

RIAA Ex. N-112-DP

RIAA Ex. N-112-DP - The PRS Ringtone Licence

RINGTON LICENCE

BETWEEN :-

(1) **PERFORMING RIGHT 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 affiliated societies ("**PRS**"); and

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

Additional Definitions:

Commencement of Agreement	[_____] (" the Commencement Date ")
Quarterly Fee	UK £ 233.53 Exc. VAT (" the Quarterly Fixed Fee ") (subject to change pursuant to clause 4.4)

The terms and conditions of this licence are attached

Signed on behalf of the Licensee:

_____ **Date:** _____

Signed on behalf of the Performing Right 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.
"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.
"MCPS"	means the Mechanical-Copyright Protection Society Limited.
"Mobile Device"	means a portable device, one of the purposes of which is for communicating with other such devices or fixed line telecommunications systems.
"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: <ul style="list-style-type: none">(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 PRS 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) 5% of the Relevant Revenue, and (b) UK£0.05 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, PRS licenses to the Licensee on a non-exclusive basis during the Term the right to communicate to the public (as that act is described in the CDPA) in the United Kingdom Repertoire Works in the form of Ringtones to Users solely for the purpose of:

- (a) delivering such Ringtone to the User's Mobile Device; and
- (b) allowing the User to preview a Ringtone before purchasing it.

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 reproduction or copying of any Repertoire Work, whether made on the Licensee's equipment, on any User's Mobile Device or otherwise during the delivery of a Ringtone to a User; 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:

- (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) use of any Repertoire Work in such a way as to constitute an advertisement for any goods or in conjunction with a sponsorship message of whatsoever nature; or
 - (f) 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.

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 PRS:
- (a) the Quarterly Fixed Fee; and
 - (b) the Royalty Fee.
- 4.2 The Quarterly Fixed Fee is recoupable against the Royalty Fee, but is non-returnable. For the avoidance of doubt, in the event that, throughout any Quarter, the total Royalty Fee payable by the Licensee to PRS is less than the Quarterly Fixed Fee, (i) no part of the Quarterly Fixed Fee shall be repayable to the Licensee by PRS and (ii) no part of the Quarterly Fixed fee may be carried over to the following Quarter.
- 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 PRS 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, PRS shall be entitled to increase in line with the increase in the retail price index over the preceding 12 months period: (a) the Quarterly Fixed Fee and (b) the minimum royalty per Ringtone supplied (referred to in the definition of 'Royalty Fee'). PRS 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 PRS the Quarterly Fixed Fee on the first day of every Quarter throughout the Term (or within 31 days of the date of invoice for such sum, if later). Where the Commencement Date is within a Quarter, the first Quarterly Fixed Fee shall be pro-rated and shall be payable upon the date of signature of this Agreement.
- 5.2 Within 31 working days of the end of each Quarter the Licensee shall provide to PRS (at the address notified by PRS to the Licensee) a fully and accurately completed Accounting Statement.
- 5.3 If the Royalty Fee for a given Quarter exceeds the Quarterly Fixed Fee, then PRS shall send the Licensee an invoice for the required additional licence fees. The Licensee shall pay such amount to PRS within 31 days of the date of such invoice.

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 PRS, 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 PRS a fully and accurately completed Reporting Statement.

6.2 PRS reserves the right to alter the form of the Reporting Statement and the data required to be given in such Reporting Statement. PRS shall give the Licensee one month notice of any such change.

6.3 Where the Licensee is licensed by MCPS 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 PRS 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 PRS, then, without prejudice to PRS'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 PRS 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 PRS 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 PRS, then, without prejudice to PRS's other rights under this Agreement, the Licensee shall pay, in addition to the payment referred to in clause 7.3, PRS's reasonable costs of such audit and verification within 28 days of receipt of PRS's VAT invoice therefor.

7.5 In conducting an audit under this clause 7, PRS agrees not to disclose any confidential information of the Licensee to any third party, except that PRS 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) PRS'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 MCPS in relation to the reproduction of Ringtones and MCPS terminates that licence agreement for any reason, then PRS shall have the right to terminate this Agreement with effect from the same date by giving written notice to the Licensee.

9. Miscellaneous

- 9.1 This Agreement has been granted by PRS 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 PRS 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 – PRS)' and the licence granted under this Agreement shall not apply in any such case unless PRS 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 PRS.
- 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