

Parties

COMMUNITY BROADCASTING ASSOCIATION OF AUSTRALIA LIMITED (ACN 003 108 030)
of Level 3, 44-54 Botany Road, Alexandria NSW 2015
(CBAA)

THE PARTY NAMED IN THE REGISTRATION FORM FOR THE APPLICATION
of Address named in the registration form for the Application
(Member)

Background

- A. CBAA and ARN have entered into the Service Agreement, whereby ARN agrees to provide CBAA with channels such as the Channel on the Application.
- B. CBAA agrees to provide the Member with the Channel, for the Member's exclusive broadcasting and operation.
- C. The Parties wish to document this arrangement pursuant to the terms and conditions of this Agreement.

Terms and Conditions

1 Definitions and Interpretation

1.1 Definitions

In this Agreement, unless the context otherwise requires:

- (a) **ADC** means Australian Disputes Centre;
- (b) **Agreement** means this internet channel service subcontract agreement, which is Executed as set out in **clause 10.11**;
- (c) **Application** means the internet and mobile based audio content application known as "iHeartRadio";
- (d) **ARN** means Australian Radio Network Pty Ltd (ACN 065 986 987);
- (e) **Background IP** means Intellectual Property Rights:
 - (i) owned or licensed by a Party before the Commencement Date; or
 - (ii) which a Party acquires after the Commencement Date and where such acquisition of rights is unrelated to this Agreement;
- (f) **Business Day** means a day which is not a weekend, public holiday or bank holiday in New South Wales;
- (g) **Channel** means a channel on the Application for the exclusive broadcasting and operation of the Member;
- (h) **Channel Services** means operating the Channel and broadcasting content on the Channel;
- (i) **Claim** includes any claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action or claim for compensation;

- (j) **Commencement Date** means the date on which this Agreement is Executed by the Member;
- (k) **Confidential Information** means any of the following in relation to the Parties:
- (i) their information, documentation and materials;
 - (ii) their ideas and strategies;
 - (iii) any of their intellectual property which is unpublished;
 - (iv) any information relating to their finances or other business information; and
 - (v) any other information of a Party which it designates as being confidential or which by its nature the other Party ought reasonably be aware is of a confidential nature,
- but does not include any information which is in the public domain (otherwise than by a breach of a Party of its obligations of confidentiality);
- (l) **Content** means audio content which the Member broadcasts on the Channel;
- (m) **Corporations Act** means *Corporations Act 2001* (Cth);
- (n) **Execute** means to execute in accordance with **clause 10.11**, and **Executed** and **Execution** have the corresponding meanings;
- (o) **Further Term** means a further term of this Agreement of one (1) year, pursuant to **clause 3.2**;
- (p) **Intellectual Property Rights** means all intellectual property rights, including the following rights:
- (i) patents, copyright, know-how, designs, trade and service marks (including goodwill in those marks), domain names and trade names and any right to have Confidential Information kept confidential;
 - (ii) any application or right to apply for registration of any of the rights referred to in **clause 1.1(p)(i)**; and
 - (iii) all rights of a similar nature to any of the rights in **clauses 1.1(p)(i)** and **1.1(p)(ii)** that may subsist anywhere in the world (including Australia),
- whether or not such rights are registered or capable of being registered;
- (q) **New IP** means all Intellectual Property Rights in any work product created or developed by the Member in the course of, or in connection with the Channel Services;
- (r) **Party** means CBAA or Member as the context requires, and **Parties** is a reference to both;
- (s) **Service Agreement** means the internet channel service agreement between CBAA and ARN, in which ARN agrees to provide CBAA with channels (including the Channel) on the Application, being the agreement which is **Annexure A** to this Agreement;
- (t) **Term** means the term of this Agreement as set out in **clause 3.1**, and which may be extended pursuant to **clause 3.2**;
- (u) **Terminating Date** means the date on which this Agreement terminates, which is either:

- (i) the first anniversary of the Commencement Date; or
- (ii) where the Agreement is extended for a Further Term pursuant to **clause 3.2**, the date of expiry of the Further Term.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) a reference to a thing includes a reference to any part of that thing;
- (b) a reference to dollars or \$ is a reference to Australian currency;
- (c) the singular includes the plural and vice versa;
- (d) the word **person** includes an individual, the estate of an individual, a body politic, a corporation, a statutory or other authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (e) the words writing and written include any other mode of representing or reproducing words, figures, drawings or symbols in a visible form;
- (f) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
- (g) a reference to clause, schedule or annexure is to a clause, schedule or annexure to this Agreement;
- (h) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it; and
- (i) headings are for convenience only and do not affect the construction or interpretation of this Agreement.

2 Service Agreement

2.1 Formation of Agreement

The Parties acknowledge that this Agreement is conditional upon the Service Agreement remaining in operation during the Term.

2.2 Back-to-back operation

- (a) The Member acknowledges that all the provisions of the Service Agreement which are pertinent to the operation of the Channel will have back-to-back application to this Agreement in relation to the Channel Services to be provided by the Member.
- (b) For the purposes of **clause 2.2(a)**, back-to-back application means that:
 - (i) the obligations of CBAA and the rights and remedies of CBAA under the Service Agreement which are pertinent to the Channel, including any amendments or variations to them as notified to the Member from time to time, will be deemed incorporated into this Agreement as if:
 - (A) the obligations of CBAA under the Service Agreement were obligations of the Member under this Agreement; and

- (A) the rights and remedies of CBAA under the Service Agreement were rights and remedies of the Member under this Agreement; and
- (ii) to the extent of any inconsistency between the provisions of the Service Agreement and any other clause of this Agreement pertinent to the operation of the Channel, the provisions of the Service Agreement will prevail, but wherever possible, the clauses of this Agreement will have cumulative effect and will be so interpreted.

2.3 Breach

- (a) The Member warrants that it has read the Service Agreement and fully understands the Service Agreement's contents, and the obligations which the Service Agreement places on CBAA.
- (b) The Member warrants that it will not do anything or allow anything to be done which would directly or indirectly result in CBAA being in breach of the Service Agreement.
- (c) If the Member does anything or allows anything to be done which would directly or indirectly result in CBAA being in breach of the Service Agreement, the Member indemnifies CBAA against any Claims arising from the breach.

3 Term

3.1 Term

This Agreement shall operate for the Term, commencing on the Commencing Date and coming to an end on the Terminating Date.

3.2 Option to renew

The Agreement may be renewed for a Further Term following any Terminating Date in accordance with **clause 3.3**.

3.3 Exercise of option

This Agreement will automatically be renewed for the Further Term at the end of the Term unless a Party serves the other Party with a written notice of its intention not to renew the Agreement no later than thirty (30) days before the end of the Term.

3.4 No limit on exercise

For the avoidance of doubt:

- (a) subject to **clause 3.4(b)**, there is no limit to the number of times that the Term of the Agreement may be extended pursuant to **clauses 3.2** and **3.3**; and
- (b) if during a Further Term, the Service Agreement expires or terminates, then the Agreement will also terminate at the same time as the expiration or termination of the Service Agreement.

4 Channel

4.1 Channel

- (a) Subject to the requirements of the Service Agreement, CBAA must use its best endeavours to cause ARN to provide the Member with the Channel to enable the Member to provide the Channel Services during the Term, in consideration for

the membership fee which the Member has provided to CBAA, receipt of which is acknowledged by CBAA.

- (b) Without limiting any of the Member's other obligations under **clause 2.3(b)**:
- (i) the Member must ensure that all Content complies with the specifications set out in Schedule 1 to the Service Agreement; and
 - (ii) the Member must not promote any of the Content on any channels that are not:
 - (A) owned by either the Member or CBAA: or
 - (B) the Channel.

4.2 Costs

All costs involved in delivering Content on the Channel, as referred to in clause 2(e) of the Service Agreement, will be payable by the Member.

5 Performance

5.1 Performance

The Member must, during the Term:

- (a) conduct the Channel Services at all times during the Term, in a conscientious, expeditious and professional manner according to any standards that normally apply to the Channel Services;
- (b) at all times have the necessary skills and experience and hold all necessary qualifications to conduct the Channel Services;
- (c) comply with CBAA's reasonable directions when conducting the Channel Services; and
- (d) comply with all terms and conditions of this Agreement.

5.2 Conduct

In performing the Channel Services, the Member will:

- (a) comply with the laws in force (in the jurisdiction(s) in which the Channel Services are performed) in the performance of its obligations under the Agreement;
- (b) ensure that no Content infringes any rights of third parties; and
- (c) not do anything which may directly or indirectly impair the good name or business of CBAA.

5.3 Delay

The Member must notify CBAA immediately of any fact or circumstance that could or might prevent it or delay it in the delivery of the Channel Services.

5.4 No Authority

- (a) The Member warrants that the Member has no authority to engage the services of any person as an employee or agent of CBAA.
- (b) Except with the prior written approval of CBAA, the Member will not bind CBAA to any contract, or create any liability against CBAA in any way or for any purpose.

5.5 Privacy

The Member will comply with all privacy obligations under any law or regulation.

6 Intellectual Property Rights

6.1 Ownership of Background IP

Subject to **clause 6.3(a)**, each Party shall retain all Intellectual Property Rights in its Background IP and nothing in this Agreement transfers ownership in, or otherwise grants any rights in, a Party's Background to the other Party.

6.2 New IP

Subject to **clause 6.3(a)** and any restrictions in the Service Agreement, the Parties agree that all right, title and interest in any New IP shall vest in the Member on creation.

6.3 Licence

- (a) Due to clause 6 of the Service Agreement, the Member agrees to grant ARN a non-exclusive, non-transferable, non-sublicensable licence to use the Content as permitted by that clause.
- (b) The licence granted under **clause 6.3(a)** may only be revoked by the Member when the licence no longer needs to be in effect in order for CBAA to comply with the Service Agreement.

7 Termination

7.1 Notice to rectify breach

- (a) If a Party commits a breach of this Agreement, the other Party may serve it with a written notice to rectify the breach.
- (b) A notice under **clause 7.1(a)** must:
 - (i) state it is a notice given under **clause 7.1(a)**;
 - (ii) specify the alleged breach with reasonable details;
 - (iii) require the Party who committed the breach to rectify it; and
 - (iv) specify a date (which must not be fewer than five (5) Business Days after the notice is served) by which the Party who committed the breach must rectify it.

7.2 Other Party may terminate

If the recipient of a notice under **clause 7.1** fails to rectify the breach within the time specified in the notice, the other Party may, by further written notice, terminate the Agreement immediately.

7.3 Termination for insolvency

Notwithstanding anything else herein contained, either Party may immediately terminate this Agreement if:

- (a) the other Party enters into a deed of arrangement or an order for it to be wound up;
- (b) an administrator, receiver or receiver/manager or a liquidator is appointed to the other Party pursuant to an appropriate statute; or

- (c) the other Party would be presumed to be insolvent by a court in any of the circumstances referred to in the Corporations Act.

7.4 Termination of Service Agreement

- (a) In the event that, for any reason:
 - (i) the Service Agreement is terminated, this Agreement will terminate on the same day as termination of the Service Agreement; or
 - (ii) the Service Agreement is reduced in scope, the scope of this Agreement will be limited accordingly on the same day as the reduction of the Service Agreement.
- (b) In the event that this Agreement is terminated or reduced in accordance with **clause 7.4(a)**, CBAA must notify the Member as soon as is reasonably practicable, and in any event within one (1) Business Day, of CBAA becoming aware of the termination or reduction of the Service Agreement.
- (c) Notwithstanding anything else contained in this Agreement, in the event that the Service Agreement is terminated or reduced, and there are obligations in the Service Agreement which survive the termination or reduction of the Service Agreement, those same obligations will survive the termination or reduction of this Agreement.

8 Dispute Resolution

8.1 Dispute resolution process

- (a) Subject to **clause 8.1(b)**, the Parties shall attempt to settle any dispute in relation to this Agreement by using the dispute resolution process provided for in this **clause 8**, before resorting to court proceedings.
- (b) Nothing in this **clause 8** will preclude either Party from seeking urgent interlocutory relief.

8.2 Notice of dispute

A Party claiming that a dispute has arisen must give written notice of the dispute to the other Party. The Parties must endeavour in good faith to resolve the dispute within ten (10) Business Days of receipt of a notice of dispute.

8.3 ADC guidelines

- (a) If a dispute is not resolved within the ten (10) Business Day period or such further period as the Parties agree in writing, the dispute shall be referred to the ADC for mediation in accordance with the ADC's 'Mediation Guidelines for Commercial Mediation' which are operating at the time the matter is referred to the ADC. The ADC's mediation guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved.
- (b) The Parties shall do all things reasonably required to refer the dispute to mediation by ADC and shall bear the costs of the mediation equally.

8.4 Post mediation

In the event that the dispute has not been settled within twenty (20) Business Days (or such other period as agreed to in writing between the Parties) after the conduct of mediation, the Parties are free to pursue any other procedures available at law for the resolution of the dispute.

9 Service of Notices

9.1 Effective notice

Any notice or other communication required or permitted, under the Agreement, to be served on a Party must be in writing and may be served:

- (a) by leaving it at the Party's current address for service or by posting it by prepaid post to the Party's current address for service:
 - (i) for the Member, being the address set out in the Registration Form; and
 - (ii) for CBAA, being 44-54 Botany Road, Alexandria NSW 2015;
- (b) by facsimile to the person's current number for service:
 - (i) for the Member, being the facsimile number set out in the Registration Form; and
 - (ii) for CBAA, being 02 9319 4545; or
- (c) by electronic mail to the address for service:
 - (i) for the Member, being the email address set out in the Registration Form; and
 - (ii) for CBAA, being office@cbaa.org.au.

9.2 Service by post

Where a notice is sent by post, service of the notice shall be taken to be effected by properly addressing, prepaying and posting a letter containing the notice and shall be deemed to have been effected on the third (3rd) Business Day after the date of posting.

9.3 Facsimile or electronic mail

Where a notice is sent by facsimile or electronic mail, service of the notice shall be taken to be effected by properly addressing and sending the notice and in such case shall be taken to have been effected on the Business Day after it is sent.

10 General Conditions

10.1 Jurisdiction

This Agreement is to be governed by and construed in accordance with all applicable laws in force in the state of New South Wales and the Parties submit to the non-exclusive jurisdiction of the courts of the state of New South Wales.

10.2 Relationship between the Parties

Nothing in this Agreement will be construed to make the Member a partner, agent or employee of, or for CBAA.

10.3 Further assurances

The Parties shall execute such further documents and do all such further things as may be necessary to implement and carry out the intent of this Agreement.

10.4 Non-merger of provisions

A provision of this Agreement which can and is intended to operate after its conclusion will remain in full force and effect.

10.5 Costs

Each Party will bear its own costs relating to the negotiation and Execution of this Agreement.

10.6 Waiver

- (a) A single or partial exercise or waiver of a right relating to this Agreement will not prevent any other exercise of that right or the exercise of any other right.
- (b) A Party will not be liable for any loss, cost or expense of any other Party caused or contributed to by any waiver, exercise, attempted exercise or failure to exercise, or any delay in the exercise of, a right.

10.7 Severability

If any clause or part of a clause of this Agreement is invalid, illegal, unlawful or otherwise incapable of enforcement, that clause or part of a clause will be deemed to be severed from this Agreement and of no force and effect. All other clauses and parts of clauses of this Agreement, however, will nevertheless prevail and remain in full force and effect and be valid and fully enforceable.

10.8 Entire Agreement

With the exception of the Service Agreement, this Agreement is the entire agreement between the Parties and supersedes all other communications, negotiations, arrangements and agreements, whether verbal or written, between the Parties in respect of the subject of this Agreement.

10.9 No Amendments without agreement

This Agreement may not be modified, discharged or abandoned unless by a document signed by both Parties.

10.10 Assignment

The Member will not assign this Agreement without the prior written consent of CBAA.

10.11 Execution

- (a) CBAA has Executed this document by providing this Agreement to the Member, along with the tick box after the Agreement.
- (b) The Member Executes this Agreement by ticking the box at the end of the Agreement, and then submitting it online.

Annexure A Service Agreement

iHeartRadio Station Specifications

Station Name	30 characters max.
Station Description	40 characters max.
Website	
Social	Facebook Twitter Google+ Instagram
Contact	Request SMS Email
Genres	Primary Genre: Secondary Genres: (can be multiple secondary genres)
Markets	Primary Market: Origin Market: Secondary Markets: (can be multiple secondary markets)
Station logo:	<p>600x600 transparent PNG file at least 72dpi, with no extra taglines or text. If you can't make the logo completely transparent, the background should not fill the whole 600x600 space (it should feel like a badge rather than a background, like you do with the movie station).</p> <p>With that source image, we'll be able to scale down for optimal display on both light and dark backgrounds across the iHeart product suite."</p> <p>The single PNG needs to work on white, grey and black backgrounds.</p> <p>Alternatively you can stick logos on a white block, but not the entire 600 x 600.</p> <p>Hero image also available for main station page 2880 x 720 (Jpg not bigger than 3MB). Note there are some exclusion areas for titling etc.</p>

Streaming	<p>Please supply a stream URL that points to a:</p> <ul style="list-style-type: none">• 64kbps AAC-HE (AAC plus) encoded stream. <p>Please ensure that it's using the SBR extension.</p> <p>You can check this by using VLC media player, clicking on the Tools menu, and clicking on Codec Information.</p>
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