

RIAA Ex. N-111-DP

RIAA Ex. N-111-DP - The MCPS Ringtone Licence

RINGTON LICENCE

BETWEEN :-

(1) **MECHANICAL-COPYRIGHT PROTECTION SOCIETY LIMITED** whose registered office is at 29-33 Berners Street London W1T 3AB - contracting for and on behalf of itself and for and on behalf of and as agents of its various members and affiliated societies ("**MCPS**"); and

(2) _____ whose registered office is at
_____ ("**the Licensee**")

Additional Definitions:

Commencement of Agreement	[_____] (" the Commencement Date ")
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The terms and conditions of this licence are attached

Signed on behalf of the Licensee:

_____ **Date:** _____

Signed on behalf of the Mechanical-Copyright Protection Society Limited:

_____ **Date:** _____

TERMS AND CONDITIONS

1. Definitions

"Accounting Statement"	means the MCPS-PRS Ringtones Revenue Reporting Form as set out in the schedule to this Agreement.
"Advance"	means UK£500 (plus VAT or equivalent sales tax)
"CDPA"	means the Copyright Designs and Patents Act 1988, as amended from time to time.
"Content Provider"	means the party which, in relation to Ringtone, is the last party in the chain of transmission to the User actually responsible for making the Ringtone available to Users and not, for the avoidance of doubt, a mere conduit which is only providing physical facilities for enabling or making a communication, provided that from or through this party, accurate details as to the identity of the Repertoire Works included in a Ringtone and the number of uses thereof and the value and the destination thereof can be obtained and audited.
"Mobile Device"	means a portable device, one of the purposes of which is for communicating with other such devices or fixed line telecommunications systems.
"PRS"	means the Performing Right Society Limited.
"Quarter"	means each of the periods from 1 st January to 31 st March, 1 st April to 30 th June, 1 st July to 30 th September, and 1 st October to 31 st December, throughout the Term.
"Relevant Revenue"	means: (a) the gross amount (less VAT or other equivalent sales tax where applicable) paid or payable by the User (or any other party in circumstances where a person other than the User is purchasing the Ringtone) directly or indirectly in relation to the supply of Ringtones; and (b) all other revenue (less VAT or other equivalent sales tax where applicable) received or receivable by the Licensee (or any other party at the order of or on behalf of the Licensee (including, without limitation, a telecommunications services supplier)) directly or indirectly in relation to the supply of Ringtones to Users' Mobile Devices (including, without limitation, advertising or sponsorship revenues), without any deductions of whatsoever nature.
"Repertoire Work"	means any work (or part thereof) consisting of music (and any words written to be used with such music) the copyright in which is owned in the United Kingdom from time to time by MCPS or its member(s) or its affiliated societies (or such affiliated societies' members).
"Reporting Statement"	means the MCPS-PRS Ringtones Reporting Statement as set out in the schedule to this Agreement.

"Ringtone"	means a short audio recording, the primary purpose of which is to notify the User of an incoming call or message.
"Royalty Fee"	means the greater of (a) 10% of the Relevant Revenue, and (b) UK£0.10 per Ringtone delivered to any User.
"Term"	means the period starting on the Commencement Date and ending upon termination of this Agreement in accordance with clause 8.
"United Kingdom"	means the United Kingdom of Great Britain and Northern Ireland and the Channel Islands and the Isle of Man.
"User"	means a person who has purchased from the Licensee a Ringtone for their Mobile Device.

2. Grant of Licence

2.1 Subject to the terms and conditions contained in this Agreement and conditional on compliance with such terms and conditions, MCPS licenses to the Licensee on a non-exclusive basis during the Term the right to:

- (a) reproduce Repertoire Works in the form of Ringtones anywhere in the World on servers for the sole purposes of (i) transmitting the same to Users in the United Kingdom (for private and domestic use) or (ii) providing a free of charge streamed-only clip to potential Users in the United Kingdom for the purpose of such User previewing the same deciding whether to purchase a Ringtone; and
- (b) reproduce, on a temporary basis only, Repertoire Works in the form of Ringtones anywhere in the World in the form of temporary server or network copies solely for the purposes of the transmission of the Ringtone from the originating server to a User's Mobile Device in the United Kingdom;
- (c) reproduce or authorise the reproduction of Repertoire Works in the United Kingdom in the form of Ringtones on Users' Mobile Devices.

2.2 The Licensee shall use appropriate encryption measures to prevent the unauthorised supply (or onward-supply) or reproduction of Ringtones incorporating Repertoire Works licensed under this Agreement.

3. Limitations on Licence

3.1 The licence granted under clause 2.1 above only applies insofar as the Licensee is, and remains throughout the Term, the Content Provider in relation to the delivery of Ringtones to Users.

3.2 For the avoidance of doubt, the licence granted in clause 2.1 above does not cover:

- (a) the public performance, communication to the public or any other transmission of whatsoever nature of any Repertoire Work; or
- (b) any sound recording rights exploited within the Ringtone; or
- (c) any musical works which are not Repertoire Works; or
- (d) any other rights not expressly granted under this Agreement.

- 3.3 The licence granted in clause 2.1 above does not apply to the use of any Repertoire Work in an advertisement or sponsorship message (whether such advertisement or sponsorship message is promoting or advertising sales of the Ringtones themselves or any other goods or services). By way of example, but without limitation to the generality of the foregoing, the licence granted under this Agreement does not cover the reproduction of a Ringtone in a television advertisement or promotion for Ringtones. A separate licence is required for such use.
- 3.4 The licence granted in clause 2.1 above does not apply to:
- (a) any Repertoire Work which has been synchronised with any visual images (whether moving or still) of whatsoever nature; or
 - (b) any unauthorised adaptation, parody, burlesque or arrangement of a Repertoire Work; or
 - (c) any Ringtone which incorporates more than 30 seconds of a Repertoire Work; or
 - (d) any Ringtone which infringes the moral rights of the composer of a Repertoire Work; or
 - (e) dramatico-musical works.
- 3.4 For the avoidance of doubt, this Agreement only covers Repertoire Works. It does not extend to other rights or interests, including (by way of example only), sound recordings, films, dramatic works, performers' rights, moral rights or rights in performances. Nothing in this Agreement shall entitle the Licensee to exercise the licences or authorisations contained in this Agreement in relation to a particular Repertoire Work where the appropriate waivers, consents and/or licences have not been obtained from the person(s) owning or controlling rights in relation to sound recordings containing that Repertoire Work or performers of that Repertoire Work.
- 3.5 Certain Repertoire Works shall be excluded from the licences granted under this Agreement. MCPS will notify the Licensee of such excluded Repertoire Works. Where MCPS has notified the Licensee of excluded Repertoire Works, then the licences granted under this Agreement shall not apply in relation thereto.

4. Licence Fees

- 4.1 In consideration of the licence granted under this Agreement and subject to clause 4.2, the Licensee shall pay to MCPS:
- (a) the Advance; and
 - (b) the Royalty Fee.
- 4.2 The Advance is recoupable against the Royalty Fee, but is non-returnable. For the avoidance of doubt, in the event that, throughout the Term, the total Royalty Fee payable by the Licensee to MCPS is less than the Advance, no part of the Advance shall be repayable to the Licensee by MCPS.
- 4.3 The licence fees referred to in clause 4.1 are subject to VAT or other equivalent sales tax if applicable. The Licensee shall pay to MCPS VAT (or other tax where applicable) at the rate or rates from time to time in force on any sums payable under this Agreement.
- 4.4 Following the end of each calendar year throughout the Term, MCPS shall be entitled to increase, in line with the increase in the retail price index over the preceding 12 months period, the minimum royalty per Ringtone supplied (referred to in the

definition of 'Royalty Fee'). MCPS will give at least two months notice of such change to the Licensee.

5. Payment of Licence Fees

- 5.1 The Licensee shall pay to MCPS the Advance on the date of signature of this Agreement (or within 31 days of the date of invoice for such sum, if later).
- 5.2 Within 31 working days of the end of each Quarter the Licensee shall provide to MCPS (at the address notified by MCPS to the Licensee) a fully and accurately completed Accounting Statement.
- 5.3 If the Royalty Fee for the first Quarter exceeds the Advance, then MCPS shall send the Licensee an invoice for the required additional licence fees. The Licensee shall pay such amount to MCPS within 31 days of the date of such invoice. If the Royalty Fee for the first Quarter does not exceed the Advance, then the remaining net Advance shall be carried over to the next Quarter to be recouped against that Quarter's Royalty Fee.
- 5.4 Where, in relation to any particular Quarter, the Licensee fails to provide the information necessary to allow the calculation of the Royalty Fee, then the Licensor shall be entitled to fix the Royalty Fee based on (a) the Royalty Fees payable in previous Quarters and (b) any other relevant factors which could reasonably lead the Licensor to believe that the Royalty Fee payable would be materially different to those paid or payable in previous Quarters.
- 5.5 Without prejudice to any other right or remedy of MCPS, and without imposing an obligation to accept late payment, where any fees payable under this Agreement are not paid by the due date, the Licensee shall pay interest on such late payment calculated on a daily basis at an annual rate of 3% over the base rate, current from time to time, of National Westminster Bank Plc payable from the date on which the payment should have been made to the date on which the payment was made.

6. Reporting

- 6.1 Within 31 days of the end of each Quarter, the Licensee shall submit to MCPS a fully and accurately completed Reporting Statement.
- 6.2 MCPS reserves the right to alter the form of the Reporting Statement and the data required to be given in such Reporting Statement. MCPS shall give the Licensee one month notice of any such change.
- 6.3 Where the Licensee is licensed by PRS in relation to the reproduction of Ringtones, then only one Reporting Statement is required to be submitted by the Licensee following the end of each Quarter on behalf of both PRS and MCPS.

7. Auditing

- 7.1 The Licensee shall keep and make available for inspection upon reasonable notice, both during and for twelve months after termination of this Agreement, proper, detailed books and records relating to (a) the supply of all Ringtones (b) any income or other consideration received by or on behalf of the Licensee in relation to the supply of Ringtones, together with any supporting documentation relating thereto.
- 7.2 The Licensee shall allow upon reasonable access to its premises to inspect accounting records, but not more than once per annum. The duly authorised representatives of MCPS shall be entitled to inspect, make extracts and take copies of any of the information and/or documentation available and to carry out such work as is, in their reasonable opinion, considered necessary to verify compliance with the provisions of this Agreement.

- 7.3 If tests under any audit and verification process indicate under-payment of the correct licence fees during which monitoring has been carried out by or on behalf of MCPS, then, without prejudice to MCPS's other rights under this Agreement, the Licensee shall pay the amount of the underpayment plus interest based on the period from which the correct fee should have been paid to MCPS to the date when it was actually paid (at the rate of 3% over the base rate current from time to time of National Westminster Bank Plc).
- 7.4 If any audit and verification process discloses (a) under-payment of more than 7.5% of the correct licence fees during which monitoring has been carried out by or on behalf of MCPS and/or (b) failures to report correctly amounting to at least 7.5% of the Ringtones supplied during the period monitored by or on behalf of MCPS, then, without prejudice to MCPS's other rights under this Agreement, the Licensee shall pay, in addition to the payment referred to in clause 7.3, MCPS's reasonable costs of such audit and verification within 28 days of receipt of MCPS's VAT invoice therefor.
- 7.5 In conducting an audit under this clause 7, MCPS agrees not to disclose any confidential information of the Licensee to any third party, except that MCPS may disclose any such information to (a) the MCPS-PRS Alliance Limited for the purpose of administering this Agreement and distributions to members, (b) the Mechanical-Copyright Protection society Limited for the purposes of administering any agreement it may have with the Licensee and (c) MCPS's professional advisors for purposes connected to the administration of this Agreement.

8. Termination

- 8.1 Either party may terminate this Agreement by giving three months written notice to the other party.
- 8.2 Either party shall have the right to terminate this Agreement immediately by written notice to the other party if:
- (a) the other commits a material breach of this Agreement which is not capable of remedy; or
 - (b) the other commits a material breach of this Agreement which is capable of remedy but which has not been so remedied within 14 days of notice thereof; or
 - (c) the other goes into receivership or any resolution is passed for its winding-up or liquidation (other than for the purposes of reconstruction or amalgamation) or is otherwise unable to pay its debts.
- 8.3 Where the Licensee is licensed by PRS in relation to the reproduction of Ringtones and PRS terminates that licence agreement for any reason, then MCPS shall have the right to terminate this Agreement with effect from the same date by giving written notice to the Licensee.
- 8.4 If during the Term the Licensee obtains direct from an MCPS member a licence in respect of the use of Repertoire Works owned or controlled by that member ("the Member's Works") for the reproduction of Ringtones, that is, authorising substantially the same use of the Member's Works as is authorised hereunder, this Agreement shall terminate forthwith as regards the Member's Works. The Licensee must notify MCPS in writing of any such licences into which the Licensee enters.

9. Miscellaneous

- 9.1 This Agreement has been granted by MCPS on the basis of the representations made by the Licensee in the process of applying for this Agreement, and in particular the information provided by the Licensee in the 'Application Form (Ringtones)'. If any of those representations are materially incorrect, the licence granted under this

Agreement shall not apply. The Licensee must notify MCPS immediately of any material changes in any of the facts and matters express or implied set out in the answers to the 'Application Form (Ringtones – MCPS)' and the licence granted under this Agreement shall not apply in any such case unless MCPS agrees otherwise in writing. For the avoidance of doubt, the Licensee seeking to supply Ringtones via additional services, clients or websites (to those included on the original Application Form) shall be deemed to be a 'material change'.

- 9.2 This Agreement is personal to the Licensee and the Licensee must not assign, sub-license or otherwise transfer any of its rights or obligations under this Agreement whether in whole or in part without the prior written consent of MCPS.
- 9.3 No delay or omission in exercising any right or remedy hereunder shall operate as a waiver thereof or of any other right or remedy and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other rights or remedies. No waiver shall be binding or effectual for any purpose unless expressed in writing and signed by the party giving it and any such waiver shall be effective only in the specific instance and for the purpose given.
- 9.4 If this Agreement creates any rights which would in the absence of this provision be enforceable by any person not a party to this Agreement, such rights shall not be enforceable.
- 9.5 This Agreement shall be construed according to the laws of England and Wales and the parties agree to submit to the jurisdiction of the English Courts.

Schedule to be attached

Form of Accounting Statement

Form of Reporting Statement