product or material to manipulate the Content in any way that affects any end user's experience; or
 - f. reproduce or seek to reproduce or "rip" any Content from the Website or any part of the Service unless authorised under this Agreement;
- 6.4 AMRAP 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 a broadcaster on a Community Station or You work/ volunteer at a Community Station in a position that is responsible for the Community Station's music catalogue;
 - b. To the best of Your knowledge the Community Station holds the necessary licenses, including APRA and PPCA licenses, to operate as a Community Station.
 - c. You will comply with the terms of this Agreement, in particular clause 7.3; 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 AMRAP, its directors, officers, employees, affiliates, agents, contractors and licensors harmless from and to keep AMRAP 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 its part contained in this Agreement.

8 TERMINATION

8.1 Either party shall have the right to terminate this Agreement:

- a. If the other party breaches 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. Without cause and on giving the other party 60 days written notice of its intention to terminate this Agreement.
- 8.2 AMRAP may terminate this Agreement in writing with immediate effect if a Broadcaster User is in breach of clause 4.2(a).

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.

- 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, Credit and for Content order from the Website through Your Account. You must notify AMRAP 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 Service 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 these Terms.

10 ELECTRONIC COMMUNICATIONS

- 10.1 You agree that AMRAP may use electronic means such as email and notices posted on the AMRAP website to communicate with You concerning:
- a. changes to the Website;
 - b. amendments to the Terms;
 - c. payment authorisations;
 - d. notices or other disclosures; or
 - e. any other matter related to the Website or Terms.
- 10.2 Please retain copies of any electronic communication by either saving a soft copy or printing the document. You will be deemed to receive the communication once it is sent to You at Your email address or posted on the Website.
- 10.3 You agree to receive electronic communication even in circumstances where You may have a statutory right to receive such communication in paper form. You are entitled to request an electronic communication to be resent or to order a paper copy, but AMRAP reserves the right to charge a reasonable fee for such additional service.
- 10.4 You agree to notify AMRAP of any change to Your email address. You may also notify AMRAP if You withdraw Your consent to receive electronic communication; however AMRAP 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. AMRAP 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 AMRAP 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. AMRAP is not responsible for media defects that result from accident or abuse. AMRAP has no obligation under this Agreement to provide maintenance, support or training.
- 11.3 To the maximum extent permitted by applicable law, AMRAP 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 AMRAP 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, AMRAP does not warrant that the Website, or any part of those services on the Website, including Streams, 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 Services available via the Service include materials from third parties (including but not limited to copyright material, links to third party websites, and trademarks).

By providing You with this Service, AMRAP is merely acting as a passive conduit for the distribution of the Content. You acknowledge and agree that AMRAP 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. AMRAP 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 AMRAP, its directors, officers, employees, affiliates, agents, contractors or licensors be liable for any loss or damage caused by AMRAP its employees or agents where:
- a. There is no breach of a legal duty of care owed to You by AMRAP or its employees or agents;
 - b. Such loss or damage is not a reasonably foreseeable result of any such breach;
 - c. Any increase in loss or damage results from breach by You of any term of this agreement.
 - d. AMRAP 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 Service.

12 DATA PROTECTION AND SECURITY

- 12.1 AMRAP uses all commercially viable measures to protect the confidentiality and security of communications transmitted by AMRAP's Website and Services and information stored on servers controlled by AMRAP. 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;
 - 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 AMRAP 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 AMRAP reserves the right to block, remove or delete Content, communications, posting and other data or information if AMRAP, 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 AMRAP 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 AMRAP 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 AMRAP 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 AMRAP; or
 - b. Your online acceptance of amended Terms.

- 14.3 You acknowledged 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 AMRAP 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 AMRAP.
- 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 Victoria, Australia and the courts of Victoria Australia shall be deemed to be the Courts of competent jurisdiction.

These Terms and Conditions together with Your Application Form and Privacy Policy ("Agreement") constitute the entire agreement between AMRAP and You in respect of the Website and Services and supersedes any prior agreement between AMRAP and You. Date: September 2009