

**APRA | AMCOS DIGITAL MUSIC SERVICE AGREEMENT 2007**

**THIS AGREEMENT IS MADE ON**

**PARTIES**

**AUSTRALASIAN MECHANICAL COPYRIGHT OWNERS SOCIETY LIMITED**  
ABN 78 001 678 851 of 6-12 Atchison Street, St Leonards, New South Wales on its own behalf and on behalf of each of the AMCOS Members (**AMCOS**)

**AUSTRALASIAN PERFORMING RIGHT ASSOCIATION LIMITED**  
ABN 42 000 016 099 of 6-12 Atchison Street, St Leonards, New South Wales (**APRA**)

**YOUR DETAILS**

**Registered Company Name:** ..... (**You**)

**ABN:** .....

**Trading Name:** .....

**Street Address:** .....

**Postal Address (if different):** .....

**Main Contact:** .....

**Contact's Title:** .....

**Contact's Email Address:** .....

**Contact's Phone Number:** .....

**Contact's Fax Number:** .....

**BACKGROUND**

- A. AMCOS and APRA are mechanical right and performing right collecting societies respectively.
- B. AMCOS is the exclusive licensee in the Territory of the right to reproduce the AMCOS Works in certain circumstances.
- C. APRA controls in the Territory the right to communicate the APRA Works.
- D. You are a provider of Downloads and require a licence from APRA|AMCOS in order to conduct Your Digital Music Service.
- E. AMCOS and APRA have agreed to grant licences and make arrangements respectively on the terms of this agreement.

**LICENCE**

In consideration of payment of the Licence Fees and compliance with the attached terms, ~~as varied by AMCOS and APRA from time to time by notice to You (Terms)~~, AMCOS and APRA grant You a Licence commencing on the Commencement Date. The Terms are incorporated into this agreement and each party must comply with its obligations under them.

**SIGNED AS AN AGREEMENT**

Signed by **Australasian Mechanical Copyright Owners Society Limited:**

.....  
Signature of authorised person

.....  
Signature of witness

.....  
Position of authorised person (print)

.....  
Name of witness (print)

.....  
Name of authorised person(print)

Signed by **Australasian Performing Right Association Limited:**

.....  
Signature of authorised person

.....  
Signature of witness

.....  
Position of authorised person (print)

.....  
Name of witness (print)

.....  
Name of authorised person (print)

|

Signed by **You**:

.....  
Signature of authorised person

.....  
Signature of witness

.....  
Position of authorised person (print)

.....  
Name of witness (print)

.....  
Name of authorised person (print)

## **DIGITAL DOWNLOAD TERMS**

### **1. Subject matter and grant of rights**

#### **1.1 Entire agreement**

This agreement, and the Terms, including the schedules, contain the entire agreement between APRA|AMCOS and You relating to the reproduction of AMCOS Works and the communication of APRA Works as part of Your Digital Music Service.

#### **1.2 Grant of rights**

Subject to clause 1.3 and on the Terms, APRA|AMCOS grants You a Licence.

#### **1.3 Exclusions and limitations**

1.3.1 The Licence is conditional on Your compliance with the Terms, including provision of Sales Reports and Revenue Statements (where required) and payment of Licence Fees.

1.3.2 Nothing in this agreement constitutes the grant of a licence to reproduce a Work that is not an AMCOS Work.

1.3.3 Nothing in this agreement constitutes the grant of a licence to communicate a Work that is not an APRA Work.

1.3.4 This agreement does not apply to reproductions of Works made, sold, distributed or communicated by You or on Your behalf with the intention of, or with Your expressed or implied authorisation for, use other than as part of Your Digital Music Service.

1.3.5 The Licence does not include the right to synchronise AMCOS Works with audiovisual material, including Music Videos, or still images.

1.3.6 The Licence does not include the right to reproduce or communicate to the public any Work in a manner that suggests any connection between individual Works or groups of Works and any goods or services, including but not limited to Your Digital Music Service, by way of an Advertisement or otherwise.

1.3.7 The Licence does not include the right or authorise:

- (a) the reproduction of any Work into an Advertisement or Premium;
- (b) the reproduction or communication of any Work as a ringtone;
- (c) the making of an adaptation or a parody of an AMCOS Work;
- (d) the reproduction or communication of any Work with words that are not approved or normally associated with the Work by the copyright owner for Australia;
- (e) the reproduction or communication of any Works in a graphic form;
- (f) the performance in public of any Works;
- (g) the performance in public or communication to the public of any Grand Right Works in their entirety;

- (h) the performance in public or communication to the public of any choral work of more than 20 minutes' duration in its entirety;
- (i) the reproduction, performance in public or communication to the public of any sound recording; or
- (j) any other right not expressly granted under this agreement.

1.3.8 Nothing in the Terms constitutes a consent by the authors of Works in relation to any act contrary to the composer's moral rights.

1.3.9 If APRA|AMCOS notifies you that a Work is not an APRA Work or an AMCOS Work for the purposes of this agreement, You must immediately cease offering the Work for Sale on Your Digital Music Service [in reliance on this agreement](#).

#### **1.4 Term**

1.4.1 This agreement commences with effect from the Commencement Date and, subject to earlier termination in accordance with clause 7, will continue until terminated by either party on 3 months' notice, such termination not to be effective before the third anniversary of the Commencement Date.

1.4.2 In the event that proceedings are commenced in the Copyright Tribunal where the subject matter of the proceedings is relevant to the Terms, this agreement will remain in force in accordance with clause 1.4.1, but neither party will be prevented from participating in those proceedings or from arguing that the Terms are not reasonable.

#### **1.5 Licence Fees**

1.5.1 Where clause 2.2 does not apply, You must pay APRA|AMCOS the greater of:

- (i) 12.0% (exclusive of GST) of the Retail Price; or
- (ii) the Track Rate.

1.5.2 Where clause 2.2 applies, You must pay APRA|AMCOS the greater of:

- (i) 12.0% of Gross Revenue; or
- (ii) the Subscriber Rate; or
- (iii) only if you offer Permanent Downloads, the amount calculated by adding the Track Rate in respect of each Permanent Download during the relevant period.

1.5.3 Notwithstanding anything contained in this agreement, [You are not required to pay Licence Fees under this agreement, and](#) You may be entitled to a Rebate where either, APRA|AMCOS is reasonably satisfied, or You can demonstrate to the reasonable satisfaction of APRA|AMCOS, that:

- (a) the Work is a Work in which copyright does not subsist;
- (b) the Work is not an AMCOS Work, including because a prior licence has been obtained for the reproduction of the Work on Your Digital Music Service; or

- (c) the Work is not an APRA Work, including because a prior licence has been obtained for the communication of that Work on Your Digital Music Service.

## **1.6 Free Downloads**

- 1.6.1 No Licence Fee is payable on Promotional Downloads.
- 1.6.2 APRA|AMCOS may review the Code and, on one month's notice, issue a revised Code.

## **2. Your obligations**

### **2.1 Sales Reports**

- 2.1.1 You must account to APRA|AMCOS for all transactions that are the subject of the Terms for each Accounting Period in accordance with this clause 2.1.
- 2.1.2 You must deliver a Sales Report to APRA|AMCOS by the Due Date.
- 2.1.3 Each Sales Report must be in the electronic or such other form reasonably required from time to time by APRA|AMCOS and must contain the following details:
  - (a) information sufficient to identify the Sales Report, including:
    - (i) Your details (including where applicable any password allocated to You by APRA|AMCOS, Your APRA|AMCOS identification number and Your contact email address); and
    - (ii) file identification details (including the identification of the Sales Report as a Digital Music Service Sales Report, the transmission date of the file and the number of records in the file);
  - (b) information sufficient to separately identify each Sales Batch in the Sales Report, including:
    - (i) the Accounting Period start and end date;
    - (ii) the country of Sale;
    - (iii) the basis on which You pay Licence Fees (for example, fixed price Sales or variable price Sales);
    - (iv) the type of Download;
    - (v) Gross Revenue (where required); and
    - (vi) customer numbers to enable the calculation of the Subscriber Rate where relevant.
  - (c) in respect of each Track in each Sales Batch:
    - (i) title of the Work (or Works in the case of Medleys);
    - (ii) composer(s) of the Work(s);

- (iii) name of the artist or band that recorded the version of the Work reported (or has been used by You to identify the Work);
  - (iv) if indicated on the Track, or requested by APRA|AMCOS, the APRA work identifier, ISWC, ISRC and the name of record label that provided the digital master recording;
  - (v) for fixed price Sales, the number of units Sold at each Retail Price (including where free) and the Retail Price (in Australian dollars);
  - (vi) for variable price Sales, the total number of units Sold (including where supplied free of charge);
  - (vii) the type of Download; and
  - (viii) whether You have a direct licence from a relevant member of APRA or AMCOS;
- (d) in respect of each Bundle in each Sales Batch:
- (i) title of the Bundle;
  - (ii) name of the artist or band that recorded the Bundle reported (or "various" if the Bundle is a compilation recording);
  - (iii) if relevant, the name of the record company that provided You with the Bundle and that record company's catalogue number or UPC for the Bundle;
  - (iv) for fixed price transactions, the number of units Sold at each Retail Price (including where free) and the Retail Price (in Australian dollars);
  - (v) for variable price Sales, the total number of units Sold (including where supplied free of charge);
  - (vi) the type of Download;
  - (vii) the number of tracks on the Bundle; and
  - (viii) whether You have a direct licence from a relevant member of APRA or AMCOS.

2.1.4 In respect of each Bundle included by You in a Sales Report that is not matched to an existing production on APRA|AMCOS's database, APRA|AMCOS may request in electronic or such other form reasonably required from time to time by APRA|AMCOS, the following details in respect of each Track on that Bundle:

- (i) title of the Work (or Works in the case of Medleys);
- (ii) composer(s) of the Work(s);
- (iii) name of the artist or band that recorded the version of the Work reported (or has been used by You to identify the Work);
- (iv) the track number; and

- (v) if indicated on the Track, or requested by APRA|AMCOS, the APRA work identifier, ISWC, ISRC and the name of record label that provided the digital master recording;
- (vi) whether You have a licence from an owner of the copyright in the Work or under a direct licence from a relevant member of APRA; and
- (vii) whether the Work as recorded is a local cover of a foreign work.

2.1.5 Notwithstanding clause 2.1.1, APRA|AMCOS may on the provision of 3 months' notice to You [reasonably](#) vary the Accounting Period.

2.1.6 If You sell Dual Downloads, You must provide a separate Sales Report to APRA|AMCOS under a separate APRA|AMCOS identification number for each copy.

## **2.2 Revenue Statements**

If You cannot supply a Retail Price under clause 2.1.3(c)(v) or 2.1.3(d)(iv) because You do not Sell Downloads at a fixed price (including because You provide a Streaming Service or Sell Tethered Downloads), You must also provide APRA|AMCOS with Revenue Statements for each Accounting Period.

## **2.3 Failure to provide relevant statements**

If You fail to comply with clause 2.1 and clause 2.2, APRA|AMCOS may reasonably estimate Sales, Subscriber and music use information, including any relevant previous information provided by You, for the purpose of issuing a tax invoice for a Provisional Payment.

## **2.4 Payment of Licence Fees**

2.4.1 You must pay Licence Fees to APRA|AMCOS within 14 days after receipt of an invoice from APRA|AMCOS.

2.4.2 You must pay interest at the Agreed Rate on any amount that remains unpaid 14 days after receipt of an invoice from APRA|AMCOS.

2.4.3 You acknowledge that the information contained in Sales Reports and Revenue Statements is critical to the calculation and distribution of Licence Fees by APRA and AMCOS to their respective members.

2.4.4 If You fail to provide a Sales Report or Revenue Statement (if required) in accordance with the Terms, and APRA|AMCOS notifies You that the Sales Report or Revenue Statement has not been provided, You must pay interest at the Agreed Rate calculated from 21 days after the Due Date on amounts that would have become payable had the reports been provided.

## **2.5 Provisional Payment**

2.5.1 If the amount of Licence Fees payable in any Accounting Period exceeds the Provisional Payment, You must pay the excess to APRA|AMCOS within 14 days after the date of the invoice.

2.5.2 If the amount of the Licence Fees payable in any Accounting Period is less than the Provisional Payment, APRA|AMCOS must credit the amount to Your account.

## **2.6 Security**

2.6.1 Before the Commencement Date or at any time during the term of this agreement, if required by APRA|AMCOS, You must give APRA|AMCOS Security as security for performance of Your obligations under this agreement.

2.6.2 The Security will be calculated by APRA|AMCOS based on a reasonable estimate of the amount of Licence Fees payable for any Accounting Period.

2.6.3 If required by APRA|AMCOS, the amount of the Security may be increased proportionally with any increase in the amount of Licence Fees payable under clause 1.5.

2.6.4 APRA|AMCOS may use the Security to recover any loss or expense APRA|AMCOS incurs due to a breach of this agreement by You.

2.6.5 If any part of the Security has been used by APRA|AMCOS under clause 2.6.4, You must replace that part of the Security within 5 business days of notice by APRA|AMCOS that it has used the Security.

2.6.6 Upon the termination of this agreement APRA|AMCOS must promptly return to You any part of the Security not needed to recover an expense or loss of APRA|AMCOS.

## **2.7 Records**

You must keep proper records relating to Your Digital Music Service enabling full database logging sufficient to maintain and keep Monthly Source Log Files and Backup Tapes for Your Digital Music Service (including all Downloads, Streams and Subscription Payments) and including but not limited to accounting records (such as Revenue Statements), which must be maintained to a standard sufficient to enable an audit trail to be established relating to Sales, provided that the auditor's right to inspect such documents is limited to documents that are reasonably required and are relevant to the audit.

## **3. Obligations of APRA | AMCOS**

### **3.1 Training and upgrades**

3.1.1 APRA|AMCOS may notify You from time to time of updates, revisions, amendments or other changes to the Sales Report formats.

3.1.2 Any notice referred to in clause 3.1.1 must be:

- (a) reasonable in the circumstances; and
- (b) allow You reasonable time to make adjustments and implement the updates, revisions, amendments or other changes to Your current systems.

### **3.2 Tax invoices**

- 3.2.1 On receipt of Sales Reports and Revenue Statements (where required), or where clause 2.3 applies, APRA|AMCOS must each issue tax invoices to You showing the total Licence Fees or the Provisional Payment payable for the Accounting Period.
- 3.2.2 In relation to any GST payable for a taxable supply (as defined under GST law) by either party, the recipient of the supply must pay the GST subject to the supplier providing a tax invoice (as defined under GST law).
- 3.2.3 APRA|AMCOS will provide, when requested by You, an electronic statement in respect of each invoice issued under clause 3.2.1 after the date of APRA|AMCOS receiving the request.

### **3.3 Disputed ownership of Works**

- 3.3.1 If a third party not being a Member approaches You and claims the right to receive licence fees payable in relation to a Work:
- (a) You must notify APRA|AMCOS in writing within 7 days of such claim and advise the third party to make written application to APRA|AMCOS to investigate the claim for ownership; and
  - (b) within 28 days of receipt of Your notification APRA|AMCOS must advise You whether the relevant rights in the Work are:
    - (i) controlled by a Member;
    - (ii) controlled by the third party claiming the right, in which case APRA|AMCOS must repay monies paid in respect of the Work to You within a reasonable time or provide You with a Rebate; or
    - (iii) claimed by two or more persons, one or more of whom is a Member, in dispute, in which case APRA|AMCOS will hold the monies in a dispute account until such time as the matter is resolved.
- 3.3.2 In the case of rights described in clause 3.3.1(b)(iii), APRA|AMCOS will continue to issue invoices in respect of Your use of the Work until such time as the matter is resolved.

## **4. Management of amounts payable**

### **4.1 Fixed Retail Price**

If You Sell Single-Track Downloads or Bundles at a Retail Price, then for the purpose of determining Licence Fees the amounts will be separately assessed in respect of each Sale at each different Retail Price reported in the relevant Sales Report.

### **4.2 Fractions of Cents**

If the [aggregate](#) Licence Fee in respect of each [separately reported](#) Single-Track Download or Bundle payable under this agreement includes a fraction of a cent, [the fee will be rounded to the nearest whole cent, and an amount](#)

with a fraction of a half cent or more will be rounded up to the nearest cent. ~~that is less or more than one half of a cent:~~

~~(a) where the fraction is less than one half of a cent, that fraction will be treated as one half cent; and~~

~~(a) where that fraction is more than one half of a cent, that fraction will be treated as a whole cent.~~

#### **4.3 Medleys and Samples**

For the purposes of calculating Licence Fees, a Medley or a Work containing Samples will be taken to be one Work.

### **5. Rights of AMCOS and APRA**

#### **5.1 Audit**

5.1.1 APRA|AMCOS may on 30 days' notice to You appoint a nationally recognised third party accountant or auditor not being the auditor of a competitor of Yours and not compensated on a contingency fee basis to ~~or~~ examine Your records to:

- (a) determine the correctness of any notice or payment supplied or made under this agreement; or
- (b) in the case of a failure by You to provide information in accordance with clause 2.1 or 2.2, to obtain information required to be provided under that clause.

5.1.2 You must pay the cost of the audit or examination if it:

- (a) establishes that the information provided by You resulted in the amounts payable under the Terms being understated by more than 5%;
- (b) establishes that You have not kept the records requires pursuant to clause 2.7; or
- (c) is undertaken under clause 5.1.1(b).

5.1.3 After an audit or examination has been conducted, APRA|AMCOS must direct the auditor to provide a copy of the report to You at the same time as the report is provided to APRA|AMCOS.

5.1.4 You must pay any moneys determined by the auditor or agreed between the parties to have been payable but unpaid under this agreement, and any amount payable under clause 5.1.2, within 14 days of receipt of a tax invoice from APRA|AMCOS.

5.1.5 If You dispute the findings of the auditor:

- (a) You must notify APRA|AMCOS within 28 days of receipt of the report; and
- (b) the provisions of clause 6 apply.

## **6. Dispute resolution**

### **6.1 Disputes**

- 6.1.1 The parties must, during and after the term of the Agreement, without delay and in good faith, attempt to resolve any dispute which arises out of or in connection with the Terms prior to commencing any proceedings, but failure to do so will not be deemed a breach of the Terms entitling any party to terminate.
- 6.1.2 Without limiting clause 6.1.1, the parties agree that where the provisions of the Terms would be manifestly unfair to a party, including because You have obtained direct licences from a copyright owner, the parties must attempt to resolve any issue between them by negotiation in good faith.
- 6.1.3 A party wishing to resolve a dispute must notify the other party of the existence of the dispute and must identify the nature of the dispute in writing. If a dispute under the Terms has not been resolved between the parties within 30 days after notice of the dispute has been given, You may require the dispute to be referred to expert determination in accordance with clause 6.2.
- 6.1.4 The existence of a dispute or the commencement of proceedings does not affect the obligation of the parties to continue to perform their obligations under the Terms.

### **6.2 Expert determination**

- 6.2.1 Disputes under this agreement that have not been resolved in accordance with clause 6.1 must be referred to the expert determination procedure offered by APRA in accordance with the terms of its authorisations under the *Trade Practices Act 1974*.
- 6.2.2 If a dispute is submitted to expert determination under clause 6.2.1, then a party may not commence proceedings in respect of the dispute unless the dispute is not determined within 30 days of submission to expert determination, or such other time as the parties agree.

### **6.3 Copyright Tribunal**

Nothing in this clause 6 affects the right of any party to seek a determination from the Copyright Tribunal of Australia in relation to the subject matter of this agreement.

## **7. Termination**

### **7.1 Termination for default**

- 7.1.1 If a party (**Defaulting Party**):
- (a) goes into liquidation, has a receiver or receiver and manager appointed to it or any part of its assets, enters into a scheme of arrangement with creditors or suffers any other form of external administration, or being an individual, commits any act of bankruptcy or enters into a scheme of arrangement with creditors;
  - (b) fails, within 14 days after receipt of notice, to remedy any breach of its obligations under the Terms which is capable of remedy; or

- (c) breaches any of its obligations under the Terms which is not capable of remedy,

the other party may, by notice to the Defaulting Party, terminate this agreement.

- 7.1.2 If APRA|AMCOS terminates this agreement for breach it may seek to include such additional terms as it believes reasonable to secure performance of Your obligations under any future agreement offered on otherwise the same terms as the Terms.

## **8. Miscellaneous**

### **8.1 Confidentiality**

- 8.1.1 Subject to clauses 8.1.2 and 8.1.3, APRA|AMCOS must not during or after the term of this agreement (except in the proper course of performance of this agreement), disclose to or authorise the disclosure to any person without Your prior written consent any information provided to APRA|AMCOS under clause 2.1 or 2.2.

- 8.1.2 With respect to information supplied under clause 2.1 or 2.2, APRA|AMCOS may:

- (a) use that information to determine Licence Fees and to distribute money to their respective members;
- (b) disclose the information to MIPI solely for the purposes of any investigations being conducted by it on behalf of APRA|AMCOS ; and
- (c) disclose that information to APRA|AMCOS' auditors for the purposes of an audit, and other of APRA|AMCOS' professional advisers.

- 8.1.3 The obligations of confidentiality set out in this clause 8 do not apply to information provided to APRA|AMCOS which is:

- (a) required to be disclosed by law; or
- (b) in the public domain other than by breach of this clause.

### **8.2 Notices**

All notices required to be given under this agreement must be sent in writing to the parties at the addresses set out in this agreement or to such other address as any party may notify in writing from time to time. Notices may be served by hand delivery, by post, email or by facsimile. Notices served by hand, email or by facsimile will be deemed to have been received on the day of sending. Notices sent by post will be deemed to have been received on the third business day after sending.

### **8.3 Law of agreement**

This agreement must be construed in accordance with the laws for the time being in force in the State of New South Wales.

### **8.4 Waiver**

A waiver by any of the parties of any provision of the Terms will not be deemed or construed as a waiver of such term or condition for the future, or of any subsequent breach. All remedies, rights, undertakings and

obligations contained in the Terms will be cumulative and none of them will be in limitation of any other remedy, right, undertaking or obligation of any other party.

## 8.5 Variation

This agreement may only be varied by the written agreement of the parties. ~~APRA|AMCOS may vary the Terms, including the rate payable by notice to You. Within 30 days after the date of such notice you may terminate this agreement with immediate effect. If you continue to exercise the rights granted under this agreement 30 days after the date of the notice, the agreement will continue as varied.~~

## 8.6 Assignment

A party may only assign a right under this agreement with the prior written consent of the other party.

## 8.7 Severability

If any provision of this agreement is held to be unenforceable, all other provisions shall nevertheless continue in full force and effect.

## 9. Definitions and interpretation

### 9.1 Definitions

**Accounting Period** means each month or such other period as is agreed or notified to You by APRA|AMCOS under clause 2.1.5;

**Act** means the *Copyright Act 1968* and *Copyright Regulations*;

**Advertisement** means any production which is an announcement designed to attract the attention of the public or any part of it to a product, service, person, organisation or line of conduct including community service announcements and infomercials;

**Agreed Rate** means the benchmark rate published by the National Australia Bank Limited plus 2%, calculated at daily rests;

**AMCOS Work** means a Work in respect of which AMCOS is entitled to administer the right of reproduction, or represents to You that it is entitled to grant a Licence;

**APRA | AMCOS** means APRA and AMCOS;

**APRA Work** means a Work in respect of which the right of communication to the public is owned or controlled by APRA for Australia and New Zealand;

**Backup Tapes** means a backup of Your content and sales database taken at the end of each calendar quarter;

**Bundle** means a number of Downloads Sold as a single set or album;

**Clip** means a Download which when played back at normal speed in an uncompressed format on a device is no more than 30 seconds in duration;

**Code** means the code in schedule 2;

**Commencement Date** means the date specified in schedule 1;

**Digital Music Service** means the business carried on under the trading names in schedule 1 providing Downloads or a Streaming Service for Sale;

**DJ Mix** means a sequence of Tracks mixed together to sound as one continuous track;

**Download** means a copy of a Track in the form of an electronic file in which sounds are embodied (including a Music Video) and in the case of a Tethered Download which contains digital rights management information of the copyright owner of the sound recording to protect the content of the file from illegal or unauthorised use;

**Dual Download** means a Download occurring as a result of a single Sale and resulting in more than one copy;

**Due Date** means the 30th day after the end of an Accounting Period;

**Grand Right Work** means an opera, operetta, musical play, revue or pantomime insofar as it consists of words and music expressly written for it;

**Gross Revenue** means Your gross earnings together with the gross earnings of all of Your agents, partners, affiliates and income sharers (including without limitation any telecommunications company or service provider or bureau) directly or indirectly receivable during the Accounting Period in respect or otherwise in relation to Your Digital Music Service;

**GST** has the same meaning as in section 195-1 of *A New Tax System (Goods and Services Tax) Act 1999*;

**ISRC** means International Standard Record Code ISO 3901:2001, as amended from time to time by the International Organisation for Standardisation (**ISO**);

**ISWC** means International Standard Works Code ISO 15707:2001 as amended from time to time by the ISO;

**Licence** means a non-exclusive licence to:

- (a) reproduce AMCOS Works;
- (b) authorise the reproduction of AMCOS Works; and
- (c) communicate in the Territory the APRA Works,

in the form of Downloads (whether by You or by Your customers in the Territory onto storage devices) for the purpose of the Sale or to complete a Sale;

**Licence Fee** means the fees payable by You under clause 1.5;

**Medley** means a Track no longer than 8 minutes duration embodying two or more Works, where there is no space between the Works, excluding Samples and DJ Mixes;

**Member** means a member of APRA or AMCOS as at the date of this agreement and any person who becomes a member of APRA or AMCOS during the term of this agreement;

**MIPI** means Music Industry Piracy Investigations ACN 071 726 906;

**Monthly Source Log Files** means a copy of Your content and sales database and associated log files, which record every change made to the records in those databases in the relevant month;

**Music Video** means a cinematograph film produced for the primary purpose of promoting or visually representing:

(a) the performer of a sound recording; and/or

(b) the sound recording,

of a Work embodied in the soundtrack of that cinematograph film;

**Permanent Download** means a Download that can be used for the life of the copy;

**Premium** means a copy of a Download made for Sale or consideration not consisting wholly of money or not directly to customers for their personal use, but excludes Promotional Downloads;

**Promotional Download** means a Download to which the Code applies;

**Provisional Payment** means a reasonable estimate by APRA|AMCOS of the Licence Fees;

**Rebate** means that proportion of the Licence Fee calculated from time to time by APRA|AMCOS and credited to Your account under clause 1.5.3;

**Retail Price** means the selling price of a Download that is advertised to the general public or to Your customers by You or on Your behalf, excluding GST;

**Revenue Statement** means a statement, in the form reasonably required from time to time by APRA|AMCOS signed and verified by someone authorised by You, detailing Gross Revenue;

**Sale** means the sale or supply of Downloads (including supply free of charge) or the supply of Streaming Services:

(a) to customers for their personal use on terms that prohibit further supply to third parties; and

(b) in the form of a Clip, for the sole purpose of demonstrating, for no charge, the Clip to potential customers of Your Digital Music Service;

**Sales Batch** means, in an Accounting Period, a group of Sales reported by reference to common factors as directed by APRA|AMCOS from time to time, including the country of Sale and whether the price is fixed or variable;

**Sales Report** means a statement in accordance with clause 2.1, and which may contain one or more Sales Batches;

**Sample** means a part of a sound recording of a Work which (along with the accompanying Work) is subsequently embodied in another sound recording;

**Security** means a bank cheque or unconditional bank guarantee on terms and conditions approved by APRA|AMCOS;

**Single-Track Download** means a Download comprising one Track (or part of a Track) only;

**Streaming** means the communication to the public of Tracks and Music Videos (which may or may not be pre-recorded) by means of the internet to a device under circumstances in which the user is prohibited from making a copy of the Track or Music Video;

**Streaming Service** means a service of providing on-demand Streaming access to Tracks and Music Videos in return for a Subscription Payment;

**Subscriber** means a customer of Your Digital Music Service whose Subscription Payments are up to date;

**Subscriber Rate** means for each calendar month in an Accounting Period an amount calculated by multiplying the number of Your customers as at the end of the month by:

(i) \$2.40 (exclusive of GST) where clause 1.5.2(iii) applies; or

(ii) \$1.57 (exclusive of GST) where clause 1.5.2(iii) does not apply.

and aggregating where necessary;

**Subscription Payment** means any one-off or periodical fee You charge customers for access to Your Digital Music Service;

**Tethered Download** means a Download that can only be used by Subscribers;

**Territory** means Australia and New Zealand;

**Track** means a sound recording of a Work;

**Track Rate** means in respect of:

- (a) a Single-Track Download, 12 cents (exclusive of GST);
- (b) a Dual Download, 24 cents (exclusive of GST);
- (c) a Bundle, 8 cents (exclusive of GST) for each Track on each Bundle; and
- (d) a Bundle that is a Dual Download, 16 cents (exclusive of GST) for each Track on each Bundle; and

**UPC** means Universal Product Code; and

**Work** means a musical work and any literary work normally associated with it by the copyright owner for Australia, and a reference to a Work includes a reference to a share in any such Work.

Words defined in this agreement have the same meaning in the Terms.

## **9.2 Interpretation**

In the Terms, unless the subject matter or context otherwise requires:

- (e) the singular denotes the plural and vice versa;
- (f) a reference to one gender includes all other genders;
- (g) a person includes an individual, a body corporate and a government;
- (h) a reference to a statute, regulation, or provision of a statute or regulation includes a reference to that statute, regulation or provision as amended or re-enacted from time to time;
- (i) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have corresponding meanings; and
- (j) any word or phrase defined in the Act has that meaning in the Terms unless otherwise defined in the Terms.

## **Schedule 1**

**Name of licensee (You)**

**Trading name(s)**

**Commencement Date**

## **Schedule 2 – Code**

A complimentary licence applies to all Promotional Downloads providing that:

- (a) You nominate the Work embodied in the Download;
- (b) the Download is not a Tethered Download;
- (c) they are offered to all customers and potential customers of Your Digital Music Service without condition;
- (d) the owner of the copyright in the master sound recording has also granted a complimentary licence in respect of that Download;
- (e) the promotion of the Download is limited to no more than 30 days;
- (f) no more than five promotions are made available concurrently at any time; and
- (g) they are not offered for free as part of a package (for example, “buy one, get one free”) or introductory offer to Your Digital Music Service.

# LICENCE AGREEMENT

Licence No:  
(AMCOS use only)

THIS AGREEMENT IS MADE ON

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## PARTIES

**AUSTRALASIAN MECHANICAL COPYRIGHT OWNERS SOCIETY LIMITED** ABN 78 001 678 851  
of 6-12 Atchison Street, St Leonards, New South Wales (**AMCOS**)

(company name)

ABN

  

(street address)

("Licensee")

## BACKGROUND

- A. AMCOS controls in Australia the right to reproduce AMCOS Works.
- B. The Licensee is in the business of providing customised mobile telephone ring tones in consideration for a subscription fee in the Territory, by means of premium rate short message services, premium rate multimedia message services and/or through the proprietary networks of telecommunications carriers in the Territory, Internet, WAP or other means of distribution, and requires a licence from AMCOS in order to pursue this business activity.
- C. AMCOS has agreed to grant a licence, on the terms of this agreement.

## AGREEMENT

### 1. DEFINITIONS AND INTERPRETATION

1.1 Where commencing with a capital letter:

**Advertisement** means any audio, visual or audio-visual production which is an announcement designed to attract the attention of the public or any part of it to a product, service, person, organisation or line of conduct;

**Agreed Rate** means the interest rate for overdrafts of \$100,000 or more charged by the National Australia Bank plus 2 percentage points, calculated on daily rests from the due date to the date of payment;

**AMCOS Works** means the musical works for which AMCOS is entitled to grant the licence referred to in clause 2.1 as notified by AMCOS to the Licensee from time to time in accordance with clause 5;

**Music Video** means a cinematograph film produced for the primary purpose of promoting:

(a) the performer of the sound recording; or

(b) the sound recording,

of a musical work embodied in the soundtrack of the cinematograph film – subject to initial synchronisations being cleared;

**Other Mobile Products** means products, other than Ringtones, available on the Service, including wallpapers and logos;

**Pro-rated Subscription Revenue** for a period is calculated by dividing the Subscription Revenue by the total number of Ringtones and Other Mobile Products sold in the period, and multiplying that number by the total number of AMCOS Works provided as Ringtones in the period;

**Ringtone** means a monophonic, polyphonic or phonographic reproduction of an AMCOS Work used as a ringtone on a mobile telephone and in respect of phonographic reproductions may also incorporate the reproduction of a work as part of a Music Video;

**Quarter** means a 3 month period commencing on 1 January, 1 April, 1 July or 1 October;

**Service** means the provision of up to a fixed number of Ringtones and Other Mobile Products in return for a fixed periodic fee;

**Subscription Fee** means the amount charged by the licensee to a customer for the provision of the Service;

**Subscription Revenue** means the aggregate amount of Subscription Fees charged by the Licensee during the relevant period; and

**Territory** means Australia.

1.2 An agreement, warranty, representation or obligation which binds or benefits 2 or more persons under this agreement binds or benefits them jointly and severally.

## **2. LICENCE**

2.1 AMCOS grants the Licensee a non-exclusive licence to:

- (a) reproduce the AMCOS Works in the form of Ringtones in the Territory for the purpose of selling the Ringtones;
  - (b) subject to clause 2.2, authorise reproductions of the Ringtones by the Licensee's customers onto mobile telephones to complete the sale of the Ringtone; and
  - (c) reproduce the Ringtones on the services specified in Schedule 3 for the sole purpose of demonstrating the Ringtones to potential customers,
- in the Territory.

2.2 The Licensee must only authorise or permit the reproduction of Ringtones by the Licensee's customers onto mobile telephones which prevent the further reproduction of the Ringtones.

2.3 The Licensee must not:

- (a) reproduce, or authorise the reproduction of, any Ringtones onto mobile telephones which have not been issued telephone numbers by the relevant authority in the Territory;
- (b) change or make an adaptation or a parody of an AMCOS Work; or
- (c) rent or hire any recording of an AMCOS Work.

2.4 The licence in clause 2 does not include or authorise:

- (a) the reproduction of any musical works or lyrics in a graphic form;
- (b) the reproduction of any sound recording;
- (c) the reproduction of any musical works or associated words to promote any product or service;
- (d) the communication of any musical works or associated words;
- (e) the reproduction of any AMCOS Work into an Advertisement; or
- (f) any other right not expressly granted under this agreement.

## **3. TERM**

This agreement commences on \_\_\_\_\_ and, subject to earlier termination in accordance with clause 11, continues until terminated by either party on at least 2 months' notice.

## **4. ASSESSMENT, INVOICING AND PAYMENT OF LICENCE FEES**

4.1 The Licensee must pay for each Quarter the Licence Fee calculated in accordance with the formula in Schedule 1.

4.2 The Licensee must, within 30 days after the end of each Quarter, provide AMCOS with the revenue and music use information described in Schedule 2 in the form prescribed by AMCOS from time to time.

4.3 On execution of this agreement, AMCOS will issue an invoice for the provisional fee for the period from the commencement of the service to the next 31 March, 30 June, 30 September or 31 December, whichever date occurs first. The provisional fee will be based on AMCOS' reasonable estimate of the fee payable by the Licensee under clause 4.1.

4.4 On AMCOS' receipt of the information under clause 4.2 for the period referred to in clause 4.3, AMCOS must calculate the Licence Fee in accordance with the formula clause 4.1. If this Licence Fee exceeds the provisional fee invoiced, the Licensee must pay the excess to AMCOS on receipt of an invoice specifying the amount. If the Licence Fee is less than the provisional fee invoiced, AMCOS must, at their option, either refund the amount of the difference to the Licensee or credit the difference to the Licensee's account.

4.5 For all Quarters subsequent to the period referred to in clause 4.3, AMCOS will issue an invoice for the prepayment fee for the Quarter. AMCOS shall be entitled to rely on the latest information provided by the Licensee under clause 4.2 in order to calculate the prepayment fee.

4.6 On AMCOS' receipt of the information under clause 4.2 for the Quarters referred to in clause 4.5, AMCOS must calculate the Licence Fee in accordance with the formula clause 4.1. If this Licence Fee exceeds the prepayment fee invoiced, the Licensee must pay the excess to AMCOS on receipt of an invoice specifying the amount. If the Licence Fee is less than the prepayment fee invoiced, AMCOS must, at their option, either refund the amount of the difference to the Licensee or credit the difference to the Licensee's account.

4.7 The Licensee must pay any invoice issued by AMCOS within 14 days after the date of the invoice.

4.8 On AMCOS' receipt of the information under clause 9, AMCOS may issue an invoice for any additional licence fees payable. The Licensee must pay any invoice issued under this clause within 14 days after the date of the invoice.

4.9 The Licensee must pay AMCOS interest at the Agreed Rate on each amount outstanding under this agreement.

## **5. AMCOS WORKS**

5.1 The Licensee must not reproduce or authorise the reproduction of any musical work unless it has been notified by AMCOS that the musical work is an AMCOS Work.

5.2 The Licensee must within 14 days after the date of this agreement provide AMCOS with a list of the musical works which it wishes to reproduce in the form of Ringtones under this agreement.

5.3 AMCOS will use its reasonable endeavours to notify the Licensee within 30 days after receipt of the list which of the musical works on the list are AMCOS Works.

5.4 The Licensee must obtain AMCOS' prior written approval of any musical works it wishes to add to the list of AMCOS Works notified by AMCOS under clause 5.3.

- 5.5 AMCOS will use its reasonable endeavours to respond to any request from the Licensee under clause 5.4 within 30 days after receipt of the Licensee's request.
- 5.6 AMCOS may from time to time by notice to the Licensee advise the Licensee that a musical work which had previously been advised by AMCOS:
- (a) to be an AMCOS Work, is no longer an AMCOS Work; or
  - (b) not to be an AMCOS Work, is now an AMCOS Work.
- 5.7 On receipt of notice under clause 5.6 that a work is no longer an AMCOS Work, the Licensee must as soon as practicable cease the reproduction and authorisation of reproduction of the works.

## **6. SUPPLY OF INFORMATION**

The Licensee must, within 30 days after the end of each Quarter, provide AMCOS with the revenue and music use information described in Schedule 2 in the form prescribed by AMCOS from time to time.

## **7. PAYMENTS**

- 7.1 On AMCOS' receipt of the information under clause 6, AMCOS must calculate the licence fee for the Quarter in accordance with clause 4.
- 7.2 The Licensee must pay any invoice issued by AMCOS within 14 days after the date of the invoice.
- 7.3 On AMCOS' receipt of the information under clause 9, AMCOS may issue an invoice for any additional licence fees payable. The Licensee must pay any invoice issued under this clause within 14 days after the date of the invoice.
- 7.4 The Licensee must pay AMCOS interest at the Agreed Rate on each amount outstanding under this agreement.

## **8. RECORDS**

The Licensee must keep accurate books of account and other records in sufficient detail to ensure that all amounts payable to AMCOS under this agreement can be properly ascertained.

## **9. AUDIT OR EXAMINATION**

- 9.1 AMCOS may on 30 days' notice to the Licensee audit or examine the Licensee's books of account and other records to:
- (a) determine the correctness of any notice or payment under this agreement; or
  - (b) in the case of a failure by the Licensee to provide information in accordance with clause 6, to obtain information required to be provided under that clause.
- 9.2 The Licensee must pay the cost of the audit or examination if it:
- (a) establishes that the information provided by the Licensee resulted in the amounts payable under this agreement being understated by more than 5%; or
  - (b) is undertaken under clause 9.1(b).

## **10. CONFIDENTIALITY**

- 10.1 Subject to clauses 10.2 and 10.3, AMCOS must not during or after the Term (except in the proper course of performance of this agreement), disclose to or authorise the disclosure to any person without the Licensee's prior written consent any information provided to AMCOS under clause 6.
- 10.2 With respect to information supplied under clause 6, AMCOS may:
- (a) use that information to determine licence fees payable to AMCOS under this agreement; and
  - (b) disclose that information to AMCOS' auditors for the purposes of an audit, and other of AMCOS' professional advisers.
- 10.3 The obligations of confidentiality set out in this clause 10 do not apply to information provided to AMCOS which is:
- (a) required to be disclosed by law; or
  - (b) in the public domain other than by breach of this clause.

## **11. TERMINATION**

- 11.1 AMCOS may immediately terminate this agreement by notice to the Licensee if the Licensee:
- (a) breaches any term of this agreement and fails to remedy the breach within 7 days after being required in writing to do so by AMCOS; or
  - (b) goes into liquidation, has a receiver or receiver and manager appointed to it or any part of its assets, enters into a scheme of arrangement with creditors or suffers any other form of external administration.
- 11.2 Either party may terminate this agreement on 2 months' notice to the other party.

## **12. DISPUTE RESOLUTION**

If any dispute arises out of or in connection with this agreement, either party may submit that dispute to mediation in accordance with the rules of the Australian Commercial Disputes Centre.

## **13. NOTICES**

- 13.1 A notice under this agreement must be in writing and may be given to a party by:
- (a) delivering it to the address of the party;
  - (b) sending it by pre-paid post to the address of the party; or

(c) sending it by facsimile or email to the facsimile number or email address of the party, and the notice will be deemed to have been received by the party on receipt.

13.2 A facsimile is deemed to have been received on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the party.

13.3 Until a party gives notice of a change, the street address and facsimile number for that party is:

**AMCOS**

Street address: 6-12 Atchison Street, St Leonards, New South Wales, 2065

Telephone number: (02) 9935 7900

Facsimile number: (02) 9935 7999

Email: digital@apra.com.au

Attention: Online Licensing Manager

**LICENSEE**

Street address:

Telephone Number:

Facsimile number:

Email:

Attention:


**14. MISCELLANEOUS**

14.1 No waiver by AMCOS of any breach of any provision of this agreement operates as a waiver of another breach of the same or of any other provision of this agreement.

14.2 This agreement is personal to the Licensee. The Licensee is not entitled to assign any of its rights without the prior written consent of AMCOS.

14.3 This agreement may only be varied by the written agreement of the parties.

14.4 In addition to the payments under clause 7, the Licensee must pay to AMCOS within 14 days after the date of an invoice issued by AMCOS an amount on account of stamp duties and taxes, including any goods and services tax, arising in respect of this agreement.

14.5 This agreement must be construed in accordance with the laws in force in the State of New South Wales and the parties agree to submit to the jurisdiction of New South Wales Courts.

14.6 Unless the context otherwise requires, a word which denotes the singular denotes the plural and vice versa.



**SIGNED AS AN AGREEMENT**

Signed for and on behalf of **Australasian Mechanical Copyright Owners Society Limited** in the presence of:

\_\_\_\_\_  
Signature of authorised person

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Office held (print)

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Name of authorised person (print)

Signed for and on behalf of **the Licensee** in the presence of:

\_\_\_\_\_  
Signature of authorised person

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Office held (print)

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Name of authorised person (print)

# LICENCE AGREEMENT

Licence No:  
(APRA use only)

THIS AGREEMENT IS MADE ON

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## PARTIES

### AUSTRALASIAN PERFORMING RIGHT ASSOCIATION LIMITED

ABN 42 000 016 099 of 6-12 Atchison Street, St Leonards, New South Wales (APRA)

(company name)

ABN

  

(street address)

("Licensee")

## BACKGROUND

- A. APRA owns or controls for Australia the exclusive right of public performance and communication to the public in relation to a large number of musical works and associated lyrics.
- B. The Licensee is in the business of providing customised mobile telephone ring tones in consideration for a subscription fee in the Territory, by means of premium rate short message services, premium rate multimedia message services and/or through the proprietary networks of telecommunications carriers, Internet, WAP and other means of distribution, and requires a licence from APRA in order to pursue this business activity.
- C. APRA has agreed to grant a licence on the terms of this agreement.

## AGREEMENT

### 1. DEFINITIONS AND INTERPRETATION

1.1 Where commencing with a capital letter:

**Advertisement** means any audio, visual or audio-visual production which is an announcement designed to attract the attention of the public or any part of it to a product, service, person, organisation or line of conduct;

**Agreed Rate** means the interest rate for overdrafts of \$100,000 or more charged by the National Australia Bank plus 2 percentage points, calculated on daily rests from the due date to the date of payment;

**APRA Works** means all musical works, including any words normally associated with those works by the copyright owner for Australia, the right of public performance of which is vested in APRA for Australia and New Zealand;

**Grand Right Work** means an opera, operetta, musical play, revue or pantomime to the extent that it consists of music and words written expressly for the work;

**Music Video** means a cinematograph film produced for the primary purpose of promoting:

- (a) the performer of the sound recording; or
- (b) the sound recording, of a musical work embodied in the soundtrack of the cinematograph film – subject to initial synchronisations being cleared;

**Other Mobile Products** means products, other than Ringtones, available on the Service, including wallpapers and logos;

**Pro-rated Subscription Revenue** for a period is calculated by dividing the Subscription Revenue by the total number of Ringtones and Other Mobile Products sold in the period, and multiplying that number by the total number of APRA Works provided as Ringtones in the period;

**Purpose** means the purpose of communicating the Ringtones via services specified in Schedule 3 for the purpose of the Licensee's sale of customised mobile telephone ring tones;

**Ringtone** means a monophonic, polyphonic or phonographic reproduction of an APRA Work used as a ringtone on a mobile telephone, and in respect of phonographic reproductions may also incorporate the reproduction of a work as part of a Music Video;

**Quarter** means a 3 month period commencing on 1 January, 1 April, 1 July or 1 October;

**Service** means the provision of up to a fixed number of customised mobile telephone Ringtones and Other Mobile Products in return for a fixed periodic fee;

**Subscription Fee** means the amount charged by the licensee to a customer for the provision of the Service;

**Subscription Revenue** means the aggregate amount of Subscription Fees charged by the Licensee during the relevant period; and

**Territory** means Australia.

- 1.2 An agreement, warranty, representation or obligation which binds or benefits 2 or more persons under this agreement binds or benefits them jointly and severally.

## **2. LICENCE**

- 2.1 APRA grants to the Licensee a licence to communicate the APRA Works for the Purpose only.

- 2.2 The licence in clause 2.1 does not include or authorise:

- (a) the performance or communication of Grand Right Works in their entirety;
- (b) the performance or communication of any choral work of more than 20 minutes' duration in its entirety;
- (c) the performance or communication of any music and associated words so as to burlesque or parody the work;
- (d) the performance or communication of any musical work with new or substituted words, or any words which have been notified by APRA as prohibited;
- (e) the reproduction or communication of any musical works or lyrics in a graphic form;
- (h) the reproduction, performance or communication of any sound recording; or
- (i) any other right not expressly granted under this agreement.

- 2.3 The licence must use all commercially reasonable endeavours to only authorise the communication of Ringtones to the Licensee's customers to mobile telephones which prevent the further communication of the Ringtones.

## **3. TERM**

This agreement commences on \_\_\_\_\_ and, subject to earlier termination in accordance with clause 10, continues until terminated by either party on at least 2 months' notice.

## **4. ASSESSMENT, INVOICING AND PAYMENT OF LICENCE FEES**

- 4.1 The Licensee must pay for each Quarter the Licence Fee calculated in accordance with the formula in Schedule 1.

- 4.2 The Licensee must, within 30 days after the end of each Quarter, provide APRA with the revenue and music use information described in Schedule 2 in the form prescribed by APRA from time to time.

- 4.3 On execution of this agreement, APRA will issue an invoice for the provisional fee for the period from the commencement of the service to the next 31 March, 30 June, 30 September or 31 December, whichever date occurs first. The provisional fee will be based on APRA's reasonable estimate of the fee payable by the Licensee under clause 4.1.

- 4.4 On APRA's receipt of the information under clause 4.2 for the period referred to in clause 4.3, APRA must calculate the Licence Fee in accordance with the formula clause 4.1. If this Licence Fee exceeds the provisional fee invoiced, the Licensee must pay the excess to APRA on receipt of an invoice specifying the amount. If the Licence Fee is less than the provisional fee invoiced, APRA must, at their option, either refund the amount of the difference to the Licensee or credit the difference to the Licensee's account.

- 4.5 For all Quarters subsequent to the period referred to in clause 4.3, APRA will issue an invoice for the prepayment fee for the Quarter. APRA shall be entitled to rely on the latest information provided by the Licensee under clause 4.2 in order to calculate the prepayment fee.

- 4.6 On APRA's receipt of the information under clause 4.2 for the Quarters referred to in clause 4.5, APRA must calculate the Licence Fee in accordance with the formula clause 4.1. If this Licence Fee exceeds the prepayment fee invoiced, the Licensee must pay the excess to APRA on receipt of an invoice specifying the amount. If the Licence Fee is less than the prepayment fee invoiced, APRA must, at their option, either refund the amount of the difference to the Licensee or credit the difference to the Licensee's account.

- 4.7 The Licensee must pay any invoice issued by APRA within 14 days after the date of the invoice.

- 4.8 On APRA's receipt of the information under clause 8, APRA may issue an invoice for any additional licence fees payable. The Licensee must pay any invoice issued under this clause within 14 days after the date of the invoice.

- 4.9 The Licensee must pay APRA interest at the Agreed Rate on each amount outstanding under this agreement.

## **5. SUPPLY OF INFORMATION**

The Licensee must, within 30 days after the end of each Quarter, provide APRA with the revenue and music use information described in Schedule 2 in the form prescribed by APRA from time to time.

## **6. PAYMENTS**

- 6.1 On APRA's receipt of the information under clause 5, APRA must calculate the licence fee for the Quarter in accordance with clause 4.

- 6.2 The Licensee must pay any invoice issued by APRA within 14 days after the date of the invoice.

- 6.3 On APRA's receipt of the information under clause 8, APRA may issue an invoice for any additional licence fees payable. The Licensee must pay any invoice issued under this clause within 14 days after the date of the invoice.

- 6.4 The Licensee must pay APRA interest at the Agreed Rate on each amount outstanding under this agreement.

**7. RECORDS**

The Licensee must keep accurate books of account and other records in sufficient detail to ensure that all amounts payable to APRA under this agreement can be properly ascertained.

**8. AUDIT OR EXAMINATION**

8.1 APRA may on 30 days' notice to the Licensee, appoint an auditor to audit or examine the Licensee's books of account and other records relevant to:

- (a) determine the correctness of any notice or payment under this agreement; or
- (b) in the case of a failure by the Licensee to provide information in accordance with clause 6, to obtain information required to be provided under that clause.

8.2 The Licensee must pay the cost of the audit or examination if it:

- (a) establishes that the information provided by the Licensee resulted in the amounts payable under this agreement being understated by more than 5%; or
- (b) is undertaken under clause 8.1(b).

**9. CONFIDENTIALITY**

9.1 Subject to clauses 9.2 and 9.3, APRA must not during or after the Term (except in the proper course of performance of this agreement), disclose to or authorise the disclosure to any person without the Licensee's prior written consent any information provided to APRA under clause 5.

9.2 With respect to information supplied under clause 5, APRA may:

- (a) use that information to determine licence fees payable to APRA under this agreement; and
- (b) disclose that information to APRA's auditors for the purposes of an audit, and other of APRA's professional advisers.

9.3 The obligations of confidentiality set out in this clause 9 do not apply to information provided to APRA which is:

- (a) required to be disclosed by law; or
- (b) in the public domain other than by breach of this clause.

**10. TERMINATION**

10.1 APRA may immediately terminate this agreement by notice to the Licensee if the Licensee:

- (a) breaches any term of this agreement and fails to remedy the breach within 7 days after being required in writing to do so by APRA; or
- (b) goes into liquidation, has a receiver or receiver and manager appointed to it or any part of its assets, enters into a scheme of arrangement with creditors or suffers any other form of external administration.

10.2 Either party may terminate this agreement on 2 months' notice to the other party.

**11. DISPUTE RESOLUTION**

If any dispute arises out of or in connection with this agreement, either party may submit that dispute to the alternative dispute resolution mechanism approved by the Australian Competition Tribunal constituted under the *Trade Practices Act 1974* in the determination in relation to File Nos. 4 and 5 of 1998.

**12. NOTICES**

12.1 A notice under this agreement must be in writing and may be given to a party by:

- (a) delivering it to the address of the party;
- (b) sending it by pre-paid post to the address of the party; or
- (c) sending it by facsimile or email to the facsimile number or email address of the party,

and the notice will be deemed to have been received by the party on receipt.

12.2 A facsimile is deemed to have been received on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the party.

12.3 Until a party gives notice of a change, the street address and facsimile number for that party is:

**APRA**

Street address: 6-12 Atchison Street, St Leonards, New South Wales, 2065  
Telephone number: (02) 9935 7900  
Facsimile number: (02) 9935 7999  
Email: digital@apra.com.au  
Attention: Online Licensing Manager

**LICENSEE**

Street address:	
Telephone Number:	
Facsimile number:	
Email:	
Attention:	

**13. MISCELLANEOUS**

13.1 No waiver by APRA of any breach of any provision of this agreement operates as a waiver of another breach of the same or of any other provision of this agreement.

13.2 This agreement is personal to the Licensee. The Licensee is not entitled to assign any of its rights without the prior written consent of APRA.

13.3 This agreement may only be varied by the written agreement of the parties.

13.4 In addition to the payments under clause 7, the Licensee must pay to APRA within 14 days after the date of an invoice issued by APRA an amount on account of stamp duties and taxes, including any goods and services tax, arising in respect of this agreement.

13.5 This agreement must be construed in accordance with the laws in force in the State of New South Wales and the parties agree to submit to the jurisdiction of New South Wales Courts.

13.6 Unless the context otherwise requires, a word which denotes the singular denotes the plural and vice versa.



**SIGNED AS AN AGREEMENT**

Signed for and on behalf of **Australasian Performing Right Association Limited** in the presence of:

\_\_\_\_\_  
Signature of authorised person

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Office held (print)

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Name of authorised person (print)

Signed for and on behalf of **the Licensee** in the presence of:

\_\_\_\_\_  
Signature of authorised person

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Office held (print)

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Name of authorised person (print)

# LICENCE AGREEMENT

Licence No:  
(AMCOS use only)

THIS AGREEMENT IS MADE ON

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## PARTIES

**AUSTRALASIAN MECHANICAL COPYRIGHT OWNERS SOCIETY LIMITED** ABN 78 001 678 851  
of 6-12 Atchison Street, St Leonards, New South Wales (**AMCOS**)

(company name)

ABN

  

(street address)

("Licensee")

## BACKGROUND

- A. AMCOS controls in Australia the right to reproduce AMCOS Works.
- B. The Licensee is in the business of providing customised mobile telephone ring tones for sale at a fixed rate per sale in the Territory and requires a licence from AMCOS in order to pursue this business activity.
- C. AMCOS has agreed to grant a licence, on the terms of this agreement.

## AGREEMENT

### 1. DEFINITIONS AND INTERPRETATION

1.1 Where commencing with a capital letter:

**Advertisement** means any audio, visual or audio-visual production which is an announcement designed to attract the attention of the public or any part of it to a product, service, person, organisation or line of conduct;

**Agreed Rate** means the interest rate for overdrafts of \$100,000 or more charged by the National Australia Bank plus 2 percentage points, calculated on daily rests from the due date to the date of payment;

**AMCOS Works** means the musical works for which AMCOS is entitled to grant the licence referred to in clause 2.1 as notified by AMCOS to the Licensee from time to time in accordance with clause 5;

**Ringtone** means a monophonic, polyphonic or phonographic reproduction of an AMCOS Work used as a ringtone on a mobile telephone;

**Quarter** means a 3 month period commencing on 1 January, 1 April, 1 July or 1 October; and

**Territory** means Australia.

1.2 An agreement, warranty, representation or obligation which binds or benefits 2 or more persons under this agreement binds or benefits them jointly and severally.

### 2. LICENCE

2.1 AMCOS grants the Licensee a non-exclusive licence to:

- (a) reproduce the AMCOS Works in the form of Ringtones in the Territory for the purpose of selling the Ringtones;
  - (b) subject to clause 2.2, authorise reproductions of the Ringtones by the Licensee's customers onto mobile telephones to complete the sale of the Ringtone; and
  - (c) reproduce the Ringtones on the services specified in Schedule 3 for the sole purpose of demonstrating the Ringtones to potential customers,
- in the Territory.

2.2 The Licensee must only authorise or permit the reproduction of Ringtones by the Licensee's customers onto mobile telephones which prevent the further reproduction of the Ringtones.

2.3 The Licensee must not:

- (a) reproduce, or authorise the reproduction of, any Ringtones onto mobile telephones which have not been issued telephone numbers by the relevant authority in the Territory;
- (b) change or make an adaptation or a parody of an AMCOS Work; or
- (c) rent or hire any recording of an AMCOS Work.

2.4 The licence in clause 2 does not include or authorise:

- (a) the reproduction of any musical works or lyrics in a graphic form;
- (b) the reproduction of any sound recording;
- (c) the reproduction of any musical works or associated words to promote any product or service;
- (d) the communication of any musical works or associated words;
- (e) the reproduction of any AMCOS Work into an Advertisement; or
- (f) any other right not expressly granted under this agreement.

**3. TERM**

This agreement commences on \_\_\_\_\_ and, subject to earlier termination in accordance with clause 11, continues until terminated by either party on at least 2 months' notice.

**4. CALCULATION OF LICENCE FEES**

The Licensee must pay the licence fee calculated in accordance with the formula in Schedule 1.

**5. AMCOS WORKS**

5.1 The Licensee must not reproduce or authorise the reproduction of any musical work unless it has been notified by AMCOS that the musical work is an AMCOS Work.

5.2 The Licensee must within 14 days after the date of this agreement provide AMCOS with a list of the musical works which it wishes to reproduce in the form of Ringtones under this agreement.

5.3 AMCOS will use its reasonable endeavours to notify the Licensee within 30 days after receipt of the list which of the musical works on the list are AMCOS Works.

5.4 The Licensee must obtain AMCOS' prior written approval of any musical works it wishes to add to the list of AMCOS Works notified by AMCOS under clause 5.3.

5.5 AMCOS will use its reasonable endeavours to respond to any request from the Licensee under clause 5.4 within 30 days after receipt of the Licensee's request.

5.6 AMCOS may from time to time by notice to the Licensee advise the Licensee that a musical work which had previously been advised by AMCOS:

- (a) to be an AMCOS Work, is no longer an AMCOS Work; or
- (b) not to be an AMCOS Work, is now an AMCOS Work.

5.7 On receipt of notice under clause 5.6 that a work is no longer an AMCOS Work, the Licensee must as soon as practicable cease the reproduction and authorisation of reproduction of the works.

**6. SUPPLY OF INFORMATION**

The Licensee must, within 14 days after the end of each Quarter, provide AMCOS with the revenue and music use information described in Schedule 2 in the form prescribed by AMCOS from time to time.

**7. PAYMENTS**

7.1 On AMCOS' receipt of the information under clause 6, AMCOS must calculate the licence fee for the Quarter in accordance with clause 4.

7.2 The Licensee must pay any invoice issued by AMCOS within 14 days after the date of the invoice.

7.3 On AMCOS' receipt of the information under clause 9, AMCOS may issue an invoice for any additional licence fees payable. The Licensee must pay any invoice issued under this clause within 14 days after the date of the invoice.

7.4 The Licensee must pay AMCOS interest at the Agreed Rate on each amount outstanding under this agreement.

**8. RECORDS**

The Licensee must keep accurate books of account and other records in sufficient detail to ensure that all amounts payable to AMCOS under this agreement can be properly ascertained.

**9. AUDIT OR EXAMINATION**

9.1 AMCOS may on 30 days' notice to the Licensee audit or examine the Licensee's books of account and other records to:

- (a) determine the correctness of any notice or payment under this agreement; or
- (b) in the case of a failure by the Licensee to provide information in accordance with clause 6, to obtain information required to be provided under that clause.

9.2 The Licensee must pay the cost of the audit or examination if it:

- (a) establishes that the information provided by the Licensee resulted in the amounts payable under this agreement being understated by more than 5%; or
- (b) is undertaken under clause 9.1(b).

**10. CONFIDENTIALITY**

- 10.1 Subject to clauses 10.2 and 10.3, AMCOS must not during or after the Term (except in the proper course of performance of this agreement), disclose to or authorise the disclosure to any person without the Licensee's prior written consent any information provided to AMCOS under clause 6.
- 10.2 With respect to information supplied under clause 6, AMCOS may:
  - (a) use that information to determine licence fees payable to AMCOS under this agreement; and
  - (b) disclose that information to AMCOS' auditors for the purposes of an audit, and other of AMCOS' professional advisers.
- 10.3 The obligations of confidentiality set out in this clause 10 do not apply to information provided to AMCOS which is:
  - (a) required to be disclosed by law; or
  - (b) in the public domain other than by breach of this clause.

**11. TERMINATION**

- 11.1 AMCOS may immediately terminate this agreement by notice to the Licensee if the Licensee:
  - (a) breaches any term of this agreement and fails to remedy the breach within 7 days after being required in writing to do so by AMCOS; or
  - (b) goes into liquidation, has a receiver or receiver and manager appointed to it or any part of its assets, enters into a scheme of arrangement with creditors or suffers any other form of external administration.
- 11.2 Either party may terminate this agreement on 2 months' notice to the other party.

**12. DISPUTE RESOLUTION**

If any dispute arises out of or in connection with this agreement, either party may submit that dispute to mediation in accordance with the rules of the Australian Commercial Disputes Centre.

**13. NOTICES**

- 13.1 A notice under this agreement must be in writing and may be given to a party by:
  - (a) delivering it to the address of the party;
  - (b) sending it by pre-paid post to the address of the party; or
  - (c) sending it by facsimile or email to the facsimile number or email address of the party,and the notice will be deemed to have been received by the party on receipt.
- 13.2 A facsimile is deemed to have been received on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the party.
- 13.3 Until a party gives notice of a change, the street address and facsimile number for that party is:

**AMCOS**

Postal address: Locked Bag 3665, St Leonards, New South Wales, 1590  
Telephone number: (02) 9935 7900  
Facsimile number: (02) 9935 7999  
Email: online@apra.com.au  
Attention: Online Licensing Manager

**LICENSEE**

Postal address:	
Telephone Number:	
Facsimile number:	
Email:	
Attention:	

**14. MISCELLANEOUS**

- 14.1 No waiver by AMCOS of any breach of any provision of this agreement operates as a waiver of another breach of the same or of any other provision of this agreement.
- 14.2 This agreement is personal to the Licensee. The Licensee is not entitled to assign any of its rights without the prior written consent of AMCOS.
- 14.3 This agreement may only be varied by the written agreement of the parties.
- 14.4 In addition to the payments under clause 7, the Licensee must pay to AMCOS within 14 days after the date of an invoice issued by AMCOS an amount on account of stamp duties and taxes, including any goods and services tax, arising in respect of this agreement.
- 14.5 This agreement must be construed in accordance with the laws in force in the State of New South Wales and the parties agree to submit to the jurisdiction of New South Wales Courts.
- 14.6 Unless the context otherwise requires, a word which denotes the singular denotes the plural and vice versa.



**SIGNED AS AN AGREEMENT**

Signed for and on behalf of **Australasian Mechanical Copyright Owners Society Limited** in the presence of:

\_\_\_\_\_  
Signature of authorised person

\_\_\_\_\_  
Signature of witness

Director: Mechanical Licensing \_\_\_\_\_

Office held

\_\_\_\_\_  
Name of witness (print)

Richard Mallett \_\_\_\_\_

Name of authorised person

Signed for and on behalf of **the Licensee** in the presence of:

\_\_\_\_\_  
Signature of authorised person

\_\_\_\_\_  
Signature of witness

Director: Mechanical Licensing \_\_\_\_\_

Office held

\_\_\_\_\_  
Name of witness (print)

Richard Mallett \_\_\_\_\_

Name of authorised person

# LICENCE AGREEMENT

Licence No:  
(APRA use only)

THIS AGREEMENT IS MADE ON

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## PARTIES

### AUSTRALASIAN PERFORMING RIGHT ASSOCIATION LIMITED

ABN 42 000 016 099 of 6-12 Atchison Street, St Leonards, New South Wales (APRA)

(company name)

ABN

  

(street address)

("Licensee")

## BACKGROUND

- A. APRA owns or controls for Australia the exclusive right of public performance and communication to the public in relation to a large number of musical works and associated lyrics.
- B. The Licensee is in the business of providing customised mobile telephone ring tones for sale at a fixed rate per sale in the Territory and requires a licence from APRA in order to pursue this business activity.
- C. APRA has agreed to grant a licence on the terms of this agreement.

## AGREEMENT

### 1. DEFINITIONS AND INTERPRETATION

1.1 Where commencing with a capital letter:

**APRA Works** means all musical works, including any words normally associated with those works by the copyright owner for Australia, the right of public performance of which is vested in APRA for Australia and New Zealand;

**Agreed Rate** means the interest rate for overdrafts of \$100,000 or more charged by the National Australia Bank plus 2 percentage points, calculated on daily rests from the due date to the date of payment;

**Grand Right Work** means an opera, operetta, musical play, revue or pantomime to the extent that it consists of music and words written expressly for the work;

**Purpose** means the purpose of communicating the Ringtones via services specified in Schedule 3 for the purpose of the Licensee's sale of customised mobile telephone ring tones;

**Ringtone** means a monophonic, polyphonic or phonographic reproduction of an APRA Work used as a ringtone on a mobile telephone;

**Quarter** means a 3 month period commencing on 1 January, 1 April, 1 July or 1 October; and

**Territory** means Australia.

1.2 An agreement, warranty, representation or obligation which binds or benefits 2 or more persons under this agreement binds or benefits them jointly and severally.

### 2. LICENCE

2.1 APRA grants to the Licensee a licence to communicate the APRA Works for the Purpose only.

2.2 The licence in clause 2.1 does not include or authorise:

- (a) the performance or communication of Grand Right Works in their entirety;
- (b) the performance or communication of any choral work of more than 20 minutes' duration in its entirety;
- (c) the performance or communication of any music and associated words so as to burlesque or parody the work;
- (d) the performance or communication of any musical work with new or substituted words, or any words which have been notified by APRA as prohibited;
- (e) the reproduction or communication of any musical works or lyrics in a graphic form;
- (h) the reproduction, performance or communication of any sound recording; or
- (i) any other right not expressly granted under this agreement.

- 2.3 The licence must only authorise the communication of Ringtones to the Licensee's customers to mobile telephones which prevent the further communication of the Ringtones.
- 3. TERM**  
This agreement commences on \_\_\_\_\_ and, subject to earlier termination in accordance with clause 10, continues until terminated by either party on at least 2 months' notice.
- 4. CALCULATION OF LICENCE FEES**  
The Licensee must pay the licence fee calculated in accordance with the formula in Schedule 1.
- 5. SUPPLY OF INFORMATION**  
The Licensee must, within 14 days after the end of each Quarter, provide APRA with the revenue and music use information described in Schedule 2 in the form prescribed by APRA from time to time.
- 6. PAYMENTS**
- 6.1 On APRA's receipt of the information under clause 5, APRA must calculate the licence fee for the Quarter in accordance with clause 4.
- 6.2 The Licensee must pay any invoice issued by APRA within 14 days after the date of the invoice.
- 6.3 On APRA's receipt of the information under clause 8, APRA may issue an invoice for any additional licence fees payable. The Licensee must pay any invoice issued under this clause within 14 days after the date of the invoice.
- 6.4 The Licensee must pay APRA interest at the Agreed Rate on each amount outstanding under this agreement.
- 7. RECORDS**  
The Licensee must keep accurate books of account and other records in sufficient detail to ensure that all amounts payable to APRA under this agreement can be properly ascertained.
- 8. AUDIT OR EXAMINATION**
- 8.1 APRA may on 30 days' notice to the Licensee audit or examine the Licensee's books of account and other records to:
- (a) determine the correctness of any notice or payment under this agreement; or
  - (b) in the case of a failure by the Licensee to provide information in accordance with clause 6, to obtain information required to be provided under that clause.
- 8.2 The Licensee must pay the cost of the audit or examination if it:
- (a) establishes that the information provided by the Licensee resulted in the amounts payable under this agreement being understated by more than 5%; or
  - (b) is undertaken under clause 8.1(b).
- 9. CONFIDENTIALITY**
- 9.1 Subject to clauses 9.2 and 9.3, APRA must not during or after the Term (except in the proper course of performance of this agreement), disclose to or authorise the disclosure to any person without the Licensee's prior written consent any information provided to APRA under clause 5.
- 9.2 With respect to information supplied under clause 5, APRA may:
- (a) use that information to determine licence fees payable to APRA under this agreement; and
  - (b) disclose that information to APRA's auditors for the purposes of an audit, and other of APRA's professional advisers.
- 9.3 The obligations of confidentiality set out in this clause 9 do not apply to information provided to APRA which is:
- (a) required to be disclosed by law; or
  - (b) in the public domain other than by breach of this clause.
- 10. TERMINATION**
- 10.1 APRA may immediately terminate this agreement by notice to the Licensee if the Licensee:
- (a) breaches any term of this agreement and fails to remedy the breach within 7 days after being required in writing to do so by APRA; or
  - (b) goes into liquidation, has a receiver or receiver and manager appointed to it or any part of its assets, enters into a scheme of arrangement with creditors or suffers any other form of external administration.
- 10.2 Either party may terminate this agreement on 2 months' notice to the other party.
- 11. DISPUTE RESOLUTION**  
If any dispute arises out of or in connection with this agreement, either party may submit that dispute to the alternative dispute resolution mechanism approved by the Australian Competition Tribunal constituted under the *Trade Practices Act 1974* in the determination in relation to File Nos. 4 and 5 of 1998.

**12. NOTICES**

12.1 A notice under this agreement must be in writing and may be given to a party by:

- (a) delivering it to the address of the party;
- (b) sending it by pre-paid post to the address of the party; or
- (c) sending it by facsimile or email to the facsimile number or email address of the party,

and the notice will be deemed to have been received by the party on receipt.

12.2 A facsimile is deemed to have been received on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the party.

12.3 Until a party gives notice of a change, the street address and facsimile number for that party is:

**APRA**

Postal address: Locked Bag 3665, St Leonards, New South Wales, 1590  
Telephone number: (02) 9935 7900  
Facsimile number: (02) 9935 7999  
Email: online@apra.com.au  
Attention: Online Licensing Manager

**LICENSEE**

Postal address:	
Telephone Number:	
Facsimile number:	
Email:	
Attention:	

**13. MISCELLANEOUS**

13.1 No waiver by APRA of any breach of any provision of this agreement operates as a waiver of another breach of the same or of any other provision of this agreement.

13.2 This agreement is personal to the Licensee. The Licensee is not entitled to assign any of its rights without the prior written consent of APRA.

13.3 This agreement may only be varied by the written agreement of the parties.

13.4 In addition to the payments under clause 7, the Licensee must pay to APRA within 14 days after the date of an invoice issued by APRA an amount on account of stamp duties and taxes, including any goods and services tax, arising in respect of this agreement.

13.5 This agreement must be construed in accordance with the laws in force in the State of New South Wales and the parties agree to submit to the jurisdiction of New South Wales Courts.

13.6 Unless the context otherwise requires, a word which denotes the singular denotes the plural and vice versa.



**SIGNED AS AN AGREEMENT**

Signed for and on behalf of **Australasian Performing Right Association Limited** in the presence of:

\_\_\_\_\_  
Signature of authorised person

\_\_\_\_\_  
Signature of witness

Director: Mechanical Licensing  
Office held

\_\_\_\_\_  
Name of witness (print)

Richard Mallett  
Name of authorised person

Signed for and on behalf of **the Licensee** in the presence of:

\_\_\_\_\_  
Signature of authorised person

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Office held (print)

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Name of authorised person (print)

# LICENCE AGREEMENT

Licence No:  
(AMCOS use only)

THIS AGREEMENT IS MADE ON

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PARTIES

AUSTRALASIAN MECHANICAL COPYRIGHT OWNERS SOCIETY LIMITED ABN 78 001 678 851  
of 16 Mountain St, Ultimo, New South Wales (AMCOS)

(company name)

ABN

  

(street address)

("Licensee")

## BACKGROUND

- A. AMCOS controls the right to reproduce AMCOS Works in the Territory.
- B. The Licensee is in the business of providing customised mobile telephone ring tones for sale or supply at a fixed rate per ringtone in the Territory, by means of premium rate short message services, premium rate multimedia message services and/or through the proprietary networks of telecommunications carriers in the Territory, and requires a licence from AMCOS in order to pursue this business activity.
- C. AMCOS has agreed to grant a licence, on the terms of this agreement.

## AGREEMENT

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Where commencing with a capital letter:

Agreed Rate means the interest rate for overdrafts of \$100,000 or more charged by the National Australia Bank plus 2 percentage points, calculated on daily rests from the due date to the date of payment;

AMCOS Works means the musical works for which AMCOS is entitled to grant the licence referred to in clause 2.1 as notified by AMCOS to the Licensee from time to time in accordance with clause 5;

Grand Right Work means an opera, operetta, musical play, revue or pantomime to the extent that it consists of music and words written expressly for the work;

Ringtone means a monophonic, polyphonic or phonographic reproduction of an AMCOS Work for use as a ringtone on a mobile telephone;

Quarter means a 3 month period commencing on 1 January, 1 April, 1 July or 1 October; and

Territory means Australia and New Zealand.

- #### 1.2
- An agreement, warranty, representation or obligation which binds or benefits 2 or more persons under this agreement binds or benefits them jointly and severally.

### 2. LICENCE

AMCOS grants the Licensee a non-exclusive licence to:

- (a) reproduce the AMCOS Works in the form of Ringtones in the Territory for the purpose of the Licensee's agreement to sell or supply the Ringtones;
- (b) Authorise reproductions of the Ringtones by the Licensee's customers onto mobile telephones to complete the sale or supply of the Ringtone; and
- (c) reproduce the Ringtones on the services specified in Schedule 3 for the sole purpose of demonstrating the Ringtones to potential customers, in the Territory.

### 3 EXCLUSIONS AND LIMITATIONS

- 3.1 The rights granted in this agreement are conditional on compliance with the Terms, including provision of Sales Reports, Revenue Statements and Usage Statements (where required) and payment of Licence Fees.
- 3.2 Nothing in this agreement constitutes the grant of a licence to reproduce a Work that is not an AMCOS Work.
- 3.3 This agreement does not apply to reproductions of Works made, sold, distributed or communicated by You or on Your behalf with the intention of, or with Your expressed or implied authorisation for use other than as a Ringtone.
- 3.4 The right granted under clause 2 do not include the right to synchronise AMCOS Works with audiovisual material, including Music Videos, or still images.
- 3.5 The rights granted under clause 2 do not include the right to reproduce or communicate to the public any Work to promote any product, service or advertising campaign, or in a manner that suggests any connection between individual Works or groups of Works and any goods or services, including but not limited to the Ringtone Service.
- 3.6 The licences granted under the Terms do not include or authorise:
- (a) the reproduction of any Work into an Advertisement or Premium;
  - (b) the making of an adaptation or a parody of an AMCOS Work;
  - (c) the reproduction or communication of any Work with words that are not approved or normally associated with the Work by the copyright owner for Australia;
  - (d) the reproduction or communication of any Works in a graphic form;
  - (e) the performance in public of any Works;
  - (f) the performance in public or communication to the public of any Grand Right Works in their entirety;
  - (g) the performance in public or communication to the public of any choral work of more than 20 minutes' duration in its entirety;
  - (h) the reproduction, performance in public or communication to the public of any sound recording; or
  - (i) any other right not expressly granted under this agreement.
- 3.7 Nothing in the Terms constitutes a consent by the authors of Works in relation to any act contrary to the composer's moral rights.
- 3.8 This licence does not apply to any ringtone service offered by the licensee where customers to that service are required to pay a subscription fee

### 4. TERM

This agreement commences on \_\_\_\_\_ and, subject to earlier termination in accordance with clause 9, continues until terminated by either party on at least 2 months' notice.

### 5. ASSESSMENT, INVOICING AND PAYMENT OF LICENCE FEES

- 5.1 The Licensee must pay for each Quarter the Licence Fee calculated in accordance with the formula in Schedule 1.
- 5.2 The Licensee must, within 14 days after the end of each Quarter, provide AMCOS with the revenue and music use information described in Schedule 2 in the form reasonably prescribed by AMCOS from time to time.
- 5.3 If in the reasonable option of AMCOS, an upgrade to the current form will require the Licensee to adjust its systems significantly, AMCOS must:
- (a) provide the Licensee with reasonable prior notice of all such upgrades or new versions; and
  - (b) allow the Licensee reasonable time to implement and make adjustments to its current systems to accommodate the upgrade and new version.
- 5.4 On execution of this agreement, AMCOS may issue an invoice for the provisional fee for the period from the commencement of the service to the next 31 March, 30 June, 30 September or 31 December, whichever date occurs first. The provisional fee will be based on AMCOS' reasonable estimate of the fee payable by the Licensee under clause 5.1.
- 5.5 On AMCOS' receipt of the information under clause 5.2 for the period referred to in clause 5.4 AMCOS must calculate the Licence Fee in accordance with the formula clause 5.1. If this Licence Fee exceeds the provisional fee invoiced, the Licensee must pay the excess to AMCOS on receipt of an invoice specifying the amount. If the Licence Fee is less than the provisional fee invoiced, AMCOS must credit the difference to the Licensee's account.
- 5.6 For all Quarters subsequent to the period referred to in clause 5.3. AMCOS may issue an invoice for the provisional fee for the Quarter. AMCOS shall be entitled to rely on the latest information provided by the Licensee under clause 5.2 in order to calculate the provisional fee.
- 5.7 On AMCOS' receipt of the information under clause 5.2 for the Quarters referred to in clause 5.6
- 5.5 AMCOS must calculate the Licence Fee in accordance with the formula clause 5.1. If this Licence Fee exceeds the provisional fee invoiced, the Licensee must pay the excess to AMCOS on receipt of an invoice specifying the amount. If the Licence Fee is less than the provisional fee invoiced, AMCOS must credit the difference to the Licensee's account.
- 5.8 AMCOS will send all invoices to the Licensee as an email attachment unless the Licensee requests otherwise.

- 5.9 The Licensee must pay any invoice issued by AMCOS within 14 days after the date of the invoice.
- 5.10 On receipt of the information under clause 7, AMCOS may issue an invoice for any additional licence fees payable. The Licensee must pay any invoice issued under this clause within 21 days after the date of the invoice.
- 5.11 The Licensee must pay AMCOS interest at the Agreed Rate on each amount outstanding under this agreement.
6. RECORDS  
The Licensee must keep accurate books of account and other records in sufficient detail to ensure that all amounts payable to AMCOS under this agreement can be properly ascertained.
7. AUDIT OR EXAMINATION
- 7.1 AMCOS may on 30 days' notice to the Licensee audit or examine the Licensee's books of account and other records to:
- (a) determine the correctness of any notice or payment under this agreement; or
  - (b) in the case of a failure by the Licensee to provide information in accordance with clause 5.2, to obtain information required to be provided under that clause.
- 7.2 The Licensee must pay the cost of the audit or examination if it:
- (a) establishes that the information provided by the Licensee resulted in the amounts payable under this agreement being understated by more than 5%; or
  - (b) is undertaken under clause 7.1(b).
8. CONFIDENTIALITY
- 8.1 Subject to clauses 8.2 and 8.3, AMCOS must not during or after the Term (except in the proper course of performance of this agreement), disclose to or authorise the disclosure to any person without the Licensee's prior written consent any information provided to AMCOS under clause 5.2.
- 8.2 With respect to information supplied under clause 5.2, AMCOS may:
- (a) use that information to determine licence fees payable to AMCOS under this agreement; and
  - (b) disclose that information to AMCOS' auditors for the purposes of an audit, and other of AMCOS' professional advisers.
- 8.3 The obligations of confidentiality set out in this clause 8 do not apply to information provided to AMCOS which is:
- (a) required to be disclosed by law; or
  - (b) in the public domain other than by breach of this clause.
9. TERMINATION
- 9.1 AMCOS may immediately terminate this agreement by notice to the Licensee if the Licensee:
- (a) breaches any term of this agreement and fails to remedy the breach within 7 days after being required in writing to do so by AMCOS; or
  - (b) goes into liquidation, has a receiver or receiver and manager appointed to it or any part of its assets, enters into a scheme of arrangement with creditors or suffers any other form of external administration.
- 9.2 Either party may terminate this agreement on 2 months' notice to the other party.
10. DISPUTE RESOLUTION  
If any dispute arises out of or in connection with this agreement, either party may submit that dispute to mediation in accordance with the rules of the Australian Commercial Disputes Centre.
11. NOTICES
- 11.1 A notice under this agreement must be in writing and may be given to a party by:
- (a) delivering it to the address of the party;
  - (b) sending it by pre-paid post to the address of the party; or
  - (c) sending it by facsimile or email to the facsimile number or email address of the party,
- and the notice will be deemed to have been received by the party on receipt.
- 11.2 A facsimile is deemed to have been received on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the party.

11.3 Until a party gives notice of a change, the street address and facsimile number for that party is:

AMCOS

Street address: 16 Mountain St, Ultimo NSW 2007

Telephone number: (02) 9935 7900

Facsimile number: (02) 9935 7999

Email: digital@apra.com.au

Attention: Digital Recordings Manager

LICENSEE

Street address:

Telephone Number:

Facsimile number:

Email:

Attention:


12. MISCELLANEOUS

- 12.1 No waiver by AMCOS of any breach of any provision of this agreement operates as a waiver of another breach of the same or of any other provision of this agreement.
- 12.2 This agreement is personal to the Licensee. The Licensee is not entitled to assign any of its rights without the prior written consent of AMCOS.
- 12.3 This agreement may only be varied by the written agreement of the parties.
- 12.4 In addition to the payments under clause 5, the Licensee must pay to AMCOS within 14 days after the date of an invoice issued by AMCOS an amount on account of stamp duties and taxes, including any goods and services tax, arising in respect of this agreement.
- 12.5 This agreement must be construed in accordance with the laws in force in the State of New South Wales and the parties agree to submit to the jurisdiction of New South Wales Courts.
- 12.6 Unless the context otherwise requires, a word which denotes the singular denotes the plural and vice versa.

## SCHEDULE 1 - LICENCE FEES

In consideration of the licence granted in clause 2.1(a), in respect of each new AMCOS Work added to the Licensee's inventory in the Quarter a fee of \$11 (inclusive of GST at 10%) applies.

In consideration of the licence granted in clause 2.1(b), the Licensee must pay to AMCOS a fee for each Ringtone of 11% (inclusive of GST at 10%) of the retail price subject to a minimum fee of 16.5 cents (inclusive of GST at 10%) per contract of sale.

## SCHEDULE 2 - QUARTERLY REPORTS

The Licensee must supply within 14 days after the end of each Quarter a detailed account of Ringtone sales contract in that Quarter for each separate Ringtone service operated by the Licensee (Sales Report). The Sales Report must identify:

For each separate work offered for sale during the Quarter:

- (a) title of the work;
- (b) writer(s) of the work;
- (c) the recording artist most commonly associated with the work;
- (d) the price the work sold at;
- (e) the number of sales contract in each month in the Quarter, entered separately for (a) monophonic and polyphonic ringtones, and (b) phonographic ringtones.

In a format acceptable to AMCOS, the Licensee must also supply APRA within 30 days after the end of each Quarter, copies of actual revenue statements (including but not limited to details of items delivered, items billed, gross revenue, price points and period covered as relevant) provided by the relevant telecommunications carriers and service providers responsible for collecting revenue in relation to the Purpose.

Note: If the price of a particular ringtone changes during each Quarter or is sold at different prices then separate line entries should be made, one for each price, so that the correct licence fee may be calculated.



SIGNED AS AN AGREEMENT

Signed for and on behalf of Australasian Mechanical Copyright Owners Society Limited in the presence of:

\_\_\_\_\_  
Signature of authorised person

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Office held (print)

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Name of authorised person (print)

Signed for and on behalf of the Licensee in the presence of:

\_\_\_\_\_  
Signature of authorised person

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Office held (print)

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Name of authorised person (print)

# LICENCE AGREEMENT

Licence No:  
(APRA use only)

THIS AGREEMENT IS MADE ON

200

PARTIES

AUSTRALASIAN PERFORMING RIGHT ASSOCIATION LIMITED  
ABN 42 000 016 099 of 16 Mountain St, Ultimo, New South Wales (APRA)

(company name)

ABN

  

(street address)

("Licensee")

## BACKGROUND

- A. APRA owns or controls for the Territory the exclusive right of public performance and communication to the public in relation to a large number of musical works and associated lyrics.
- B. The Licensee is in the business of providing customised mobile telephone ring tones for sale or supply at a fixed rate per ringtone in the Territory, by means of premium rate short message services, premium rate multimedia message services and/or through the proprietary networks of telecommunications carriers and requires a licence from APRA in order to pursue this business activity.
- C. APRA has agreed to grant a licence on the terms of this agreement.

## AGREEMENT

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Where commencing with a capital letter:

APRA Works means all musical works, including any words normally associated with those works by the copyright owner for Australia, the right of public performance of which is vested in APRA for Australia and New Zealand;

Agreed Rate means the interest rate for overdrafts of \$100,000 or more charged by the National Australia Bank plus 2 percentage points, calculated on daily rests from the due date to the date of payment;

Grand Right Work means an opera, operetta, musical play, revue or pantomime to the extent that it consists of music and words written expressly for the work;

Ringtone means a monophonic, polyphonic or phonographic reproduction of an APRA Work for use as a ringtone on a mobile telephone;

Quarter means a 3 month period commencing on 1 January, 1 April, 1 July or 1 October; and

Territory means Australia and New Zealand.

- 1.2 An agreement, warranty, representation or obligation which binds or benefits 2 or more persons under this agreement binds or benefits them jointly and severally.

### 2. LICENCE

APRA grants to the Licensee a licence to communicate the APRA Works for the purpose of providing them as Previews and Ringtones to customers as part of the Subscription Service only.

3. EXCLUSIONS AND LIMITATIONS

- 3.1 The rights granted in this agreement are conditional on compliance with the Terms, including provision of Sales Reports, Revenue Statements and Usage Statements (where required) and payment of Licence Fees.
- 3.2 Nothing in this agreement constitutes the grant of a licence to communicate a Work that is not an APRA Work.
- 3.3 This agreement does not apply to reproductions of Works made, sold, distributed or communicated by You or on Your behalf with the intention of, or with Your expressed or implied authorisation for use other than as a Ringtone.
- 3.5 The rights granted under clause 2 do not include the right to reproduce or communicate to the public any Work to promote any product, service or advertising campaign, or in a manner that suggests any connection between individual Works or groups of Works and any goods or services, including but not limited to the Ringtone service.
- 3.6 The licences granted under the Terms do not include or authorise:
- (a) the reproduction of any Work into an Advertisement or Premium;
  - (b) the reproduction or communication of any Work with words that are not approved or normally associated with the Work by the copyright owner for Australia;
  - (c) the reproduction or communication of any Works in a graphic form;
  - (d) the performance in public of any Works;
  - (e) the performance in public or communication to the public of any Grand Right Works in their entirety;
  - (f) the performance in public or communication to the public of any choral work of more than 20 minutes' duration in its entirety;
  - (g) the reproduction, performance in public or communication to the public of any sound recording; or
  - (h) any other right not expressly granted under this agreement.
- 3.7 Nothing in the Terms constitutes a consent by the authors of Works in relation to any act contrary to the composer's moral rights.
- 3.8 This licence does not apply to any ringtone service offered by the licensee where customers to that service are required to pay a subscription fee

4. TERM

This agreement commences on \_\_\_\_\_ and, subject to earlier termination in accordance with clause 9, continues until terminated by either party on at least 2 months' notice.

5. ASSESSMENT, INVOICING AND PAYMENT OF LICENCE FEES

- 5.1 The Licensee must pay for each Quarter the Licence Fee calculated in accordance with the formula in Schedule 1.
- 5.2 The Licensee must, within 14 days after the end of each Quarter, provide APRA with the revenue and music use information described in Schedule 2 in the form reasonably prescribed by APRA from time to time.
- 5.3 If in the reasonable option of APRA, an upgrade to the current form will require the Licensee to adjust its systems significantly, APRA must:
- (a) provide the Licensee with reasonable prior notice of all such upgrades or new versions; and
  - (b) allow the Licensee reasonable time to implement and make adjustments to its current systems to accommodate the upgrade and new version.
- 5.5 On execution of this agreement, APRA may issue an invoice for the provisional fee for the period from the commencement of the service to the next 31 March, 30 June, 30 September or 31 December, whichever date occurs first. The provisional fee will be based on APRA' reasonable estimate of the fee payable by the Licensee under clause 5.1.
- 5.5 On APRA receipt of the information under clause 5.2 for the period referred to in clause \_\_\_\_\_ APRA must calculate the Licence Fee in accordance with the formula clause 5.1. If this Licence Fee exceeds the provisional fee invoiced, the Licensee must pay the excess to APRA on receipt of an invoice specifying the amount. If the Licence Fee is less than the provisional fee invoiced, APRA must credit the difference to the Licensee's account.
- 5.6 For all Quarters subsequent to the period referred to in clause 5.3. APRA may issue an \_\_\_\_\_ invoice for the provisional fee for the Quarter. APRA shall be entitled to rely on the latest \_\_\_\_\_ information provided by the Licensee under clause 5.2 in order to calculate the provisional fee.
- 5.7 On APRA' receipt of the information under clause 5.2 for the Quarters referred to in clause \_\_\_\_\_
- 5.5 APRA must calculate the Licence Fee in accordance with the formula clause 5.1. If this Licence Fee exceeds the provisional fee invoiced, the Licensee must pay the excess to APRA on receipt of an invoice specifying the amount. If the Licence Fee is less than the provisional fee invoiced, APRA must credit the difference to the Licensee's account.
- 5.8 APRA will send all invoices to the Licensee as an email attachment unless the Licensee \_\_\_\_\_ requests otherwise.
- 5.9 The Licensee must pay any invoice issued by APRA within 14 days after the date of the \_\_\_\_\_ invoice.
- 5.10 On receipt of the information under clause 8, APRA may issue an invoice for any additional licence fees payable. The Licensee must pay any invoice issued under this clause within 21 days after the date of the invoice.

- 5.11 The Licensee must pay APRA interest at the Agreed Rate on each amount outstanding under this agreement.
6. RECORDS  
The Licensee must keep accurate books of account and other records in sufficient detail to ensure that all amounts payable to APRA under this agreement can be properly ascertained.
7. AUDIT OR EXAMINATION
- 7.1 APRA may on 30 days' notice to the Licensee audit or examine the Licensee's books of account and other records to:
- (a) determine the correctness of any notice or payment under this agreement; or
  - (b) in the case of a failure by the Licensee to provide information in accordance with clause 6, to obtain information required to be provided under that clause.
- 7.2 The Licensee must pay the cost of the audit or examination if it:
- (a) establishes that the information provided by the Licensee resulted in the amounts payable under this agreement being understated by more than 5%; or
  - (b) is undertaken under clause 7.1(b).
8. CONFIDENTIALITY
- 8.1 Subject to clauses 8.2 and 8.3, APRA must not during or after the Term (except in the proper course of performance of this agreement), disclose to or authorise the disclosure to any person without the Licensee's prior written consent any information provided to APRA under clause 5.
- 8.2 With respect to information supplied under clause 5, APRA may:
- (a) use that information to determine licence fees payable to APRA under this agreement; and
  - (b) disclose that information to APRA's auditors for the purposes of an audit, and other of APRA's professional advisers.
- 8.3 The obligations of confidentiality set out in this clause 8 do not apply to information provided to APRA which is:
- (a) required to be disclosed by law; or
  - (b) in the public domain other than by breach of this clause.
9. TERMINATION
- 9.1 APRA may immediately terminate this agreement by notice to the Licensee if the Licensee:
- (a) breaches any term of this agreement and fails to remedy the breach within 7 days after being required in writing to do so by APRA; or
  - (b) goes into liquidation, has a receiver or receiver and manager appointed to it or any part of its assets, enters into a scheme of arrangement with creditors or suffers any other form of external administration.
- 9.2 Either party may terminate this agreement on 2 months' notice to the other party.
10. DISPUTE RESOLUTION  
If any dispute arises out of or in connection with this agreement, either party may submit that dispute to the alternative dispute resolution mechanism approved by the Australian Competition Tribunal constituted under the *Trade Practices Act 1974* in the determination in relation to File Nos. 4 and 5 of 1998.
11. NOTICES
- 11.1 A notice under this agreement must be in writing and may be given to a party by:
- (a) delivering it to the address of the party;
  - (b) sending it by pre-paid post to the address of the party; or
  - (c) sending it by facsimile or email to the facsimile number or email address of the party,
- and the notice will be deemed to have been received by the party on receipt.
- 11.2 A facsimile is deemed to have been received on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the party.

11.3 Until a party gives notice of a change, the street address and facsimile number for that party is:

APRA  
 Street address: 16 Mountain St, Ultimo NSW 2007  
 Telephone number: (02) 9935 7900  
 Facsimile number: (02) 9935 7999  
 Email: digital@apra.com.au  
 Attention: Digital Recordings Manager

LICENSEE	
Street address:	
Telephone Number:	
Facsimile number:	
Email:	
Attention:	

12. MISCELLANEOUS
- 12.1 No waiver by APRA of any breach of any provision of this agreement operates as a waiver of another breach of the same or of any other provision of this agreement.
- 12.2 This agreement is personal to the Licensee. The Licensee is not entitled to assign any of its rights without the prior written consent of APRA.
- 12.3 This agreement may only be varied by the written agreement of the parties.
- 12.4 In addition to the payments under clause 5, the Licensee must pay to APRA within 14 days after the date of an invoice issued by APRA an amount on account of stamp duties and taxes, including any goods and services tax, arising in respect of this agreement.
- 12.5 This agreement must be construed in accordance with the laws in force in the State of New South Wales and the parties agree to submit to the jurisdiction of New South Wales Courts.
- 12.6 Unless the context otherwise requires, a word which denotes the singular denotes the plural and vice versa.

## SCHEDULE 1 - LICENCE FEES

In consideration of the licence granted in clause 2.1, the Licensee must pay to APRA a fee:

- (a) for each Ringtone, 1.1% (inclusive of GST at 10%) of the retail price subject to a minimum fee of 1.65 cents (inclusive of GST at 10%) per contract of sale in a monophonic or polyphonic format; and
- (b) for each Ringtone, 2.2% (inclusive of GST at 10%) of the retail price subject to a minimum fee of 3.30 cents (inclusive of GST at 10%) per contract of sale in a phonographic format.

## SCHEDULE 2 - QUARTERLY REPORTS

The Licensee must supply within 14 days after the end of each Quarter a detailed account of Ringtone sales contract in that Quarter for each separate Ringtone service operated by the Licensee (Sales Report). The Sales Report must identify:

For each separate work offered for sale during the Quarter:

- (a) title of the work;
- (b) writer(s) of the work;
- (c) the recording artist most commonly associated with the work;
- (d) the price the work sold at;
- (e) the number of sales contract in each month in the Quarter, entered separately for (a) monophonic and polyphonic ringtones, and (b) phonographic ringtones.

In a format acceptable to APRA, the Licensee must also supply APRA within 30 days after the end of each Quarter, copies of actual revenue statements (including but not limited to details of items delivered, items billed, gross revenue, price points and period covered as relevant) provided by the relevant telecommunications carriers and service providers responsible for collecting revenue in relation to the Purpose.

Note: If the price of a particular ringtone changes during each Quarter or is sold at different prices then separate line entries should be made, one for each price, so that the correct licence fee may be calculated.



SIGNED AS AN AGREEMENT

Signed for and on behalf of Australasian Performing Right Association Limited in the presence of:

\_\_\_\_\_  
Signature of authorised person

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Office held (print)

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Name of authorised person (print)

Signed for and on behalf of the Licensee in the presence of:

\_\_\_\_\_  
Signature of authorised person

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Office held (print)

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Name of authorised person (print)

# LICENCE AGREEMENT

Licence No:  
(APRA|AMCOS use only)

THIS AGREEMENT IS MADE ON  
PARTIES

200

AUSTRALASIAN MECHANICAL COPYRIGHT OWNERS SOCIETY LIMITED ABN 78 001 678  
851  
of 6-12 Atchison Street, St Leonards, New South Wales (AMCOS)

(registered company name)

ABN

(street address)

(trading as)

("Licensee")

## BACKGROUND

- A. AMCOS controls in Australia the right to reproduce AMCOS Works in certain circumstances.
- B. The Licensee is in the business of providing customised mobile telephone ring tones for download in consideration for a subscription fee in the Territory, by means of premium rate short message services, premium rate multimedia message services, proprietary networks of telecommunications carriers in the Territory, Internet, WAP or other means of distribution, and requires a licence from AMCOS in order to pursue this business activity.
- C. AMCOS has agreed to grant a licence, on the terms of this agreement.

## AGREEMENT

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Where commencing with a capital letter:

Advertisement means any audio, visual or audio-visual production which is an announcement designed to attract the attention of the public or any part of it to a product, service, person, organisation or line of conduct;

Agreed Rate means the interest rate for overdrafts of \$100,000 or more charged by the National Australia Bank plus 2 percentage points, calculated on daily rests from the due date to the date of payment;

AMCOS Works means the musical works for which AMCOS is entitled or represents that it is entitled to grant the licence referred to in clause 2.1 in accordance with clause 5;

Music Video means a cinematograph film produced for the primary purpose of promoting:

- (a) the performer of the sound recording; or
- (b) the sound recording,  
of a musical work embodied in the soundtrack of the cinematograph film;

Other Mobile Products means products, other than Ringtones, available on the Subscription Service, including wallpapers and logos;

Preview means a part of a Ringtone, no longer than 30 seconds in duration, used for the sole purpose of demonstrating, for no charge, the Ringtone to potential customers of the Subscription Service;

Pro-rated Subscription Revenue means for a Quarter, the amount derived by dividing the Subscription Revenue by the total number of Ringtones and Other Mobile Products transmitted to or ordered by customers in the Quarter, and multiplying that number by the total number of AMCOS Works transmitted to or ordered by customers as Ringtones in the Quarter, adjusted where necessary to take account of differential product pricing;

Ringtone means a monophonic, polyphonic or phonographic reproduction of an AMCOS Work for use as a ringtone on a mobile telephone and in respect of phonographic reproductions may also incorporate the reproduction of a work as part of a Music Video;

Quarter means a 3 month period commencing on 1 January, 1 April, 1 July or 1 October;

Subscription Service means the Licensee's business that allows customers to request, order or be supplied with up to a fixed number of Ringtones and Other Mobile Products in return for a fixed periodic fee (popularly known as clubs);

Subscription Fee means the amount charged by the Licensee to a customer for the provision of the Subscription Service (exclusive of GST or similar sales tax);

Subscription Revenue means the aggregate amount of Subscription Fees charged by the Licensee during the relevant Quarter; and

Territory means Australia *and New Zealand*.

1.2 An agreement, warranty, representation or obligation which binds or benefits 2 or more persons under this agreement binds or benefits them jointly and severally.

## 2. LICENCE

2.1 AMCOS grants the Licensee a non-exclusive licence to:

- (a) reproduce the AMCOS Works in the form of Ringtones for the purpose of providing them as Ringtones as part of the Subscription Service;
- (b) subject to clause 2.2, authorise reproductions of the works embodied in Ringtones by the Licensee's customers in the Territory onto mobile telephones as part of the Subscription Service; and
- (c) reproduce the Ringtones on the services specified in Schedule 3 for the sole purpose of demonstrating the Ringtones in the form of Previews to potential customers.

2.2 The Licensee must not under this agreement:

- (a) change or make an adaptation or a parody of an AMCOS Work; or
- (b) rent or hire any recording of an AMCOS Work.

2.3 The licence in clause 2 does not include or authorise:

- (a) the reproduction of any musical works or lyrics in a graphic form;
- (b) the reproduction of any sound recording;
- (c) the reproduction of any musical works or associated lyrics to promote any product or service;

- (d) the public performance or communication to the public of any musical works or associated lyrics, or sound recordings;
- (e) the reproduction of any AMCOS Work into an Advertisement;
- (f) any synchronisation rights in respect of Music Videos; or
- (g) any other right not expressly granted under this agreement.

3. TERM

This agreement commences on \_\_\_\_\_ and, subject to earlier termination in accordance with clause 9, continues until terminated by either party on at least 2 months notice.

4. ASSESSMENT, INVOICING AND PAYMENT OF LICENCE FEES

- 4.1 The Licensee must pay for each Quarter the Licence Fee calculated in accordance with the formula in Schedule 1.
- 4.2 The Licensee must, within 30 days after the end of each Quarter, provide AMCOS with the revenue and music use information described in Schedule 2 in the form reasonably prescribed by AMCOS from time to time.
- 4.3 If in the reasonable option of AMCOS, an upgrade to the current form will require the Licensee to adjust its systems significantly, AMCOS must:
  - (a) provide the Licensee with reasonable prior notice of all such upgrades or new versions; and
  - (b) allow the Licensee reasonable time to implement and make adjustments to its current systems to accommodate the upgrade and new version.
- 4.4 On execution of this agreement, AMCOS will issue an invoice for the provisional fee for the period from the commencement of the Subscription Service to the next 31 March, 30 June, 30 September or 31 December, whichever date occurs first. The provisional fee will be based on AMCOS' reasonable estimate of the fee payable by the Licensee under clause 4.1.
- 4.5 On AMCOS' receipt of the information under clause 4.2 for the period referred to in clause 4.3, AMCOS must calculate the Licence Fee in accordance with the formula clause 4.1. If this Licence Fee exceeds the provisional fee invoiced, the Licensee must pay the excess to AMCOS on receipt of an invoice specifying the amount. If the Licence Fee is less than the provisional fee invoiced, AMCOS must, at the Licensee's option, either refund the amount of the difference to the Licensee or credit the difference to the Licensee's account. When exercising that option AMCOS will take Licensee's reasonable interests into consideration.
- 4.6 For all Quarters subsequent to the period referred to in clause 4.3. AMCOS will issue an invoice for the provisional fee for the Quarter. AMCOS shall be entitled to rely on the latest information provided by the Licensee under clause 4.2 in order to calculate the provisional fee.
- 4.7 On AMCOS' receipt of the information under clause 4.2 for the Quarters referred to in clause 4.5, AMCOS must calculate the Licence Fee in accordance with the formula clause 4.1. If this Licence Fee exceeds the provisional fee invoiced, the Licensee must pay the excess to AMCOS on receipt of an invoice specifying the amount. If the Licence Fee is less than the provisional fee invoiced, AMCOS must, at the Licensee's option, either refund the amount of the difference to the Licensee or credit the difference to the Licensee's account. When exercising that option AMCOS will take Licensee's reasonable interests into consideration.
- 4.8 AMCOS will send all invoices to the Licensee as an email attachment unless the Licensee requests otherwise.
- 4.9 The Licensee must pay any invoice issued by AMCOS within 21 days after the date of the invoice.

- 4.10 On receipt of the information under clause 7, AMCOS may issue an invoice for any additional licence fees payable. The Licensee must pay any invoice issued under this clause within 21 days after the date of the invoice.
- 4.11 The Licensee must pay AMCOS interest at the Agreed Rate on each amount outstanding under this agreement.
5. AMCOS WORKS
- 5.1 AMCOS may from time to time by notice to the Licensee advise the Licensee that a musical work which had previously been advised by AMCOS:
- (a) to be an AMCOS Work, is no longer an AMCOS Work; or
  - (b) not to be an AMCOS Work, is now an AMCOS Work.
- 5.2 On receipt of notice under clause 5.1 that a work is no longer an AMCOS Work, the Licensee must cease the reproduction and authorisation of reproduction of the works under this agreement within 48 hours of receipt of such notice.
6. RECORDS
- The Licensee must keep accurate books of account and other records in sufficient detail to ensure that all amounts payable to AMCOS under this agreement can be properly ascertained.
7. AUDIT OR EXAMINATION
- 7.1 AMCOS may on 30 days' notice to the Licensee appoint an auditor to audit or examine the Licensee's books of account and other relevant records to:
- (a) determine the correctness of any notice or payment under this agreement; or
  - (b) in the case of a failure by the Licensee to provide information in accordance with clause 4, other than a failure to provide writer details under Schedule 2, to obtain information required to be provided under that clause.
- 7.2 The Licensee must pay the cost of the audit or examination if it:
- (a) establishes that the information provided by the Licensee resulted in the amounts payable under this agreement being understated by more than 5%; or
  - (b) is undertaken under clause 7.1(b).
8. CONFIDENTIALITY
- 8.1 Subject to clauses 8.2 and 8.3, AMCOS must not during or after the Term (except in the proper course of performance of this agreement), disclose to or authorise the disclosure to any person without the Licensee's prior written consent any information provided to AMCOS under this Agreement.
- 8.2 With respect to information supplied under clause 4, AMCOS may:
- (a) use that information to determine licence fees payable to AMCOS under this agreement; and
  - (b) disclose that information to AMCOS' auditors for the purposes of an audit, and other of AMCOS' professional advisers, provided that such advisers are bound to confidentiality with regard to that information.
- 8.3 The obligations of confidentiality set out in this clause 8 do not apply to information provided to AMCOS which is:
- (a) required to be disclosed by law; or
  - (b) in the public domain other than by breach of this clause.
9. TERMINATION
- 9.1 AMCOS may immediately terminate this agreement by notice to the Licensee if the Licensee:

- (a) breaches any term of this agreement and fails to remedy the breach within 30 days after being required in writing to do so by AMCOS; or
- (b) goes into liquidation, has a receiver or receiver and manager appointed to it or any part of its assets, enters into a scheme of arrangement with creditors or suffers any other form of external administration.

9.2 Either party may terminate this agreement on 2 months' notice to the other party.

## 10. WARRANTIES AND INDEMNITY

10.1 AMCOS warrants that:

- (a) it has the right to grant each licence set out in clause 2; and
- (b) its current publisher members are listed in schedule 4.

10.2 Subject to the Licensee complying with its obligations under clause 10.3, AMCOS indemnifies the Licensee against all direct and indirect damages, losses, costs and expenses incurred (including any legal costs and expenses reasonably incurred) by the Licensee as a result of a breach of the warranty given by AMCOS under clause 10.1.

10.3 The Licensee must:

- (a) immediately but no later than within five business days notify AMCOS of any claim, demand, suit, action or proceeding;
- (b) must not compromise or settle that matter without first obtaining the written approval of AMCOS; and
- (c) allow AMCOS to have the conduct of any such matter in consultation with the Licensee at AMCOS' expense.

## 11. NOTICES

11.1 A notice under this agreement must be in writing and may be given to a party by:

- (a) delivering it to the address of the party;
- (b) sending it by pre-paid post to the address of the party; or
- (c) sending it by facsimile or email to the facsimile number or email address of the party, and the notice will be deemed to have been received by the party on receipt.

11.2 A facsimile is deemed to have been received on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the party.

11.3 Until a party gives notice of a change, the street address and facsimile number for that party is:

AMCOS

Street address: 6-12 Atchison Street, St Leonards, NSW 2121, Australia

Telephone number: +61 2 9935 7900

Facsimile number: +61 2 9935 7999

Email: [online@apra.com.au](mailto:online@apra.com.au)

Attention: Online Licensing Manager

LICENSEE

Street address:

Telephone Number:

Facsimile number:

Email:

Attention:

11. DISPUTE RESOLUTION

If any dispute arises out of or in connection with this agreement, either party may submit that dispute to the alternative dispute resolution mechanism approved by the Australian Competition Tribunal constituted under the *Trade Practices Act 1974* in the determination in relation to File Nos. 4 and 5 of 1998. Information about the mechanism can be obtained from APRA.

12. MISCELLANEOUS

- 12.1 No waiver by either party of any breach of any provision of this agreement operates as a waiver of another breach of the same or of any other provision of this agreement.
- 12.2 This agreement is personal to the Licensee. The Licensee is not entitled to assign any of its rights without the prior written consent of AMCOS, such consent not to be unreasonably withheld.
- 12.3 This agreement may only be varied by the written agreement of the parties.
- 12.4 In addition to the payments under clause 4, the Licensee must pay to AMCOS within 14 days after the date of an invoice issued by AMCOS an amount on account of stamp duties and taxes, including any goods and services tax, arising in respect of this agreement if required by law.
- 12.5 This agreement must be construed in accordance with the laws in force in New South Wales and the parties agree to submit to the jurisdiction of the New South Wales Courts.
- 12.6 Unless the context otherwise requires, a word which denotes the singular denotes the plural and vice versa.



SIGNED AS AN AGREEMENT

Signed for and on behalf of Australasian Mechanical Copyright Owners Society Limited in the presence of:

\_\_\_\_\_  
Signature of authorised person

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Office held (print)

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Name of authorised person (print)

Signed for and on behalf of the Licensee in the presence of:

\_\_\_\_\_  
Signature of authorised person

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Office held (print)

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Name of authorised person (print)

# LICENCE AGREEMENT

Licence No:  
(APRA|AMCOS use only)

THIS AGREEMENT IS MADE ON  
PARTIES

200

AUSTRALASIAN PERFORMING RIGHT ASSOCIATION LIMITED  
(ABN 42 000 016 099) of 6-12 Atchison Street, St Leonards, New South Wales (APRA)

(registered company name)

ABN

(street address)

(trading as)

("Licensee")

## BACKGROUND

- A. APRA owns or controls for Australia the exclusive right of public performance and communication to the public in relation to a large number of musical works and associated lyrics.
- B. The Licensee is in the business of providing customised mobile telephone ring tones for download in consideration for a subscription fee in the Territory, by means of premium rate short message services, premium rate multimedia message services, proprietary networks of telecommunications carriers in the Territory, Internet, WAP or other means of distribution, and requires a licence from APRA in order to pursue this business activity.
- C. APRA has agreed to grant a licence, on the terms of this agreement.

## AGREEMENT

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Where commencing with a capital letter:

Advertisement means any audio, visual or audio-visual production which is an announcement designed to attract the attention of the public or any part of it to a product, service, person, organisation or line of conduct;

Agreed Rate means the interest rate for overdrafts of \$100,000 or more charged by the National Australia Bank plus 2 percentage points, calculated on daily rests from the due date to the date of payment;

APRA Works means all musical works, including any words normally associated with those works by the copyright owner for Australia, in which the rights of public performance and communication to the public are owned or controlled by APRA for Australia;

Grand Right Work means an opera, operetta, musical play, revue or pantomime to the extent that it consists of music and words written expressly for it;

Music Video means a cinematograph film produced for the primary purpose of promoting:

- (a) the performer of the sound recording; or
- (b) the sound recording,

of a musical work embodied in the soundtrack of the cinematograph film;

Other Mobile Products means products, other than Ringtones, available on the Subscription Service, including wallpapers and logos;

Preview means a part of a Ringtone, no longer than 30 seconds in duration, used for the sole purpose of demonstrating, for no charge, the preview to potential customers of the Subscription Service;

Pro-rated Subscription Revenue means for a Quarter, the amount derived by dividing the Subscription Revenue by the total number of Ringtones and Other Mobile Products transmitted to or ordered by customers in the Quarter, and multiplying that number by the total number of APRA Works transmitted to or ordered by customers as Ringtones in the Quarter adjusted where necessary to take account of differential product pricing;

Ringtone means a monophonic, polyphonic or phonographic reproduction of an APRA Work for use as a ringtone on a mobile telephone and in respect of phonographic reproductions may also incorporate the reproduction of a work as part of a Music Video;

Quarter means a 3 month period commencing on 1 January, 1 April, 1 July or 1 October;

Subscription Service means the Licensee's business that allows customers to request or be supplied with up to a fixed number of Ringtones and Other Mobile Products in return for a fixed periodic fee (popularly known as clubs);

Subscription Fee means the amount charged by the Licensee to a customer for the provision of the Subscription Service (exclusive of GST or similar sales tax);

Subscription Revenue means the aggregate amount of Subscription Fees charged by the Licensee during the relevant Quarter; and

Territory means Australia and New Zealand.

1.2 An agreement, warranty, representation or obligation which binds or benefits 2 or more persons under this agreement binds or benefits them jointly and severally.

## 2. LICENCE

2.1 APRA grants to the Licensee a licence to communicate the APRA Works for the purpose of providing them as Previews and Ringtones to customers as part of the Subscription Service only.

2.2 The licence in clause 2.1 does not include or authorise:

- (a) the public performance or communication to the public of Grand Right Works in their entirety;
- (b) the public performance or communication to the public of any choral work of more than 20 minutes' duration in its entirety;
- (c) the public performance or communication to the public of any music and associated words so as to burlesque or parody the work;
- (d) the public performance or communication to the public of any musical work with new or substituted words, or any words which have been notified by APRA as prohibited;

- (e) the reproduction or communication to the public of any musical works or lyrics in a graphic form;
- (h) the reproduction, public performance or communication to the public of any sound recording; or
- (i) any other right not expressly granted under this agreement.

3. TERM

This agreement commences on \_\_\_\_\_ and, subject to earlier termination in accordance with clause 8, continues until terminated by either party on at least 2 months notice.

4. ASSESSMENT, INVOICING AND PAYMENT OF LICENCE FEES

- 4.1 In consideration of the licence granted in clause 2.1, the Licensee must pay for each Quarter the Licence Fee calculated in accordance with the formula in Schedule 1.
- 4.2 The Licensee must, within 30 days after the end of each Quarter, provide APRA with the revenue and music use information described in Schedule 2 in the form reasonably prescribed by APRA from time to time.
- 4.3 If in the reasonable opinion of APRA, an upgrade to the current forms will require the Licensee to adjust its systems significantly, APRA must:
  - (a) provide the Licensee with reasonable prior notice of all such upgrades or new versions; and
  - (b) allow the Licensee reasonable time to implement and make adjustments to its current systems to accommodate the upgrade and new version.
- 4.4 On execution of this agreement, APRA will issue an invoice for the provisional fee for the period from the commencement of the Subscription Service to the next 31 March, 30 June, 30 September or 31 December, whichever date occurs first. The provisional fee will be based on APRA's reasonable estimate of the fee payable by the Licensee under clause 4.1.
- 4.5 On APRA's receipt of the information under clause 4.2 for the period referred to in clause 4.3, APRA must calculate the Licence Fee in accordance with the formula clause 4.1. If this Licence Fee exceeds the provisional fee invoiced, the Licensee must pay the excess to APRA on receipt of an invoice specifying the amount. If the Licence Fee is less than the provisional fee invoiced, APRA must, at its option, either refund the amount of the difference to the Licensee or credit the difference to the Licensee's account. When exercising that option APRA will take the Licensee's reasonable interests into consideration.
- 4.6 For all Quarters subsequent to the period referred to in clause 4.3, APRA will issue an invoice for the provisional fee for the Quarter. APRA shall be entitled to rely on the latest information provided by the Licensee under clause 4.2 in order to calculate the provisional fee.
- 4.7 On APRA's receipt of the information under clause 4.2 for the Quarters referred to in clause 4.5, APRA must calculate the Licence Fee in accordance with the formula clause 4.1. If this Licence Fee exceeds the provisional fee invoiced, the Licensee must pay the excess to APRA on receipt of an invoice specifying the amount. If the Licence Fee is less than the provisional fee invoiced, APRA must, at the Licensee's option, either refund the amount of the difference to the Licensee or credit the difference to the Licensee's account. When exercising that option APRA will take Licensee's reasonable interests into consideration.
- 4.8 APRA will send all invoices to the Licensee as an email attachment unless the Licensee requests otherwise.

- 4.9 The Licensee must pay any invoice issued by APRA within 21 days after the date of the invoice.
- 4.10 On APRA's receipt of information under clause 6, APRA may issue an invoice for any additional licence fees payable. The Licensee must pay any invoice issued under this clause within 21 days after the date of the invoice.
- 4.11 The Licensee must pay APRA interest at the Agreed Rate on each amount outstanding under this agreement.

## 5. RECORDS

The Licensee must keep accurate books of account and other records in sufficient detail to ensure that all amounts payable to APRA under this agreement can be properly ascertained.

## 6. AUDIT OR EXAMINATION

- 6.1 APRA may on 30 days' notice to the Licensee appoint an auditor to audit or examine the Licensee's books of account and other relevant records to:
  - (a) determine the correctness of any notice, payment, report or information provided under this agreement; or
  - (b) in the case of a failure by the Licensee to provide information in accordance with clause 4, other than a failure to provide writer details under Schedule 2, to obtain information required to be provided under that clause.
- 6.2 The Licensee must pay the cost of the audit or examination if it:
  - (a) establishes that the information provided by the Licensee resulted in the amounts payable under this agreement being understated by more than 5%; or
  - (b) is undertaken under clause 6.1(b).

## 7. CONFIDENTIALITY

- 7.1 Subject to clauses 7.2 and 7.3, APRA must not during or after the Term (except in the proper course of performance of this agreement), disclose to or authorise the disclosure to any person without the Licensee's prior written consent any information provided to APRA under this Agreement.
- 7.2 With respect to information supplied under clause 4, APRA may:
  - (a) use that information to determine licence fees payable to APRA under this agreement; and
  - (b) disclose that information to APRA's auditors for the purposes of an audit, and other of APRA's professional advisers, provided that such advisers are bound to confidentiality with regard to that information.
- 7.3 The obligations of confidentiality set out in this clause 7 do not apply to information provided to APRA which is:
  - (a) required to be disclosed by law; or
  - (b) in the public domain other than by breach of this clause.

## 8. TERMINATION

- 8.1 APRA may immediately terminate this agreement by notice to the Licensee if the Licensee:
  - (a) breaches any term of this agreement and fails to remedy the breach within 30 days after being required in writing to do so by APRA; or

- (b) goes into liquidation, has a receiver or receiver and manager appointed to it or any part of its assets, enters into a scheme of arrangement with creditors or suffers any other form of external administration.
- 8.2 Either party may terminate this agreement on 2 months' notice to the other party.

9. WARRANTIES AND INDEMNITY

- 9.1 APRA warrants that it has the right to grant the licence in clause 2.
- 9.2 Subject to the Licensee complying with its obligations under clause 9.3, APRA indemnifies the Licensee against all direct and indirect damages, losses, costs and expenses incurred (including any legal costs and expenses reasonably incurred) by the Licensee as a result of a breach of the warranty given by APRA under clause 9.1.
- 9.3 The Licensee must:
- (a) immediately but no later than within five business days notify APRA of any claim, demand, suit, action or proceeding;
  - (b) must not compromise or settle that matter without first obtaining the written approval of APRA; and
  - (c) allow APRA to have the conduct of any such matter in consultation with the Licensee at APRA's expense.

10. NOTICES

- 10.1 A notice under this agreement must be in writing and may be given to a party by:
- (a) delivering it to the address of the party;
  - (b) sending it by pre-paid post to the address of the party; or
  - (c) sending it by facsimile or email to the facsimile number or email address of the party,
- and the notice will be deemed to have been received by the party on receipt.
- 10.2 A facsimile is deemed to have been received on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the party.
- 10.3 Until a party gives notice of a change, the street address and facsimile number for that party is:

APRA

Street address: 6-12 Atchison Street, St Leonards, NSW 2121, Australia  
Telephone number: +61 2 9935 7900  
Facsimile number: +61 2 9935 7999  
Email: online@apra.com.au  
Attention: Online Licensing Manager

LICENSEE

Street address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Facsimile number: \_\_\_\_\_

Email: \_\_\_\_\_

Attention: \_\_\_\_\_

11. DISPUTE RESOLUTION

If any dispute arises out of or in connection with this agreement, either party may submit that dispute to the alternative dispute resolution mechanism approved by the Australian Competition Tribunal constituted under the Trade Practices Act 1974 in the determination in relation to File Nos. 4 and 5 of 1998. Information about the mechanism can be obtained from APRA.

12. MISCELLANEOUS

- 12.1 No waiver by either party of any breach of any provision of this agreement operates as a waiver of another breach of the same or of any other provision of this agreement.
- 12.2 This agreement is personal to the Licensee. The Licensee is not entitled to assign any of its rights without the prior written consent of APRA, such consent not to be unreasonably withheld.
- 12.3 This agreement may only be varied by the written agreement of the parties.
- 12.4 In addition to the payments under clause 4, the Licensee must pay to APRA within 14 days after the date of an invoice issued by APRA an amount on account of stamp duties and taxes, including any goods and services tax, arising in respect of this agreement if required by law.
- 12.5 This agreement must be construed in accordance with the laws in force in New South Wales and the parties agree to submit to the jurisdiction of the New South Wales Courts.
- 12.6 Unless the context otherwise requires, a word which denotes the singular denotes the plural and vice versa.

## SCHEDULE 1 - LICENCE FEES

The Licensee must pay to APRA a fee of:

- (a) 1% (exclusive of GST) of the Pro-rated Subscription Revenue in respect of polyphonic and monophonic Ringtones, calculated by applying the proportion of Ringtones in those formats ordered by, or supplied to, customers as a percentage of all Ringtones ordered by customers, subject to a minimum fee of 1.5 cents (exclusive of GST) for each Ringtone in a monophonic or polyphonic format ordered by, or supplied to, customers; and
- (b) 2% (exclusive of GST) of the Pro-rated Subscription Revenue in respect of phonographic Ringtones, calculated by applying the proportion of Ringtones in that format ordered by, or supplied to, customers as a percentage of all Ringtones ordered by customers, subject to a minimum fee of 3 cents (exclusive of GST) for each Ringtone in a phonographic format ordered by, or supplied to, customers.

## SCHEDULE 2 - QUARTERLY REPORTS

The Licensee must supply within 30 days after the end of each Quarter a detailed account of Ringtone sales in that Quarter (Sales Report). The Sales Report must identify:

For each separate Ringtone ordered by, or supplied to, customers during the Quarter:

- (a) the title of the work reproduced in the Ringtone;
- (b) the unique identifying number of the work (if provided by APRA);
- (c) the writer(s) of the work;
- (d) the recording artist most commonly associated with the work (generally the artist used by the Licensee in association with the Ringtone);
- (e) the number of orders for the Ringtone in the Quarter, entered separately for (a) monophonic and polyphonic orders and (b) phonographic orders.

In a format acceptable to APRA, the Licensee must also supply APRA within 30 days after the end of each Quarter, copies of actual revenue statements (including but not limited to details of Ringtones and Other Mobile Products sold, Subscription Revenue, price points and period covered as relevant) provided by the relevant telecommunications carriers and service providers responsible for collecting revenue in relation to the Subscription Service.

SCHEDULE 3 – Names and associated URLs and numbers of services covered under this agreement.


SIGNED AS AN AGREEMENT

Signed for and on behalf of Australasian Performing Right Association Limited in the presence of:

\_\_\_\_\_  
Signature of authorised person

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Office held (print)

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Name of authorised person (print)

Signed for and on behalf of the Licensee in the presence of:

\_\_\_\_\_  
Signature of authorised person

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Office held (print)

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Name of authorised person (print)

# LICENCE AGREEMENT

Licence No:  
(AMCOS use only)

THIS AGREEMENT IS MADE ON

200

PARTIES

AUSTRALASIAN MECHANICAL COPYRIGHT OWNERS SOCIETY LIMITED ABN 78 001 678 851  
of 16 Mountain St, Ultimo, New South Wales (AMCOS)

(company name)

ABN

  

(street address)

("Licensee")

## BACKGROUND

- A. AMCOS controls the right to reproduce AMCOS Works in the Territory.
- B. The Licensee is in the business of providing customised mobile telephone ring tones for sale or supply at a fixed rate per ringtone in the Territory, by means of premium rate short message services, premium rate multimedia message services and/or through the proprietary networks of telecommunications carriers in the Territory, and requires a licence from AMCOS in order to pursue this business activity.
- C. AMCOS has agreed to grant a licence, on the terms of this agreement.

## AGREEMENT

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Where commencing with a capital letter:

Agreed Rate means the interest rate for overdrafts of \$100,000 or more charged by the National Australia Bank plus 2 percentage points, calculated on daily rests from the due date to the date of payment;

AMCOS Works means the musical works for which AMCOS is entitled to grant the licence referred to in clause 2.1 as notified by AMCOS to the Licensee from time to time in accordance with clause 5;

Grand Right Work means an opera, operetta, musical play, revue or pantomime to the extent that it consists of music and words written expressly for the work;

Ringtone means a monophonic, polyphonic or phonographic reproduction of an AMCOS Work for use as a ringtone on a mobile telephone;

Quarter means a 3 month period commencing on 1 January, 1 April, 1 July or 1 October; and

Territory means Australia and New Zealand.

- #### 1.2
- An agreement, warranty, representation or obligation which binds or benefits 2 or more persons under this agreement binds or benefits them jointly and severally.

### 2. LICENCE

AMCOS grants the Licensee a non-exclusive licence to:

- (a) reproduce the AMCOS Works in the form of Ringtones in the Territory for the purpose of the Licensee's agreement to sell or supply the Ringtones;
- (b) Authorise reproductions of the Ringtones by the Licensee's customers onto mobile telephones to complete the sale or supply of the Ringtone; and
- (c) reproduce the Ringtones on the services specified in Schedule 3 for the sole purpose of demonstrating the Ringtones to potential customers, in the Territory.

### 3 EXCLUSIONS AND LIMITATIONS

- 3.1 The rights granted in this agreement are conditional on compliance with the Terms, including provision of Sales Reports, Revenue Statements and Usage Statements (where required) and payment of Licence Fees.
- 3.2 Nothing in this agreement constitutes the grant of a licence to reproduce a Work that is not an AMCOS Work.
- 3.3 This agreement does not apply to reproductions of Works made, sold, distributed or communicated by You or on Your behalf with the intention of, or with Your expressed or implied authorisation for use other than as a Ringtone.
- 3.4 The right granted under clause 2 do not include the right to synchronise AMCOS Works with audiovisual material, including Music Videos, or still images.
- 3.5 The rights granted under clause 2 do not include the right to reproduce or communicate to the public any Work to promote any product, service or advertising campaign, or in a manner that suggests any connection between individual Works or groups of Works and any goods or services, including but not limited to the Ringtone Service.
- 3.6 The licences granted under the Terms do not include or authorise:
- (a) the reproduction of any Work into an Advertisement or Premium;
  - (b) the making of an adaptation or a parody of an AMCOS Work;
  - (c) the reproduction or communication of any Work with words that are not approved or normally associated with the Work by the copyright owner for Australia;
  - (d) the reproduction or communication of any Works in a graphic form;
  - (e) the performance in public of any Works;
  - (f) the performance in public or communication to the public of any Grand Right Works in their entirety;
  - (g) the performance in public or communication to the public of any choral work of more than 20 minutes' duration in its entirety;
  - (h) the reproduction, performance in public or communication to the public of any sound recording; or
  - (i) any other right not expressly granted under this agreement.
- 3.7 Nothing in the Terms constitutes a consent by the authors of Works in relation to any act contrary to the composer's moral rights.
- 3.8 This licence does not apply to any ringtone service offered by the licensee where customers to that service are required to pay a subscription fee

### 4. TERM

This agreement commences on July 1, 2006 and, subject to earlier termination in accordance with clause 9, continues until terminated by either party on at least 2 months' notice.

### 5. ASSESSMENT, INVOICING AND PAYMENT OF LICENCE FEES

- 5.1 The Licensee must pay for each Quarter the Licence Fee calculated in accordance with the formula in Schedule 1.
- 5.2 At AMCOS' request the Licensee must, within 30 days after the end of each Quarter, provide AMCOS with the revenue and music use information described in Schedule 2 in the form reasonably prescribed by AMCOS from time to time.
- 5.3 If in the reasonable option of AMCOS, an upgrade to the current form will require the Licensee to adjust its systems significantly, AMCOS must:
- (a) provide the Licensee with reasonable prior notice of all such upgrades or new versions; and
  - (b) allow the Licensee reasonable time to implement and make adjustments to its current systems to accommodate the upgrade and new version.
- 5.4 On execution of this agreement, AMCOS may issue an invoice for the provisional fee for the period from the commencement of the Subscription Service to the next 31 March, 30 June, 30 September or 31 December, whichever date occurs first. The provisional fee will be based on AMCOS' reasonable estimate of the fee payable by the Licensee under clause 4.1.
- 5.5 On AMCOS' receipt of the information under clause 4.2 for the period referred to in clause 4.3, AMCOS must calculate the Licence Fee in accordance with the formula clause 4.1. If this Licence Fee exceeds the provisional fee invoiced, the Licensee must pay the excess to AMCOS on receipt of an invoice specifying the amount. If the Licence Fee is less than the provisional fee invoiced, AMCOS must, at the Licensee's option, either refund the amount of the difference to the Licensee or credit the difference to the Licensee's account. When exercising that option AMCOS will take Licensee's reasonable interests into consideration.
- 5.6 For all Quarters subsequent to the period referred to in clause 4.3. AMCOS may issue an invoice for the provisional fee for the Quarter. AMCOS shall be entitled to rely on the latest information provided by the Licensee under clause 4.2 in order to calculate the provisional fee.

- 5.7 On AMCOS' receipt of the information under clause 4.2 for the Quarters referred to in clause 4.5, AMCOS must calculate the Licence Fee in accordance with the formula clause 4.1. If this Licence Fee exceeds the provisional fee invoiced, the Licensee must pay the excess to AMCOS on receipt of an invoice specifying the amount. If the Licence Fee is less than the provisional fee invoiced, AMCOS must, at the Licensee's option, either refund the amount of the difference to the Licensee or credit the difference to the Licensee's account. When exercising that option AMCOS will take Licensee's reasonable interests into consideration.
- 5.8 AMCOS will send all invoices to the Licensee as an email attachment unless the Licensee requests otherwise.
- 5.9 The Licensee must pay any invoice issued by AMCOS within 30 days after the date of the invoice.
- 5.10 On receipt of the information under clause 7, AMCOS may issue an invoice for any additional licence fees payable. The Licensee must pay any invoice issued under this clause within 30 days after the date of the invoice.
- 5.11 The Licensee must pay AMCOS interest at the Agreed Rate on each amount outstanding under this agreement.
6. RECORDS  
The Licensee must keep accurate books of account and other records in sufficient detail to ensure that all amounts payable to AMCOS under this agreement can be properly ascertained.
7. AUDIT OR EXAMINATION
- 7.1 AMCOS may on 30 days' notice to the Licensee audit or examine the Licensee's books of account and other records to:
- (a) determine the correctness of any notice or payment under this agreement; or
  - (b) in the case of a failure by the Licensee to provide information in accordance with clause 5.2, to obtain information required to be provided under that clause.
- 7.2 The Licensee must pay the cost of the audit or examination if it:
- (a) establishes that the information provided by the Licensee resulted in the amounts payable under this agreement being understated by more than 5%; or
  - (b) is undertaken under clause 7.1(b).
8. CONFIDENTIALITY
- 8.1 Subject to clauses 8.2 and 8.3, AMCOS must not during or after the Term (except in the proper course of performance of this agreement), disclose to or authorise the disclosure to any person without the Licensee's prior written consent any information provided to AMCOS under clause 5.2.
- 8.2 With respect to information supplied under clause 5.2, AMCOS may:
- (a) use that information to determine licence fees payable to AMCOS under this agreement; and
  - (b) disclose that information to AMCOS' auditors for the purposes of an audit, and other of AMCOS' professional advisers.
- 8.3 The obligations of confidentiality set out in this clause 8 do not apply to information provided to AMCOS which is:
- (a) required to be disclosed by law; or
  - (b) in the public domain other than by breach of this clause.
9. TERMINATION
- 9.1 AMCOS may immediately terminate this agreement by notice to the Licensee if the Licensee:
- (a) breaches any term of this agreement and fails to remedy the breach within 7 days after being required in writing to do so by AMCOS; or
  - (b) goes into liquidation, has a receiver or receiver and manager appointed to it or any part of its assets, enters into a scheme of arrangement with creditors or suffers any other form of external administration.
- 9.2 Either party may terminate this agreement on 2 months' notice to the other party.
10. DISPUTE RESOLUTION  
If any dispute arises out of or in connection with this agreement, either party may submit that dispute to mediation in accordance with the rules of the Australian Commercial Disputes Centre.
11. NOTICES
- 11.1 A notice under this agreement must be in writing and may be given to a party by:
- (a) delivering it to the address of the party;
  - (b) sending it by pre-paid post to the address of the party; or

(c) sending it by facsimile or email to the facsimile number or email address of the party, and the notice will be deemed to have been received by the party on receipt.

11.2 A facsimile is deemed to have been received on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the party.

11.3 Until a party gives notice of a change, the street address and facsimile number for that party is:

AMCOS

Street address: 16 Mountain St, Ultimo NSW 2007

Telephone number: (02) 9935 7900

Facsimile number: (02) 9935 7999

Email: digital@apra.com.au

Attention: Digital Recordings Manager

LICENSEE

Street address:

Telephone Number:

Facsimile number:

Email:

Attention:


12. MISCELLANEOUS

12.1 No waiver by AMCOS of any breach of any provision of this agreement operates as a waiver of another breach of the same or of any other provision of this agreement.

12.2 This agreement is personal to the Licensee. The Licensee is not entitled to assign any of its rights without the prior written consent of AMCOS.

12.3 This agreement may only be varied by the written agreement of the parties.

12.4 In addition to the payments under clause 5, the Licensee must pay to AMCOS within 14 days after the date of an invoice issued by AMCOS an amount on account of stamp duties and taxes, including any goods and services tax, arising in respect of this agreement.

12.5 This agreement must be construed in accordance with the laws in force in the State of New South Wales and the parties agree to submit to the jurisdiction of New South Wales Courts.

12.6 Unless the context otherwise requires, a word which denotes the singular denotes the plural and vice versa.

## SCHEDULE 1 - LICENCE FEES

In consideration of the licence granted in clause 2.1(b), the Licensee must pay to AMCOS a fee for each Ringtone of 12.5% (Exclusive of GST) of the retail price subject to a minimum fee of 15 cents per sale (Exclusive of GST).

## SCHEDULE 2 - QUARTERLY REPORTS

The Licensee must supply within 14 days after the end of each Quarter a detailed account of Ringtone sales contract in that Quarter for each separate Ringtone service operated by the Licensee (Sales Report). The Sales Report must identify:

For each separate work offered for sale during the Quarter:

- (a) title of the work;
- (b) writer(s) of the work;
- (c) the recording artist most commonly associated with the work;
- (d) the price the work sold at (Exclusive of GST);
- (e) the number of sales contract in each month in the Quarter, entered separately for (a) monophonic and polyphonic ringtones, and (b) phonographic ringtones.

In a format acceptable to AMCOS, the Licensee must, at AMCOS' request, also supply AMCOS within 30 days after the end of each Quarter, copies of actual revenue statements (including but not limited to details of items delivered, items billed, gross revenue, price points and period covered as relevant) provided by the relevant telecommunications carriers and service providers responsible for collecting revenue in relation to the Purpose.



SIGNED AS AN AGREEMENT

Signed for and on behalf of Australasian Mechanical Copyright Owners Society Limited in the presence of:

\_\_\_\_\_  
Signature of authorised person

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Office held (print)

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Name of authorised person (print)

Signed for and on behalf of the Licensee in the presence of:

\_\_\_\_\_  
Signature of authorised person

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Office held (print)

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Name of authorised person (print)

# LICENCE AGREEMENT

Licence No:  
(APRA use only)

THIS AGREEMENT IS MADE ON

200

PARTIES

AUSTRALASIAN PERFORMING RIGHT ASSOCIATION LIMITED  
ABN 42 000 016 099 of 16 Mountain St, Ultimo, New South Wales (APRA)

(company name)

ABN

  

(street address)

("Licensee")

## BACKGROUND

- A. APRA owns or controls for the Territory the exclusive right of public performance and communication to the public in relation to a large number of musical works and associated lyrics.
- B. The Licensee is in the business of providing customised mobile telephone ring tones for sale or supply at a fixed rate per ringtone in the Territory, by means of premium rate short message services, premium rate multimedia message services and/or through the proprietary networks of telecommunications carriers and requires a licence from APRA in order to pursue this business activity.
- C. APRA has agreed to grant a licence on the terms of this agreement.

## AGREEMENT

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Where commencing with a capital letter:

APRA Works means all musical works, including any words normally associated with those works by the copyright owner for Australia, the right of public performance of which is vested in APRA for Australia and New Zealand;

Agreed Rate means the interest rate for overdrafts of \$100,000 or more charged by the National Australia Bank plus 2 percentage points, calculated on daily rests from the due date to the date of payment;

Grand Right Work means an opera, operetta, musical play, revue or pantomime to the extent that it consists of music and words written expressly for the work;

Ringtone means a monophonic, polyphonic or phonographic reproduction of an APRA Work for use as a ringtone on a mobile telephone;

Quarter means a 3 month period commencing on 1 January, 1 April, 1 July or 1 October; and

Territory means Australia and New Zealand.

- 1.2 An agreement, warranty, representation or obligation which binds or benefits 2 or more persons under this agreement binds or benefits them jointly and severally.

### 2. LICENCE

APRA grants to the Licensee a licence to communicate the APRA Works for the purpose of providing them as Previews and Ringtones to customers as part of the Subscription Service only.

3. EXCLUSIONS AND LIMITATIONS

- 3.1 The rights granted in this agreement are conditional on compliance with the Terms, including provision of Sales Reports, Revenue Statements and Usage Statements (where required) and payment of Licence Fees.
- 3.2 Nothing in this agreement constitutes the grant of a licence to communicate a Work that is not an APRA Work.
- 3.3 This agreement does not apply to reproductions of Works made, sold, distributed or communicated by You or on Your behalf with the intention of, or with Your expressed or implied authorisation for use other than as a Ringtone.
- 3.5 The rights granted under clause 2 do not include the right to reproduce or communicate to the public any Work to promote any product, service or advertising campaign, or in a manner that suggests any connection between individual Works or groups of Works and any goods or services, including but not limited to the Ringtone service.
- 3.6 The licences granted under the Terms do not include or authorise:
- (a) the reproduction of any Work into an Advertisement or Premium;
  - (b) the reproduction or communication of any Work with words that are not approved or normally associated with the Work by the copyright owner for Australia;
  - (c) the reproduction or communication of any Works in a graphic form;
  - (d) the performance in public of any Works;
  - (e) the performance in public or communication to the public of any Grand Right Works in their entirety;
  - (f) the performance in public or communication to the public of any choral work of more than 20 minutes' duration in its entirety;
  - (g) the reproduction, performance in public or communication to the public of any sound recording; or
  - (h) any other right not expressly granted under this agreement.
- 3.7 Nothing in the Terms constitutes a consent by the authors of Works in relation to any act contrary to the composer's moral rights.
- 3.8 This licence does not apply to any ringtone service offered by the licensee where customers to that service are required to pay a subscription fee

4. TERM

This agreement commences on July 1, 2006 and, subject to earlier termination in accordance with clause 9, continues until terminated by either party on at least 2 months' notice.

5. ASSESSMENT, INVOICING AND PAYMENT OF LICENCE FEES

- 5.1 The Licensee must pay for each Quarter the Licence Fee calculated in accordance with the formula in Schedule 1.
- 5.2 At APRA's request Licensee must, within 30 days after the end of each Quarter, provide APRA with the revenue and music use information described in Schedule 2 in the form reasonably prescribed by APRA from time to time.
- 5.3 If in the reasonable option of APRA, an upgrade to the current form will require the Licensee to adjust its systems significantly, APRA must:
- (a) provide the Licensee with reasonable prior notice of all such upgrades or new versions; and
  - (b) allow the Licensee reasonable time to implement and make adjustments to its current systems to accommodate the upgrade and new version.
- 5.4 On execution of this agreement, APRA may issue an invoice for the provisional fee for the period from the commencement of the Subscription Service to the next 31 March, 30 June, 30 September or 31 December, whichever date occurs first. The provisional fee will be based on APRA' reasonable estimate of the fee payable by the Licensee under clause 4.1.
- 5.5 On APRA' receipt of the information under clause 4.2 for the period referred to in clause 4.3, APRA must calculate the Licence Fee in accordance with the formula clause 4.1. If this Licence Fee exceeds the provisional fee invoiced, the Licensee must pay the excess to APRA on receipt of an invoice specifying the amount. If the Licence Fee is less than the provisional fee invoiced, APRA must, at the Licensee's option, either refund the amount of the difference to the Licensee or credit the difference to the Licensee's account. When exercising that option APRA will take Licensee's reasonable interests into consideration.
- 5.6 For all Quarters subsequent to the period referred to in clause 4.3. APRA may issue an invoice for the provisional fee for the Quarter. APRA shall be entitled to rely on the latest information provided by the Licensee under clause 4.2 in order to calculate the provisional fee.
- 5.7 On APRA' receipt of the information under clause 4.2 for the Quarters referred to in clause 4.5, APRA must calculate the Licence Fee in accordance with the formula clause 4.1. If this Licence Fee exceeds the provisional fee invoiced, the Licensee must pay the excess to APRA on receipt of an invoice specifying the amount. If the Licence Fee is less than the provisional fee invoiced, APRA must, at the Licensee's option, either refund the amount of the difference to the Licensee or credit the difference to the Licensee's account. When exercising that option APRA will take Licensee's reasonable interests into consideration.
- 5.8 APRA will send all invoices to the Licensee as an email attachment unless the Licensee requests otherwise.

- 5.9 The Licensee must pay any invoice issued by APRA within 30 days after the date of the invoice.
- 5.10 On receipt of the information under clause 7, APRA may issue an invoice for any additional licence fees payable. The Licensee must pay any invoice issued under this clause within 30 days after the date of the invoice.
- 5.11 The Licensee must pay APRA interest at the Agreed Rate on each amount outstanding under this agreement.
6. RECORDS  
The Licensee must keep accurate books of account and other records in sufficient detail to ensure that all amounts payable to APRA under this agreement can be properly ascertained.
7. AUDIT OR EXAMINATION
- 7.1 APRA may on 30 days' notice to the Licensee audit or examine the Licensee's books of account and other records to:
- (a) determine the correctness of any notice or payment under this agreement; or
  - (b) in the case of a failure by the Licensee to provide information in accordance with clause 6, to obtain information required to be provided under that clause.
- 7.2 The Licensee must pay the cost of the audit or examination if it:
- (a) establishes that the information provided by the Licensee resulted in the amounts payable under this agreement being understated by more than 5%; or
  - (b) is undertaken under clause 7.1(b).
8. CONFIDENTIALITY
- 8.1 Subject to clauses 8.2 and 8.3, APRA must not during or after the Term (except in the proper course of performance of this agreement), disclose to or authorise the disclosure to any person without the Licensee's prior written consent any information provided to APRA under clause 5.
- 8.2 With respect to information supplied under clause 5, APRA may:
- (a) use that information to determine licence fees payable to APRA under this agreement; and
  - (b) disclose that information to APRA's auditors for the purposes of an audit, and other of APRA's professional advisers.
- 8.3 The obligations of confidentiality set out in this clause 8 do not apply to information provided to APRA which is:
- (a) required to be disclosed by law; or
  - (b) in the public domain other than by breach of this clause.
9. TERMINATION
- 9.1 APRA may immediately terminate this agreement by notice to the Licensee if the Licensee:
- (a) breaches any term of this agreement and fails to remedy the breach within 7 days after being required in writing to do so by APRA; or
  - (b) goes into liquidation, has a receiver or receiver and manager appointed to it or any part of its assets, enters into a scheme of arrangement with creditors or suffers any other form of external administration.
- 9.2 Either party may terminate this agreement on 2 months' notice to the other party.
10. DISPUTE RESOLUTION  
If any dispute arises out of or in connection with this agreement, either party may submit that dispute to the alternative dispute resolution mechanism approved by the Australian Competition Tribunal constituted under the *Trade Practices Act 1974* in the determination in relation to File Nos. 4 and 5 of 1998.
11. NOTICES
- 11.1 A notice under this agreement must be in writing and may be given to a party by:
- (a) delivering it to the address of the party;
  - (b) sending it by pre-paid post to the address of the party; or
  - (c) sending it by facsimile or email to the facsimile number or email address of the party,
- and the notice will be deemed to have been received by the party on receipt.
- 11.2 A facsimile is deemed to have been received on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the party.

11.3 Until a party gives notice of a change, the street address and facsimile number for that party is:

APRA  
 Street address: 16 Mountain St, Ultimo NSW 2007  
 Telephone number: (02) 9935 7900  
 Facsimile number: (02) 9935 7999  
 Email: digital@apra.com.au  
 Attention: Digital Recordings Manager

LICENSEE	
Street address:	
Telephone Number:	
Facsimile number:	
Email:	
Attention:	

12. MISCELLANEOUS

- 12.1 No waiver by APRA of any breach of any provision of this agreement operates as a waiver of another breach of the same or of any other provision of this agreement.
- 12.2 This agreement is personal to the Licensee. The Licensee is not entitled to assign any of its rights without the prior written consent of APRA.
- 12.3 This agreement may only be varied by the written agreement of the parties.
- 12.4 In addition to the payments under clause 5, the Licensee must pay to APRA within 14 days after the date of an invoice issued by APRA an amount on account of stamp duties and taxes, including any goods and services tax, arising in respect of this agreement.
- 12.5 This agreement must be construed in accordance with the laws in force in the State of New South Wales and the parties agree to submit to the jurisdiction of New South Wales Courts.
- 12.6 Unless the context otherwise requires, a word which denotes the singular denotes the plural and vice versa.

## SCHEDULE 1 - LICENCE FEES

In consideration of the licence granted in clause 2.1, the Licensee must pay to APRA a fee:

for each Ringtone, 2.5%( Exclusive of GST) of the retail price subject to a minimum fee of 3 cents per sale (Exclusive of GST) .

## SCHEDULE 2 - QUARTERLY REPORTS

The Licensee must supply within 14 days after the end of each Quarter a detailed account of Ringtone sales contract in that Quarter for each separate Ringtone service operated by the Licensee (Sales Report). The Sales Report must identify:

For each separate work offered for sale during the Quarter:

- (a) title of the work;
- (b) writer(s) of the work;
- (c) the recording artist most commonly associated with the work;
- (d) the price the work sold at (Exclusive of GST);
- (e) the number of sales contract in each month in the Quarter, entered separately for (a) monophonic and polyphonic ringtones, and (b) phonographic ringtones.

In a format acceptable to APRA, the Licensee must, at APRA's request, also supply APRA within 30 days after the end of each Quarter, copies of actual revenue statements (including but not limited to details of items delivered, items billed, gross revenue, price points and period covered as relevant) provided by the relevant telecommunications carriers and service providers responsible for collecting revenue in relation to the Purpose.

Note: If the price of a particular ringtone changes during each Quarter or is sold at different prices then separate line entries should be made, one for each price, so that the correct licence fee may be calculated.



SIGNED AS AN AGREEMENT

Signed for and on behalf of Australasian Performing Right Association Limited in the presence of:

\_\_\_\_\_  
Signature of authorised person

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Office held (print)

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Name of authorised person (print)

Signed for and on behalf of the Licensee in the presence of:

\_\_\_\_\_  
Signature of authorised person

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Office held (print)

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Name of authorised person (print)