

TERMS AND CONDITIONS

1. Definitions

“Accounting and Reporting Statement”	means the MCPS-PRS Ringbacks Form for detailing Relevant Revenue and usage reporting of Musical Works as Ringbacks as set out in the schedule to this Agreement.
“Advance”	means £1,000 (excluding VAT).
“Caller”	means a person who makes a telephone call to a User’s Telephone.
“CDPA”	means the Copyright Designs and Patents Act 1988, as amended from time to time.
“Content Provider”	means the party which, in relation to the Service, is the last party in the chain of transmission to the User actually responsible for making the Service available to Users and not, for the avoidance of doubt, a mere conduit which is only providing physical facilities for enabling or making a communication, provided that in order to be a Content Provider (as defined herein) the relevant party must be able to provide (or ensure that another provides), accurate details as to the identity of the Repertoire Works included in the Service and the number of uses thereof and the value and the destination thereof can be obtained and audited.
“Dramatico-Musical Work”	means any ballet, opera, operetta, musical, musical play or work of a similar nature.
“Licensors”	means MCPS and PRS.
“Musical Work”	means any work consisting of music and any lyrics or words written to be used with the music (if applicable). It includes any part of such a work.
“Quarter”	means each of the periods from 1 st January to 31 st March, 1 st April to 30 th June, 1 st July to 30 th September, and 1 st October to 31 st December, throughout the Term.
“Relevant Revenue”	means: (a) the gross amount (less VAT) paid or payable by the User (or any other party in circumstances where a person other than the User is paying for the Service) directly or indirectly in relation to the supply of the Service, including for the avoidance of doubt, any and all monthly recurring charges and/or other fees paid or payable by the User (as aforesaid) in order that the User may have the facility and/or technical ability to utilise the Service; PROVIDED THAT where the Service is part of a package or composite of services and/or goods, with one overall un-itemised price or charge to the User then the amount ascribed to the Service for the purposes of Relevant Revenue shall be the Licensee’s normal equivalent charge - in other words the same charge (whether periodic or otherwise) which would apply had the Service been obtained individually rather than as part of a

package or composite;

and

- (b) all other revenue (less VAT) received or receivable by the Licensee (or any other party at the order of or on behalf of the Licensee (including, without limitation, a telecommunications services supplier)) directly or indirectly in relation to the supply of the Service (including, without limitation, advertising or sponsorship revenues), without any deductions or set-off(s) of whatsoever nature.

“Repertoire Work”

means each Musical Work (or such part of a Musical Work) the copyright in which is owned or controlled, from time to time, in the UK by:

- (a) MCPS or a member of MCPS or an affiliated society or an affiliated society member PROVIDED THAT it shall exclude any Musical Works that a member of MCPS or an affiliated society has withdrawn or withheld from this Agreement; and
- (b) PRS or an affiliated society or an affiliated society member.

For the avoidance of doubt, if a Musical Work is a Repertoire Work in relation to one Licensor and not the other then it remains a Repertoire Work under this Agreement in relation only to the licence granted by that Licensor.

“Ringback”

means an audio-only sound recording, the sole purpose of which is to be heard by a Caller when making a call on a Telephone to a User’s Telephone during the time between initiating a call and the User’s phone being answered so as to connect the call (or the call being terminated for any reason, before it is answered). For the avoidance of doubt, a Ringback is the sound recording heard in place of the traditional ‘ringing’ sound that a Caller would otherwise hear when making a call. It does not include a sound recording heard after the User has connected the call, but prior to the User speaking to the Caller (ie. ‘music-on-hold’).

“Royalty Fee”

means the greater of (a) 15% of the Relevant Revenue, and (b) £0.15 per Ringback provided under the Service .

(a) and (b) above are calculated on an aggregated basis over a Quarter before the comparison of the two is made. In other words, for a given Quarter, the Royalty Fee is (a) 15% of all Relevant Revenue during that Quarter, and (b) £0.15 per Ringback for all Ringbacks provided during that Quarter.

For the purposes of (b) above, a Ringback is regarded as ‘provided’ when a User selects that particular Ringback to be available to one or more Callers.

“Service”

means a service/facility provided by the Licensee to Users, pursuant to which the User is able to choose Ringbacks for use when Callers call the User’s Telephone.

“Telephone”	means a device (portable or otherwise), one of the purposes of which is for communicating with other people using fixed and mobile public telecommunication systems.
“Term”	means the period starting on the Commencement Date and ending upon termination of this Agreement in accordance with clause 9.
“Territory”	means the United Kingdom of Great Britain and Northern Ireland and the Channel Islands and the Isle of Man
“User”	means a person who receives the Service from the Licensee.

2. Grant of Licence

- 2.1 Subject to the terms and conditions contained in this Agreement and conditional on compliance with such terms and conditions, PRS licenses to the Licensee on a non-exclusive basis during the Term the right to communicate to the public (as that act is defined in the CDPA) within the Territory Repertoire Works in the form of Ringbacks to Callers solely for the purpose of delivering such Ringbacks to the Caller's Telephone in a form that it can be heard by the Caller from their Telephone's ear piece.
- 2.2 Subject to the terms and conditions contained in this Agreement and conditional on compliance with such terms and conditions, MCPS licenses to the Licensee on a non-exclusive basis during the Term the right within the Territory to copy Repertoire Works in the form of Ringbacks for the purposes delivering such Ringback to a Caller's Telephone in accordance with clause 2.1 above.
- 2.3 For the avoidance of doubt, neither of the licences granted under clauses 2.1 and 2.2 above permit the making of any copy, whether temporary or permanent, on a User's or a Caller's Telephone or on any other Telephone or hardware or device.
- 2.4 The Licensee shall use appropriate encryption measures to prevent the unauthorised supply (or onward-supply) or reproduction of Ringbacks incorporating Repertoire Works licensed under this Agreement.

3. Limitations on Licence

- 3.1 The licences granted under clauses 2.1 and 2.2 above only apply insofar as the Licensee is, and remains throughout the Term, the Content Provider in relation to the provision of the Service to Users.
- 3.2 For the avoidance of doubt, the licences granted in clauses 2.1 and 2.2 above do not cover:
- (a) any sound recording rights exploited within the Ringback; or
 - (b) any musical works which are not Repertoire Works; or
 - (c) any other rights not expressly granted under this Agreement.
- 3.3 The licences granted in clauses 2.1 and 2.2 above do not apply to:
- (a) any Repertoire Work which has been synchronised with any visual images (whether moving or still) of whatsoever nature; or
 - (b) any unauthorised adaptation (including changes to music and/or lyrics), parody, burlesque or arrangement of a Repertoire Work; or

- (c) the use of any Repertoire work in any context which the Licensee ought reasonably consider as being likely to be insulting or detrimental to the composer or artist featured on the commercially released sound recording of such Repertoire Work, or the relevant member or affiliated society member; or
- (d) any Ringback which infringes the moral rights of the composer of a Repertoire Work; or
- (e) use of any Repertoire Work in an advertisement or in a sponsorship message of whatsoever nature; or
- (f) use of any Repertoire Work in conjunction with an advertisement or a sponsorship message of whatsoever nature in such a way that a reasonable person might associate that Repertoire Work with such advertisement or sponsorship message; or
- (g) Dramatico-Musical Works.

3.4 For the avoidance of doubt, this Agreement only covers Repertoire Works. It does not extend to other rights or interests, including (by way of example only), sound recordings, films, dramatic works, performers' rights, moral rights or rights in performances. Nothing in this Agreement shall entitle the Licensee to exercise the licences or authorisations contained in this Agreement in relation to a particular Repertoire Work where the appropriate waivers, consents and/or licences have not been obtained from the person(s) owning or controlling rights in relation to sound recordings containing that Repertoire Work or performers of that Repertoire Work.

4. Licence Fees

4.1 In consideration of the licence granted under this Agreement and subject to clause 4.2, the Licensee shall pay to the Licensors:

- (a) the Advance; and
- (b) the Royalty Fee.

4.2 The Advance is recoupable against the Royalty Fee, but is non-returnable. For the avoidance of doubt, in the event that, throughout Term, the total Royalty Fees payable by the Licensee to the Licensors is less than the Advance no part of the Advance shall be repayable to the Licensee by the Licensors.

4.3 The licence fees referred to in clause 4.1 are subject to VAT. The Licensee shall pay to the Licensors VAT (if applicable) at the rate or rates from time to time in force on any sums payable under this Agreement.

4.4 Following the end of each calendar year throughout the Term, the Licensors shall be entitled to increase in line with the increase in the retail price index over the preceding 12 months period (prior to the date on which notice of such change is given the minimum royalty per Ringback supplied (referred to in the definition of 'Royalty Fee'). The Licensors will give two months notice of such change to the Licensee.

5. Payment of Licence Fees and Reporting

5.1 The Licensee shall pay to the Licensors the Advance on the Commencement Date (or within 31 days of the date of invoice for such sum, if later).

5.2 Within 31 working days of the end of each Quarter the Licensee shall provide to the Licensors (at the address notified by the Licensors to the Licensee) a fully and accurately completed Accounting and Reporting Statement.

- 5.3 The Licensors shall send the Licensee an invoice for the required licence fees (if any – ie. where the cumulative Royalty Fee payable exceeds the Advance). The Licensee shall pay such amount to the Licensors within 31 days of the date of such invoice.
- 5.4 Where, in relation to any particular Quarter, the Licensee fails to provide the information necessary to allow the calculation of the Royalty Fee, then the Licensor shall be entitled to fix the Royalty Fee based on (a) the Royalty Fees payable in previous Quarters and (b) any other relevant factors which could reasonably lead the Licensor to believe that the Royalty Fee payable would be materially different to those paid or payable in previous Quarters.
- 5.5 Without prejudice to any other right or remedy of the Licensors, and without imposing an obligation to accept late payment, where any fees payable under this Agreement are not paid by the due date, the Licensee shall pay interest on such late payment calculated on a daily basis at an annual rate of 3% over the base rate, current from time to time, of Santander UK Plc payable from the date on which the payment should have been made to the date on which the payment was made.
- 5.6 The Licensors reserve the right to alter the form of the Accounting and Reporting Statement and the data required to be given in such Accounting and Reporting Statement. The Licensors shall give the Licensee one month notice of any such change.

6. Technical Arrangements

- 6.1 The Licensors acknowledge that it may not be technically feasible to operate the Service without copies of Repertoire Works being made on servers in countries outside of the Territory. Therefore, notwithstanding the territory restriction contained in clause 2.2, the licence granted by MCPS under this Agreement covers the reproduction of Repertoire Works in the form of Ringbacks on 'mirror servers' anywhere in the world.
- 6.2 Where a copy of a Repertoire Work is made outside the Territory pursuant to clause 6.1 above, this will not prevent the communication to the public from being deemed, for the purposes of clause 2.1, to be 'within the Territory'.

7. Late Reporting

- 7.1 The following provision applies where the Licensee has:
- (a) failed to deliver prior to the required date a fully and accurately completed Accounting and Reporting Statement; or
 - (b) delivered such Accounting and Reporting Statement prior to the required date, but it contains any material omission or error of whatsoever nature (by way of example only, a Repertoire Work having been omitted therefrom or incorrectly or misleadingly named) and the Licensee has failed to give notice in writing to MCPS and PRS correcting the omission or error by the required date.
- 7.2 In such circumstances, the Licensee shall pay the fees set out in clauses 7.3 and 7.4 (in addition to those set out in clause 4).
- 7.3 Separately in relation to each relevant Repertoire Work either omitted from the relevant Accounting and Reporting Statement or as regards which there was a material omission or error of whatsoever nature or in relation to which the relevant Accounting and Reporting Statement was not delivered, the additional fees shall be calculated at the rate equivalent to that which has been or will be paid by the Licensors to their members in relation to the Accounting and Reporting Statement which was submitted prior to the required date.

- 7.4 The Licensee will also pay interest on such additional fees computed in accordance with clause 5.5 and calculated from the date on which the Licensors first made a distribution to their members in relation to the relevant period to the date on which the Accounting and Reporting Statement was received by the Licensors or the date on which the Licensors received written notice of the relevant error, as the case may be.
- 7.5 The provisions of this clause apply notwithstanding any other provision of this Agreement, but are without prejudice to any other right which the Licensors have in relation to any failure to submit Music Usage Information fully or accurately completed within the time stipulated in clause 6.1.

8. Auditing

- 8.1 The Licensee shall keep and make available for inspection upon reasonable notice, both during and for twelve months after termination of this Agreement, proper, detailed books and records relating to (a) the supply of the Service and all Ringbacks provided thereunder (b) any income or other consideration received by or on behalf of the Licensee in relation to the supply of the Service and all Ringbacks provided thereunder, together with any supporting documentation relating thereto.
- 8.2 The Licensee shall allow upon reasonable access to its premises to inspect accounting records, but not more than once per annum. The duly authorised representatives of the Licensors shall be entitled to inspect, make extracts and take copies of any of the information and/or documentation available and to carry out such work as is, in their reasonable opinion, considered necessary to verify compliance with the provisions of this Agreement.
- 8.3 If tests under any audit and verification process indicate under-payment of the correct licence fees during which monitoring has been carried out by or on behalf of the Licensors, then, without prejudice to the Licensors' other rights under this Agreement, the Licensee shall pay the amount of the underpayment plus interest based on the period from which the correct fee should have been paid to the Licensors to the date when it was actually paid (at the rate of 3% over the base rate current from time to time of Santander UK Plc).
- 8.4 If any audit and verification process discloses (a) under-payment of more than 7.5% of the correct licence fees during which monitoring has been carried out by or on behalf of the Licensors and/or (b) failures to report correctly amounting to at least 7.5% of the Ringbacks supplied during the period monitored by or on behalf of the Licensors, then, without prejudice to the Licensors' other rights under this Agreement, the Licensee shall pay, in addition to the payment referred to in clause 8.3, the Licensors' reasonable costs of such audit and verification within 28 days of receipt of the Licensors' VAT invoice therefor.
- 8.5 In conducting an audit under this clause 8, the Licensors agree not to disclose any confidential information of the Licensee to any third party, except that the Licensors may disclose any such information to (a) the MCPS-PRS Alliance Limited for the purpose of administering this Agreement and distributions to members, (b) the Licensors' members and affiliated societies for purposes related to this Agreement and (c) the Licensors' professional advisors for purposes connected to the administration of this Agreement.

9. Termination

- 9.1 Either party may terminate this Agreement by giving three months written notice to the other party.
- 9.2 Either party shall have the right to terminate this Agreement immediately by written notice to the other party if:

- (a) the other commits a material breach of this Agreement which is not capable of remedy; or
- (b) the other commits a material breach of this Agreement which is capable of remedy but which has not been so remedied within 14 days of notice thereof; or
- (c) the other goes into receivership or any resolution is passed for its winding-up or liquidation (other than for the purposes of reconstruction or amalgamation) or is otherwise unable to pay its debts.

10. Miscellaneous

- 10.1 This Agreement has been granted by the Licensors on the basis of the representations made by the Licensee in the process of applying for this Agreement, and in particular the information provided by the Licensee in the 'Application Form (Ringbacks)'. If any of those representations are materially incorrect, the licence granted under this Agreement shall not apply. The Licensee must notify the Licensors immediately of any material changes in any of the facts and matters express or implied set out in the answers to the 'Application Form (Ringbacks)' and the licences granted under this Agreement shall not apply in any such case unless the Licensors agrees otherwise in writing. For the avoidance of doubt, the Licensee seeking to supply Ringbacks via additional services, clients or websites (to those included on the original Application Form) shall be deemed to be a 'material change'.
- 10.2 This Agreement is personal to the Licensee and the Licensee must not assign, sub-license or otherwise transfer any of its rights or obligations under this Agreement whether in whole or in part without the prior written consent of the Licensors.
- 10.3 No delay or omission in exercising any right or remedy hereunder shall operate as a waiver thereof or of any other right or remedy and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other rights or remedies. No waiver shall be binding or effectual for any purpose unless expressed in writing and signed by the party giving it and any such waiver shall be effective only in the specific instance and for the purpose given.
- 10.4 If this Agreement creates any rights which would in the absence of this provision be enforceable by any person not a party to this Agreement, such rights shall not be enforceable.
- 10.5 This Agreement shall be construed according to the laws of England and Wales and the parties agree to submit to the jurisdiction of the English Courts.

Schedules to be attached

Form of Accounting and Reporting Statement