

1. Definitions

- **Recording** means a sound recording owned and controlled by Refractive and available for license from Refractive (including the underlying musical works/compositions/performances contained in the Recording) subject only to the prior rights of the Australasian Performing Rights Association (“**APRA**”);
- **Production** means a media, audio/visual Production (including all its versions, multiple episodes, trailers, variations, updates, or re-releases that come under the same Production/title) to which Recording is synchronised;
- **Territory** means worldwide, except where expressly limited to a single territory.

2. License

Refractive grants Licensee the limited, non-exclusive, non-transferable right and license (hereafter “**License**”) throughout the Territory, in perpetuity, to use the Recording in **one Licensee Production**, (except where expressly limited to a single territory) in accordance with the terms and conditions of this Agreement.

3. Rights Granted

Synchronisation Rights: the right to synchronise Recording in timed relation with audio-visual images or other media content to create a Production; and/or **Mechanical Rights**: the right to reproduce, duplicate and release Recording as part of a Production — in the media and for the licensed uses as set out below, subject to the Prohibited Uses and full payment of the applicable licence fee.

4. Licensed Uses / Media

Comprehensive Commercial Licence

- i. **Video/Film productions** – All media;
- ii. **Online streaming videos and podcasts** – All media;

Videos, films, or podcasts, including personal, corporate, and commercial works distributed through all public social media platforms or commercial streaming platforms, including AVOD and SVOD platforms such as YouTube, Vimeo, Facebook, Netflix, Amazon, Apple platforms or Hulu.
- iii. **Online advertising** – All media;
- iv. **Apps, games, and multimedia**;

Computer, mobile, online applications and games, slideshows, multimedia presentations, educational courses, including those online, and audiobooks and all commercial uses.
- v. **TV/radio broadcasts**;

Terrestrial, satellite, cable TV, IPTV and radio. Programs, news, documentaries, TV series, talk shows, etc.

vi. **TV/radio advertising** – All media and platforms;

vii. **Film and theatrical;**

Student, amateur, or professional festivals, theatrical distribution of a film or live theatrical performance shown to the general/mass public, e.g., in movie theatres, cinemas, dramatic theatres.

viii. **Other uses;**

Any other commercial or non-commercial use, the purpose of which is to synchronise Recording to a visual image or other media content and including the right to use or redistribute Recordings as a part of on-hold systems, telephone or mobile phone ringtones.

5. Prohibited Uses

Licensee **may not**:

- Transfer the rights, sublicense, sell, resell, present, lease, lend, distribute, share, make available for download or streaming, and/or transfer Recording to any other individual or production company (other than in-context in the exploitation of the Production);
- Create/produce new musical works based on Recordings (musical compositions, songs) and/or 'sample' the Recordings or any part of the Recordings for use in a new sound recording for release on any platform (including streaming platforms);
- Use/include Recordings as standalone files (in full length or shortened form) in musical releases in any format, including music compilation CDs/DVDs or singles, EPs or albums in any format on any platform (including streaming platforms);
- Redistribute Recordings as a part of different multimedia templates (e.g., website templates, video templates, e-card templates, slideshow templates) that are subsequently offered to multiple end-users;

6. Broadcast/Public Performance

Certain public performance rights in the Recordings are vested in APRA and **not included** with this license for Recordings. Using Recordings in a Production that is broadcast and/or publicly performed requires additional licensing from APRA and/or its affiliated international collection societies ("**PROs**") and Licensee may be subject to additional fees collected by APRA and/or PROs.

Broadcast and public performance use requires filling in and submitting a cue sheet (reporting the use of music) to APRA/PROs or providing a broadcaster or relevant media platform with the proper cue sheet.

Please note: you are generally not required to obtain an additional license from APRA or PROs, or to pay additional fees for use of Recordings. If your Production is performed or broadcast on TV, radio, Netflix, YouTube, cinema, etc., you are covered in most cases as these companies customarily have public performance licenses in place with APRA/PROs and pay fees for the right to publicly perform music (including music embedded in audio/visual productions). If, however, you perform or broadcast your Production in public places

(e.g., at a public event, trade show, trade centre, on a digital billboard), always check with the event organiser if it has a public performance license; otherwise, you may be required to obtain your own public performance.

7. Editing Recordings

Licensee may edit, modify, and alter Recordings (crop, lengthen, shorten, fade, pitch, filter, loop, etc.) to fit the requirements of their Production. If such modification or alteration constitutes a derivative work (a work based upon a Recording) or new arrangement, Licensee does not acquire any copyright ownership or equivalent rights in or to any Recordings, and Licensee shall use such derivative work only in accordance with this License as if it was Recording.

8. Copyright & Ownership

Recordings are owned/controlled solely and exclusively by Refractive and are protected by copyright under New Zealand law and worldwide pursuant to various laws of international treaties and other applicable intellectual property laws. Further, all "Content" on the Refractive website, including but not limited to digital downloads of Recordings, streamed Recordings and related digital content, including songs, mixes and loops, downloads or samples, and all artwork, graphics, video, text, editorials, content descriptions, interfaces, trademarks, logos, images, photographs, and any other element of the website, including the layout, look and feel, organisation, and coordination of such Content on the website is the property of or is licensed to Refractive, and is protected worldwide by intellectual property laws.

9. Refund Policy

Refractive is unable to accept cancellation of any orders for digital downloads or offer any refund for such orders once Licensee has commenced downloading. Each Recording has a sample, extract, or preview available for Licensee's review before purchasing that clearly demonstrates the content of each Recording, thereby giving Licensee a clear understanding of what is being purchased. However, in case of technical issues or errors on the website associated with payments or charges, or if Recordings are corrupted, a refund may be issued if the issue or error is unable to be reasonably resolved by Refractive.

10. Termination & Cancellation

In the case of a sale being reversed or cancelled or of money being refunded to Licensee for any reason, all rights granted under this Agreement will immediately terminate. Licensee must stop their use of Recordings and destroy all copies of Recordings.

11. Warranties & Indemnity

Refractive warrants that it has full authority to grant all the rights contemplated by the terms set out in this Agreement and that it has obtained all necessary permissions to grant such rights to the Licensee. Licensee warrants and represents that it will only use Recordings in accordance with the terms of this Agreement and indemnifies Refractive against all direct, indirect and consequential injury loss or damage of any kind suffered by Refractive as a result of breach by Licensee of this Agreement.

12. General Website Usage Terms and Conditions

Service Level and Disclaimer: Refractive will use its reasonable efforts to keep the Service operational. However, technical problems or maintenance may, from time to time, result in interruptions. Refractive is not responsible for unavailability or deficiencies of the Services caused by you, deficiencies in the Internet access or any other event beyond Refractive's control. Refractive will from time to time carry out updates and maintenance of the Service, during which the Service might be unavailable.

THE WEBSITE SERVICE IS PROVIDED "AS IS" AND "AS AVAILABLE" AND TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW REFRACTIVE MAKES NO WARRANTY, REPRESENTATION, EXPRESS OR IMPLIED, AND/OR DISCLAIMER AS REGARDS TO THE AVAILABILITY, FITNESS FOR PURPOSE, NON-INFRINGEMENT, CONTENT OR OTHER DATA PROVIDED AND THE QUALITY OF THE SERVICE. YOU USE THE SERVICE AT YOUR OWN RISK. YOU ALSO ACKNOWLEDGE THAT FREEDOM FROM PROGRAM ERRORS CANNOT BE OBTAINED IN THE SOFTWARE INDUSTRY. NEITHER REFRACTIVE NOR ANY OWNER OF CONTENT WARRANTS THAT THE SERVICE IS FREE OF MALWARE OR OTHER HARMFUL COMPONENTS.

REFRACTIVE SHALL IN NO EVENT, AND TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BE LIABLE FOR ANY DAMAGES AS A CONSEQUENCE OF SHUTDOWN, LOSS OF OR EFFECT ON DATA, LOSS OF PROFIT, AND CLAIMS FOR DAMAGES BY A THIRD PARTY OR OTHER INDIRECT INJURY.

Refractive reserves the right at any time, and from time to time, to modify or discontinue, temporarily or permanently, functions and features of the website service with or without notice, and Refractive shall have no liability to you if Refractive exercises such rights.

Third Party Applications: The website is integrated with third party applications, websites and other services to make the Recordings available to you as a user. These third party applications may have their own terms and conditions of use etc., and your use of these third party applications will therefore be subject to the applicable terms and conditions for such third party provider. Refractive is not responsible or liable for behavior, content or features of any third party application.

13. Limitation of Liability

In no event shall Refractive's total aggregate liability to Licensee or any third party claiming through Licensee arising out of Licensee's use of Refractive's website service and/or Licensee's use of or inability to use Recordings in connection with this Agreement (whether in contract, tort, or otherwise) exceed the amount of any fees actually paid by Licensee to Refractive for use of Recordings in the previous 6 months. Licensee's sole remedy shall be a refund, and Licensee agrees that, to the fullest extent possible at law, this License is granted to them without any further warranty or recourse.

14. Partial Invalidity

If any provision of this Agreement shall be invalid or unenforceable, at any time or to any extent, then the remainder of this Agreement shall not be affected thereby. Each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

15. Jurisdiction

This Agreement shall be governed by the laws of New Zealand and Licensee submits to the non-exclusive jurisdiction of the New Zealand Courts. Provided that Refractive has the right regarding illegal copying or distribution of a Recording to the public, to instigate proceedings for damages or injunctions in any court having jurisdiction.