

DATED

2017

BACKPAGES LIMITED

-and-

UNIVERSITY OF CALIFORNIA SAN DIEGO

ROCK'S BACKPAGES LICENCE AGREEMENT

"Commercial Use"	means use of the Licensed Work for the purpose of monetary reward (whether by or for the Institution or an Authorised User) by means of the sale, resale, loan, transfer, hire or other form of exploitation of the Licensed Work.
"Fee"	means the fee as set out in Schedule 1.
"Intellectual Property Rights"	means patents, trademarks, trade names, design rights, copyright (including rights in computer software and moral rights), database rights, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for the grant of any of the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world.
"Licensed Work"	means the product licensed in this Agreement known to the parties as 'Rock's Backpages' being an online database of music writing sourced from the pages of the music and mainstream press, forming a library of articles (reviews, interviews, features and more) from the early 1960s up to the present day. Further details of the Licensed Work are set out in Schedule 2.
"Offer"	means the offer as agreed between the Institution and the Publisher in the Rock's Backpages Agreement which is attached in Annex 1 hereto.
"Personal Use"	means for any purpose other than Commercial Use, including but not limited to private study, education, teaching, distance learning and/or research.
"Secure Authentication"	means access to the Licensed Work by Internet Protocol ("IP") ranges or by a valid library membership card and/or pin number provided by the Institution or by another means of authentication agreed between the Publisher and the Institution.
"Secure Network"	means a network which is only accessible by Secure Authentication.

1.2 Headings contained in this Agreement are for reference purposes only and shall not be deemed to be an indication of the meaning of the clause to which they relate.

1.3 Where the context so implies, words importing the singular number shall include the plural and vice versa and words importing the masculine shall include the feminine and vice versa.

2. GRANT OF LICENCE

2.1 In consideration for the Fee, the Publisher hereby grants the Institution a non-exclusive non-transferable licence to access and use the Licensed Work and to allow Authorised Users and Authorised Demonstrators to access and use the Licensed Work on the terms and conditions as set out in this Licence.

3. USE OF THE LICENSED WORK

3.1 Throughout the term of this Agreement, the Institution may:

- 3.1.1 make such temporary local electronic copies of all or part of the Licensed Work as are necessary to ensure efficient use by Authorised Users and Authorised Demonstrators, provided that such use is subject to all the terms and conditions of this Agreement;
- 3.1.2 allow Authorised Users and Authorised Demonstrators to access the Licensed Work by Secure Authentication in order to search, retrieve, display and view, and otherwise use portions thereof;
- 3.1.3 allow Authorised Users and Authorised Demonstrators to electronically save parts of the Licensed Work;
- 3.1.4 allow Authorised Users and Authorised Demonstrators to print out copies of parts of the Licensed Work;
- 3.1.5 provide single printed or electronic copies by email of parts of the Licensed Work at the request of individuals. Copies in non-electronic, non-print perceptible form such as Braille may be made available to Authorised Users;
- 3.1.6 supply to an authorised user of another library (whether by post, fax or secure electronic transmission, using Ariel software or its equivalent, whereby the electronic file is deleted immediately after printing) a single copy of parts of the Licensed Work;
- 3.1.7 incorporate parts of the Licensed Work for use by Authorised Users in printed and electronic course packs, study packs, resource lists and in any other material (including but not limited to multi-media works) to be used in the course of instruction and/or in virtual and managed environments (including but not limited to virtual learning environments, managed learning environments, virtual research environments and library environments) hosted on a Secure Network. Each item shall carry appropriate acknowledgement of the source, listing title and copyright owner. Course packs in non-electronic non-print perceptible form, such as Braille, may also be offered to Authorised Users;
- 3.1.8 allow Authorised Users to incorporate parts of the Licensed Work in printed or electronic form in assignments and portfolios, theses and in dissertations ("the Academic Works"), including reproductions of the Academic Works for personal use and library deposit, if such use conforms to the customary and usual practice of the Licensee. Reproductions in printed or electronic form of Academic Works may be provided to sponsors of such Academic Works. Each item shall carry appropriate acknowledgement of the source, listing title and copyright owner;
- 3.1.9 display, download and print parts of the Licensed Work for the purpose of promotion of the Licensed Work, testing of the Licensed Work, or for training Authorised Users;
- 3.1.10 publicly <isplay or publicly perform parts of the Licensed Work as part of a presentation at a seminar, conference, or workshop, or other such similar activity; and
- 3.1.II make such copies of training material and network such training material as may be required for the purpose of using the Licensed Work in accordance with this Agreement.

3.2 This Agreement shall be deemed to complement and extend the rights of the Institution and Authorised Users under the Copyright, Designs and Patents Act 1988 and the Copyright (Visually Impaired Persons) Act 2002 and nothing in this Licence shall constitute a waiver of any statutory rights held by the Institution and Authorised Users from time to time under these Acts or any amending legislation.

4. RESTRICTIONS

4.1 Save as provided herein, the Institution, Authorised Users and Authorised Demonstrators may not:

- 4.1.1 sell or resell the Licensed Work unless the Institution or an Authorised User has been granted prior written consent by the Publisher to do so;
- 4.1.2 remove, obscure or modify copyright notices, text acknowledging or other means of identification or disclaimers as they appear;
- 4.1.3 make printed or electronic copies of multiple extracts of the Licensed Work for any purpose, beyond those authorised by this Agreement;
- 4.1.4 alter, adapt or modify the Licensed Material, except to the extent necessary to make it perceptible on a computer screen, or as otherwise permitted in this Agreement. For the avoidance of doubt, no alteration of the words or their order is permitted;
- 4.1.5 display or distribute any part of the Licensed Work on any electronic network, including without limitation the Internet and the World Wide Web, and any other distribution medium now in existence or hereinafter created, other than by a Secure Network;
- 4.1.6 use all or any part of the Licensed Work for any Commercial Use or for any purpose other than for Personal Use; or
- 4.1.7 permit anyone other than Authorised Users and Authorised Demonstrators to access and use the Licensed Work.

4.2 This Clause 4 shall survive termination of this Agreement for any reason.

5. RESPONSIBILITIES OF THE INSTITUTION

5.1 The Institution will:

- 5.1.1 issue passwords or other access information only to Authorised Users and use reasonable efforts to ensure that Authorised Users do not divulge their passwords or other access information to any third party;
- 5.1.2 use all reasonable efforts to ensure that only Authorised Users and Authorised Demonstrators are permitted access to the Licensed Work;
- 5.1.3 use all reasonable efforts to ensure that all Authorised Users and Authorised Demonstrators are made aware of and undertake to abide by the terms of this Agreement;
- 5.1.4 use all reasonable efforts to monitor compliance and notify the Publisher immediately and provide full particulars on becoming aware of any of the following (a) any unauthorised use of any of the Institution's password(s); or (b) any breach by an Authorised User or an Authorised Demonstrator of the terms of this Agreement. Upon becoming aware of any breach of the terms of this Agreement the Institution further agrees promptly to fully investigate and initiate disciplinary procedures in accordance with the Institution's standard practice and use all reasonable effort to ensure that such activity ceases and to prevent any recurrence;

- 5.1.5 comply with all reasonable computer security procedures required by the Publisher and take all reasonable steps to ensure the security of the Licensed Work; and
- 5.1.6 provide the Publisher with such access information (such as IP addresses, referring URL's, library card ranges or pin numbers, and Shibboleth attributes) as is necessary to ensure access to the Licensed Work by Authorised Users and Authorised Demonstrators via the Secure Network of the Institution and via the website of the Publisher.

6. RESPONSIBILITIES OF PUBLISHER

6.1 The Publisher agrees to:

- 6.1.1 provide and permit access and use of the Licensed Work in accordance with the provisions as laid down in this Agreement;
- 6.1.2 provide for customer support services to the Institution and Authorised Users and Authorised Demonstrators via e-mail or phone, including answering e-mail inquiries relating to the use, functionality and content of the Product;
- 6.1.3 use all reasonable endeavours to make the Licensed Work available to Authorised Users and Authorised Demonstrators at all times and on a twenty-four hour basis, save for routine maintenance, and to restore access to the Licensed Work as soon as possible in the event of an interruption or suspension of the service;
- 6.1.4 provide sufficient server capacity and bandwidth for access by Authorised Users and Authorised Demonstrators;
- 6.1.5 make available to the Institution COUNTER-compliant usage statistics, on at least a monthly basis (<http://www.projectcounter.org>); and
- 6.1.6 provide electronic product documentation free of charge to the Institution. The Institution is permitted to make copies of all documentation and to distribute it to Authorised Users and Authorised Demonstrators provided it is either duplicated in full, or a proper ownership acknowledgement is included.

7. USAGE DATA

- 7.1 The parties shall co-operate in gathering any data on usage of the Licensed Work that is available to them during the term of this Agreement, and shall provide such data to each other upon request. Notwithstanding the foregoing, the parties shall neither assemble nor provide data from which an individual user could be identified.

8. FEE

- 8.1 The Institution will pay the Fee to the Publisher for the rights granted to the Licensed Work in the amount and upon terms as set out in Schedule I.

9. TERM AND TERMINATION

- 9.1 The term of this Agreement will commence upon the date of signature and will remain in full force and effect until 16th September 2017, unless terminated earlier as provided for in this Clause 9.

- 9.2 This agreement shall be renewable at the end of each current term for a successive 12 month term unless either party gives written notice of its intention not to renew at least 30 days before expiration of the current term.
- 9.3 Either party may terminate this Agreement at any time on the material breach or repeated other breaches by the other of any obligation on its part under this Agreement by serving a written notice on the other identifying the nature of the breach. The termination will become effective 30 days after receipt of the written notice unless during the relevant period of 30 days the defaulting party remedies the breach forthwith by written notice to the other party.
- 9.4 Upon termination of this Agreement by the Institution due to a material breach or repeated other breaches by the Publisher, the Publisher will reimburse the Licensee a pro rata proportion of the Fee paid by the Institution for the unexpired period of this Agreement.
- 9.5 Upon termination of this Agreement, copies of parts of the Licensed Work made by the Institution or Authorised Users may be retained. Print and electronic copies of parts of the Licensed Work retained by Authorised Users may be used after termination of this Agreement subject to the terms of Clauses 3 and 4 of this Agreement, which terms shall survive any termination of this Agreement.

10. ACKNOWLEDGEMENT AND PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

- 10.1 The Institution acknowledges that all Intellectual Property Rights in the Licensed Work are the sole and exclusive property of the Publisher or are duly licensed to the Publisher and that this Agreement does not assign or transfer to the Institution any right, title or interest therein except for the right to use the Licensed Work in accordance with the terms and conditions of this Agreement.

11. REPRESENTATIONS, WARRANTIES, INDEMNIFICATION AND LIMITATIONS OF LIABILITY IN RESPECT OF THE LICENSED WORK

- 11.1 The Institution represents and warrants that it has sufficient authority and rights to enter into and perform its obligations under this Agreement.
- 11.2 The Publisher warrants to the Institution that the Licensed Work and all Intellectual Property Rights therein are owned by or licensed to the Publisher and that the Licensed Work used as contemplated in this Agreement does not infringe any Intellectual Property Rights of any natural or legal person. The Publisher agrees that Institution shall have no liability and the Publisher will indemnify, defend and hold the Institution harmless against any and all damages, liabilities, claims, causes of action, legal fees and costs incurred by Institution in defending against any third party claim of Intellectual Property Rights infringements or threats of claims thereof with respect of Institution's use, an Authorised User's or an Authorised Demonstrator's use of the Licensed Work, provided that: (1) the use of the Licensed Work has been in full compliance with the terms and conditions of this Agreement; (2) Institution provides the Publisher with prompt notice of any such claim or threat of claim; (3) Institution co-operates fully with the Publisher in the defence or settlement of such claim; and (4) the Publisher has sole and complete control over the defence or settlement of such claim.
- 11.3 Nothing in this Agreement shall make the Institution liable for breach of the terms of this Agreement by any Authorised User or Authorised Demonstrator provided that the Institution did not cause, knowingly assist or condone the continuation of such breach after becoming aware of an actual breach having occurred.
- 11.4 Save as provided for in Clause 11.2, neither the Institution nor the Publisher will be liable to the other in contract or negligence or otherwise for (i) any special, indirect, incidental, punitive or consequential

damages (ii) loss of direct or indirect profits, business, contracts, revenue or anticipated savings or for any increased costs or expenses.

- 11.5 No party limits its liability for (i) death or personal injury to the extent it results from its negligence, or of its employees or agents in the course of their engagement; and (ii) its own fraud or that of its employees or agents in the course of their engagement.
- 11.6 The Publisher reserves the right to change the content, presentation, user facilities or availability of parts of the Licensed Work and to make changes in any software used to make the Licensed Work available at their sole discretion. The Publisher will notify the Institution of any substantial change to the Licensed Work. If the changes result in the Archived Materials being no longer useful to the Licensee, the Licensee may within sixty days of such notice terminate this Agreement and publisher will reimburse the Licensee a pro rata proportion of the Fee paid by the Institution for the unexpired period of this Agreement.
- 11.7 The Publisher makes no representation and gives no warranty express or implied with regard to the accuracy of the information contained in or in any part of the Licensed Work and the fitness of such information or part for any purposes whatsoever and the Publisher accepts no liability for loss suffered or incurred by the Institution or Authorised Users as a result of their reliance on the Licensed Work or for any loss suffered or incurred as a result of pages being omitted from the Licensed Work in error provided the Publisher will rectify such omissions as soon as reasonably practical on being made aware of them.
- 11.8 The Institution agrees to notify the Publisher within 48 hours and provide full particulars in the event that it becomes aware of any actual, suspected or threatened claims by any third party in connection with works contained in the Licensed Work and do all things reasonably required to assist the Publisher in such claims. It is expressly agreed that upon such notification, or if the Publisher becomes aware of such a claim from other sources, the Publisher may remove such work(s) from the Licensed Work. Failure to report knowledge of any actual or threatened claim by any third party shall be deemed a material breach of this Agreement. At the request of the Publisher, the Institution will make all reasonable efforts to remove such work(s) from any copies of the Licensed Work maintained by the Institution.
- 11.9 The Institution represents to the Publisher that its computer system through which the Licensed Work will be used is configured, and procedures are in place, to prohibit access to the Licensed Work by any person other than an Authorised User or an Authorised Demonstrator; that it shall use reasonable efforts to inform Authorised Users and Authorised Demonstrators about the conditions of use of the Licensed Work; and that during the term of this Agreement, the Institution will continue to make all reasonable efforts to bar non-permitted access and to convey appropriate use information to its Authorised Users and Authorised Demonstrators.
- 11.10 The Publisher reserves the right at any time to withdraw from the Licensed Work any item or part of an item for which it no longer retains the right to publish, or which it has reasonable grounds to believe infringes copyright or is defamatory, obscene, unlawful, incorrect or otherwise objectionable. In the event of withdrawal by the Publisher of the Licensed Work or any part thereof representing 10% or more of the Licensed Work, the Institution shall have the right to terminate the Agreement and to be made a pro rata refund of the Fee taking into account the remaining unexpired period of the Agreement.

12. FORCE MAJEURE

- 12.1 Either party's failure to perform any term or condition of this Agreement as a result of circumstances beyond the control of the relevant party (including without limitation, war, strikes, flood, governmental restrictions, and power, telecommunications or Internet failures or damages to or destruction of any

network facilities) ["Force Majeure"] shall not be deemed to be, or to give rise to, a breach of this Agreement.

- 12.2 If either party to this Agreement is prevented or delayed in the performance of any of its obligations under this Agreement by Force Majeure and if such party gives written notice thereof to the other party specifying the matters constituting Force Majeure together with such evidence as it reasonably can give and specifying the period for which it is estimated that such prevention or delay will continue, then the party in question shall be excused the performance or the punctual performance as the case may be as from the date of such notice for so long as such cause of prevention or delay shall continue.

13 ASSIGNMENT

- 13.1 Neither this Agreement nor any of the rights under it may be assigned or sub-licensed by either party without obtaining the prior written consent of the other party. In any permitted assignment, the assignor shall procure and ensure that the assignee shall assume all rights and obligations of the assignor under this Agreement and agrees to be bound to all the terms of this Agreement.

14 DISPUTE RESOLUTION

- 14.1 The parties agree to use best efforts to resolve disputes in an informal manner, by decision of the Managing Director of the Publisher and the Institution. If and where the parties agree that a dispute arising out of or in connection with this Agreement would best be resolved by the decision of an expert, they will agree upon the nature of the expert required and together appoint a suitable expert by agreement.
- 14.2 Any person to whom a reference is made under Clause 14.1 shall act as expert and not as an arbitrator and his decision (which shall be given by him in writing and shall state the reasons for his decision) shall be final and binding on the parties except in the case of manifest error or fraud.
- 14.3 Each party shall provide the expert with such information and documentation as he may reasonably require for the purposes of his decision.
- 14.4 The costs of the expert shall be borne by the parties in such proportions as the expert may determine to be fair and reasonable in all circumstances or, if no determination is made by the expert, by the parties in equal proportions.

15 NOTICES

- 15.1 All notices required to be given under this Agreement shall be given in writing in English and sent by courier or special delivery to the relevant addressee at its address set out below, or to such other address as may be notified by either party to the other from time to time under this Agreement, and all such notices shall be deemed to have been received 7 days after posting where sent by special delivery or on despatch in the case of despatch by courier

if to the Institution:

[Text deleted]

Electronic Resource Specialist
UC San Diego Library
9500 Gilman Dr [Text deleted]
La Jolla, CA 92093-0175

if to the Publisher

[Text deleted]

Sales & Marketing Director
Backpages Ltd
[Text deleted]

16. GENERAL

- 16.1 This Agreement, Schedules and Annexes constitute the entire agreement between the parties relating to the Licensed Work and supersede all prior communications, understandings and agreements (whether written or oral) relating to its subject matter and may not be amended or modified except by agreement of both parties in writing.
- 16.2 The Schedules and Annexes shall have the same force and effect as if expressly set in the body of this Agreement and any reference to this Agreement shall include the Schedules and Annexes.
- 16.3 The invalidity or unenforceability of any provision of this Agreement shall not affect the continuation in force of the remainder of this Agreement.
- 16.4 The rights of the parties arising under this Agreement shall not be waived except in writing. Any waiver of any of a party's rights under this Agreement or of any breach of this Agreement by the other party shall not be construed as a waiver of any other rights or of any other or further breach. Failure by either party to exercise or enforce any rights conferred upon it by this Agreement shall not be deemed to be a waiver of any such rights or operate so as to bar the exercise or enforcement thereof at any subsequent time or times.

SCHEDULE 1: FEE AND PAYMENT TERMS

1. The Institution will pay the Publisher the applicable Fee in accordance with the Offer. Each applicable Fee shall be due and payable 30 days after the receipt by the Institution of a suitable invoice for such fee from the Publisher.

SCHEDULE 2: LICENSED WORK

Rock's Backpages (www.rocksbackpages.com) is the World's only comprehensive online database of music writing, sourced from the pages of the music and mainstream press, it is a library of articles (reviews, interviews, features and more) from the early 1950s right up to the present day. There are thousand articles on the site (32,000 as of February 2017). These feature over four thousand artists and range from 500-word album (or concert) reviews to 10,000-word interviews and features. There are also over 550 (as of February 2017) exclusive, and previously unpublished, audio interviews with major music artists.

Written by over 670 of the World's most renowned music journalists (including Lester Bangs, Caitlin Moran and Nick Kent), the articles are in the main taken from a wide range of publications in the US and UK: from Creem and Trouser Press to Rolling Stone, and from New Musical Express and Melody Maker to Mojo. There is also a wide diaspora of publications from across the globe, from local and national press to fanzines and the underground music press of the 60's and 70's.

The archive covers all types of popular music from the 1950s to the present: from Abba to Zappa, the Stones to the Stone Roses and from Elvis to Eminem alongside subject areas such as cultural studies and theory, fashion, art, and design, women in music and feminism, politics, religion and society.

All the material in the database includes the full agreement and permission of the copyright holders – freelance writers and journalists – or their estates

Rock's Backpages is an ever expanding and unique primary source archive, making the database an essential resource for student of music, journalism, literature, popular culture and the media, history & cultural studies amongst other Arts, Humanities and Social Studies subjects.

The library is added to weekly, with at least 50 text articles, and one new audio interview.

ANNEX 1:OFFER

12 Months unlimited access to www.rocksbackpages.com at a [Text deleted]

ACCEPTANCE OF LICENCE AGREEMENT

SIGNED by: [Text deleted]
(Signature)

PRINT NAME: [Text deleted]

for and on behalf of University of California San Diego

Position: All Collection Services

Date: 4/28/17

Address: 9500 Gilman Dr
La Jolla CA 92093

SIGNED by: [Text deleted]
(Signature)

PRINT NAME: [Text deleted]

for and on behalf of Backpages Ltd

Position: Sales & Marketing Director

Date: 3rd May 2017