



## Audio Content License Agreement ("Agreement")

Agreement Date: \_\_\_\_\_, 2005 ("Effective Date")

Licensor: **Sounddogs.com, Inc.**

2633 Lincoln Blvd., #148, Santa Monica, CA, USA, 90405-4656

Licensee: \_\_\_\_\_

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**Background:** Sounddogs.com, Inc. is the owner of all rights to (or has sufficient rights in) the sound effects and music recordings (Sound Recordings) contained in the libraries listed in Schedule A to grant Licensee the rights detailed in this Agreement.

### 1. Purpose:

- a) Licensee intends to utilize the Sound Recordings to create ringtones, ringbacktones, realtones, ringtunes or truetones (Content). Licensee wishes to sell, distribute, market, and promote the Content; both as a retailer directly to consumers and as a wholesaler; to be played on mobile, cellular and other wireless communications devices.
- b) Licensee intends to incorporate audio content from the Libraries for distributing **ringtones on website or in product**, hereinafter referred to as 'Products'.
- c) In connection therewith, Licensee desires to select \_\_\_\_\_ distinct sound effects and \_\_\_\_\_ music tracks (hereinafter referred to as 'Sounds') as set forth in Schedule A attached hereto and forming part hereof to be sold, distributed, marketed, and promoted; both as a retailer directly to consumers and as a wholesaler; on mobile, cellular and other wireless communications devices.

### 2. Payment:

- a) In consideration of the license and rights granted herein, Licensee shall pay to Sounddogs \$ \_\_\_\_\_ per each \_\_\_\_\_ units of Product Net Sales, as calculated below:

\_\_\_\_\_ Sounds \$ \_\_\_\_\_ USD per sound for each \_\_\_\_\_ units of Product.

The first \_\_\_\_\_ products is \$\_\_\_\_\_- USD total, to be paid in advance upon the execution of this Agreement, and each additional \_\_\_\_\_ products is an additional \$\_\_\_\_\_ USD.

- b) For avoidance of doubt, no royalty shall be payable in respect of: (i) refunded purchases, failed digital transmissions, uncollected sales, or re-sends in connection with a distribution or download failure, or (ii) minutes, data packets or other wireless carrier or service provider methods of charging end users for the applicable underlying service.



3. **Territory:** As used herein, the "Territory" shall refer to the universe.
4. **Term:** The initial term (the "Initial Term") of this Agreement shall be one (1) year from the Effective Date. After the Initial Term, the Term shall be automatically renewed for additional twelve (12) -month periods (the "Renewal Term(s)"), unless otherwise terminated by notice from either party to the other not less than sixty (60) days prior to the end of the Initial Term or a Renewal Term, as the case may be. As used herein, the "Term" means the Initial Term and all Renewal Terms, collectively.
5. **Grant of Rights:**
  - (a) Sound Recordings are licensed, not sold to, Licensee. The License fee paid for these Sound Recordings does not include the right to allow the Sound Recordings to be incorporated into any audiovisual production such as a film, television show, advertisement, website (other than previews of the applicable ringtone), or videogame other than as specifically permitted in this Agreement. Licensee may not distribute the Sound Recordings, either in native format or reformatted, filtered, re-synthesized or otherwise edited, for use as sounds, multi-sounds, samples, multi-samples, programs or patches in a sampler, sample playback unit, website (other than as previews of the applicable ringtone), compact disc, DVD or computer. The Sound Recordings cannot be used as source playback from ROM or chip sets or embedded in any chip set. Licensee may not distribute, sell, rent, lease, sublicense, assign, or otherwise transfer any of the Sound Recordings except as otherwise set forth in this Agreement.
  - (b) Licensor grants to Licensee the non-exclusive right, privilege and license, during the Term and throughout the Territory, (a) to reproduce and/or digitally transform the Sound Recordings and the applicable artwork and packaging, in WAV, ADPCM or similar secured, copy-protected downloadable and transmittable digital data formats or other formats now known or hereafter developed, as Content; (b) to reproduce and store the Content onto Licensee's owned or controlled computer server(s) solely for its internal business purposes and/or for subsequent distribution to consumer end-users; (c) to edit the Content into segments that will constitute ringtones, ringbacktones, realtones and / or ringtunes; (d) to distribute, deliver, upload, download and otherwise transmit, and to permit sublicensee(s) to distribute, deliver, upload, download and otherwise transmit, the Content, whether individually or packaged with other Content, over the Internet (or any successor global computer network) or over a regional wireless transmission network (e.g., SMS or WAP or other device interface now known or hereafter developed) for transfer onto consumers' individual communications devices solely for such consumers' personal use as ringtones, ringbacktones, realtones and / or ringtunes and not available for any other use whatsoever; (e) to promote and advertise (including on the web site from which the Content will be made available for delivery to end-users), Licensee's and sublicensees' service(s) using segments of the Content; and (f) to publicly perform the Sound Recordings as



embodied in the Content as contemplated under this license. Licensor reserves all rights not specifically granted herein.

- (c) Licensee acknowledges that it has no claim, right, title or interest in any of Licensor's products except for the license granted by this Agreement. Specifically, and not by way of limitation, Licensee has no claim, right, title or interest in any Sound Recording or any other material contained in any of Licensor's products, or in any collateral material, or in any trademark of Licensor, including, without limitation, its name and logo, unless Licensee has obtained a separate and valid license therefor.
- (d) This Agreement prohibits Licensee from selling or licensing the Sound Recordings to any third party except as specifically permitted within this Agreement.
- (e) Nothing herein shall be construed as restricting Licensor's right to sell, and on a nonexclusive basis license, modify, publish or otherwise distribute the Sound Recordings in whole or in part to any other person or entity.
- (f) Sounddogs.com hereby grants to Licensee the right to reproduce and have reproduced and distribute (x) number of copies of the Products incorporating the Sounds, or (x) number of distinct downloads defined in [Section 1 \(b\)](#).

#### 6. Royalty and Royalty Accountings:

- (a) In consideration for the rights granted herein, Licensee shall pay to Licensor royalties at the Royalty specified herein.
- (b) Licensee shall render to Licensor detailed accounting statements, in electronic or digital format, of all royalties payable hereunder no less often than forty-five (45) days following the end of each calendar quarter of the Term. The statements shall report all royalty bearing transactions on a Sound Recording-by-Sound Recording basis (and, where commercially possible, on a country-by-country basis) including but not limited to reporting on each Sound Recording by title, sound file number, and source library (when appropriate) as identified on [www.sounddogs.com](http://www.sounddogs.com), the number of transmissions or downloads of such Effect, and the resultant royalty payable hereunder. Each accounting statement shall be accompanied by payment to Licensor of all royalties due and payable in respect of the applicable quarter. Notwithstanding the foregoing, if the amount due for a specific period is less than one hundred (\$100) dollars, Licensee may defer payment until the calendar quarter when the aggregate amount due exceeds one hundred (\$100) dollars.
- (c) All payments to Licensor shall be computed in the relevant local currency and remitted in United States dollars.
- (d) Licensee shall maintain accurate and complete records and accounting books with regard to the licensing and exploitation of the Sound Recordings, including but not limited to, all information needed to compute and verify the amounts payable to Licensor hereunder. Upon thirty (30) days' written



notice, Licensor or its designee may, not more than once during any twelve (12)-month period of the Term, cause a mutually agreed upon independent auditor, during normal business hours, to inspect the records of Licensee reasonably related to the calculation of payments due Licensor, for the purpose of verifying payments under this Agreement. Any audit shall be conducted at Licensor's sole cost and expense, except that if any audit reveals an error resulting in underpayment to Licensor of ten (10%) percent or more of the total amount accounted to Licensor during the accounting periods audit, the Licensee shall pay to Licensor all reasonable audit costs, including travel, hotel and per diems, together with the underpayment. All statements rendered by Licensee to Licensor shall be deemed conclusive unless objection is made within six (6) months from the date of such statement.

## 7. Termination:

- (a) Licensor may terminate this Agreement by giving Licensee notice in any of the following circumstances:
  - (i) Licensee fails to perform any of its material payment obligations under this Agreement for any reason (including impossibility of performance) and such failure has not been remedied to Licensor's satisfaction within thirty (30) days after Licensee's receipt of written notice of such failure.
  - (ii) Licensee attempts to assign any of its rights under this Agreement without Licensor's prior written consent, or if any of those rights succeeds to any other person or entity by operation of law, except that Licensee may assign its rights and obligations hereunder to (A) any purchaser of all or substantially all of the assets of Licensee, or (B) any successor in interest in connection with the change of control, merger, consolidation or other transfer by operation of law of Licensee or (C) any affiliate of Licensee.
  - (iii) Licensor or Licensee may terminate this Agreement for any reason by giving the other party sixty (60) days prior written notice.
- (b) This Agreement will terminate automatically, without notice, if any of the following occurs:
  - (i) Licensee is dissolved or its assets are liquidated, or if Licensee becomes insolvent.
  - (ii) A bankruptcy proceeding, for a reorganization or for other relief from the claims of creditors, or any similar proceeding, takes place with respect to Licensee or its assets.
- (c) A termination of the Agreement under this Section 9 will not limit or affect any of Licensor's other rights.
- (d) Upon the expiration or termination of the Term, all of Licensee's and Licensor's rights hereunder shall terminate; provided that the grant of rights by Licensor to Licensee shall survive for the term of agreements entered



into during the Term by Licensee and any third party sub-licensees, for which Licensee shall have the right to collect and disburse according to the Royalty set forth herein, any and all income generated. Licensee shall delete, or cause to be deleted, all copies of the Sound Recordings from any database or computer server which might be used to transmit, deliver or otherwise distribute the Sound Recordings to any consumer end-user, and Licensee shall make no further use whatsoever of the Sound Recordings or the Content.

- (e) Upon the expiration or termination of the Term, within 30 (thirty) days of the termination date, Licensee shall return, at Licensee's sole expense, all proprietary materials furnished by Licensor in connection with this Agreement including but not limited to product samples, artwork related to Licensor's logo, products or copyright and any other materials belonging to Licensor, to such address as Licensor will designate at the time of termination.
- (f) Upon the expiration or earlier termination of the Term, the provisions of Sections 7(c), 7(d), 7(e), 8, 9, 11 and this Section 7(f) shall survive any termination or expiration of this Agreement.

8. **Notices:** All notices under this Agreement will be in writing and will be given by certified mail, return receipt requested, at the respective addresses shown above or such other address as either party shall designate. Notices shall be deemed given when received.

9. **Warranties, Representations, and Indemnities:**

a) Licensor represents, warrants and agrees as follows:

- (i) That it has the full right, power and authority to enter into and fully perform this Agreement and to grant to Licensee all the rights hereunder on the terms and conditions set forth herein;
- (ii) There are no other agreements with any other party in conflict herewith;
- (iii) Licensor has and shall have during the term of this Agreement, sufficient rights in the Sound Recordings to grant Licensee the rights set forth in this Agreement, including any necessary approval, consent, authorization, release, clearance or license of any third party, and any release related to any rights of privacy or publicity, as may be necessary for Licensor to enter into this Agreement;
- (iv) The Sound Recordings are and shall be free from material errors or omissions;
- (v) Licensor will not publish, distribute or otherwise provide to Licensee for use hereunder any data, information or Sound Recordings that infringe on any third party's copyright, patent, trademark, trade secret or other proprietary rights or rights of privacy or publicity.
- (vi) Licensor shall be responsible for providing to Licensee the Sound Recordings in mutually agreed upon audio formats.

b) Licensee warrants, represents and agrees as follows:

- i. Licensee shall track and maintain records with respect to the countries in which Content is downloaded, transmitted or otherwise distributed



- by Licensee.
- ii. Licensee shall notify Licensor of any acts of copyright infringement, or acts that could be reasonably construed as those of copyright infringement, of which it becomes aware, concerning the Sound Recordings and Content licensed hereunder.
  - iii. Upon written instruction from Licensor, Licensee shall not license or distribute any Sound Recording or Content to any third part designated by Licensor that is engaged in piracy, illegal activities or other unauthorized use of the Sound Recordings, or that has otherwise been designated by the Recording Industry Association of America (RIAA), International Federation of the Phonographic Industry (IFPI) or other such body as an illegal producer or distributor.
  - iv. Licensee shall be responsible for marketing and distribution of the Content
- c) Licensor will defend and hold Licensee harmless from and against any and all liabilities, losses, damages, costs and expenses (including reasonable legal fees and expenses) associated with any claim or action brought against Licensee for actual or alleged infringement of any patent, copyright, trademark, service mark, trade secret, or the proprietary rights based upon duplication, sale, license or use of the Sound Recordings or Documentation by Licensee in accordance with this Agreement, or breach of Licensor's other warranties. Upon notice of an alleged infringement, or if in Licensor's opinion such a claim is likely, Licensor shall have the right, at its option, to obtain the right for Licensee to continue to exercise the rights granted under this Agreement, substitute similar Sound Recordings or modify the Sound Recordings so that they are no longer infringing. In the event that none of the above options are reasonably available, in Licensor's sole opinion, Licensor may terminate this Agreement. Licensor has no obligation under this Section for any claim to the extent that such claim results from use of the Sound Recordings by or for Licensee in combination with any non-Licensor-provided equipment, software or data.
- d) Licensee shall indemnify and hold Licensor harmless from and against any and all liabilities, losses, damages, costs and expenses (including reasonable legal fees and expenses) associated with any claim or action brought against Licensor that may arise from Licensee's improper or unauthorized replication, packaging, marketing or distribution of the Sound Recordings, including claims based on representation, warranties or misrepresentations made by Licensee or Licensees other warranties. Licensee is solely responsible for all end user Product support and warranty obligations. Licensee shall defend, indemnify and hold Licensor harmless from any liability, claim or cause of action arising out of or resulting from an end user's use of the Sound Recordings including, without limitation, any actions or claims in product liability, tort, contract or equity.
- e) A party's obligations to indemnify the other party are expressly conditioned on the party seeking indemnification: (i) giving written notice of the claim promptly to the indemnifying party; (ii) giving the indemnifying party sole control of the defense and settlement of the claim; (iii) providing to the indemnifying party all available information and assistance (at the indemnifying party's expense); and (iv) not compromising or settling such claim.



**10. Sounddogs Logos and Trademarks, etc.**

Licensee shall have the right to use the tradename and trademarks of Sounddogs on the Products packaging and in the credits and end user documentation. In connection therewith, Sounddogs grants Licensee the right and license to use, exploit and promote Sounddogs' trademark and tradename in such credits, and in any promotions, advertisements and publicity in connection with the Products. If Licensee elects to exercise this right, then Licensee shall comply with Sounddogs' reasonable trademark "marking" guidelines as set forth in Schedule B, attached hereto and forming part hereof. Sounddogs will supply Licensee with specimens for use of the trademarks upon request from Licensee. In any promotional material where the Sounddogs logo is used, the symbol <sup>TM</sup> must appear directly beside the logo and the following statement must appear: "Sounddogs is a registered trademark of Sounddogs, Inc." Position of this statement is discretionary. Licensee agrees that it will not at any time during or after this Agreement assert or claim any interest in, or do anything which may adversely affect the validity or enforceability of any copyright, trademark, tradename, or logo belonging to or licensed to Sounddogs. Licensee shall not be obligated to refer to Sounddogs or its trademark and/or tradename in any collateral material at any trade show.

**11. Miscellaneous:**

- a) No designation, approval, or consent provided for in this Agreement will be deemed given unless set forth in writing and signed by an authorized officer or representative of the party concerned.
- b) This Agreement contains the entire understanding of the parties and cannot be changed, amended or terminated except by an instrument signed by an officer of each party. A waiver of any provision of this Agreement will not waive that provision for the future or waive any subsequent breach of it. All remedies, rights, and obligations in this Agreement shall be cumulative and none of them shall be in limitation of any other remedy, right, or obligation of either party.
- c) This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Neither party may assign this Agreement without the other party's written consent (except that either party may assign its rights hereunder to any purchaser of all or substantially all of its assets or capital stock or to any successor by way of merger, consolidation or similar transaction). Any attempt to assign or transfer this Agreement other than in accordance with this provision shall be null and void.
- d) This agreement shall be governed by and interpreted in accordance with the laws of the state of California. The material provisions of the Agreement shall be deemed performed or to be performed in California and regardless of the order in which signatures of the representatives of Licensee and Sounddogs are affixed, the contract shall be deemed to have been executed at the Sounddogs offices at 2411 Third St. Apt. J, Santa Monica, CA, USA, 90405  
Licensee and Sounddogs consent to the jurisdiction of the courts of Los Angeles, California and to venue at the location of this court.

In the event any term or provision of this Agreement shall be declared invalid by a court of competent jurisdiction, such invalidity shall be limited solely to the specific term or provision invalidated, and the remainder of this Agreement shall remain in full force and effect according to its terms.



In the event of litigation, the party ultimately prevailing shall be entitled to receive from the other its reasonable attorneys fees and costs, as determined by the court rendering the final decision.

- e) The relationship of the parties is that of independent contractors and nothing in this Agreement shall render either party an agent of the other.
- f) This Agreement may be executed in any number of counterparts, all of which taken together shall constitute a single instrument. Execution and delivery of this Agreement may be evidenced by facsimile transmission.
- g) Neither party shall be responsible for any failure to perform due to unforeseen circumstances or to causes beyond their control including but not limited to acts of God, war, riot, embargoes, acts of civil or military authorities, fire, floods, earthquakes, accidents, strikes, or shortages of transportation, facilities, fuel, energy, labor or materials. In the event of any such delay, either party may defer the delivery date for a period equal to the time of such delay.

The parties have duly executed this Agreement by the authorized signatures below.

**Sounddogs.com, Inc.**

By: \_\_\_\_\_  
Name: Rob Nokes  
Title: President & CEO

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



SCHEDULE A

**LIST OF SELECTED SOUNDDOGS.COM SOUND EFFECTS AND MUSIC TRACKS**

Sounds listed below are licensed to Licensee for US\$ \_\_\_\_/each for each \_\_\_\_\_

**Products**

SDC File Number                      Sound File Name



#### **SCHEDULE B**

In any product or promotional materials where the Sounddogs logo is first used, the symbol ™ must appear directly beside the logo and the following statement must appear at an appropriate place in such materials: "Sounddogs is a registered trademark of Sounddogs.com, Inc." The Sounddogs logo is set out on the attached letterhead (Schedule B):

No alterations to the logo design whatsoever are permitted. Logo size cannot be less than one half inch in diameter. The official colors to be used when printing the Sounddogs logo (as displayed on Sounddogs letterhead) are as follows:

