

Intellectual Property Rights – Artists.

The Service provides Artists with the ability to upload Digital Content owned or controlled by such Artists to the Site, including but not limited to sound recordings (“Sound Recordings”), videos synchronized with Sound Recordings and other audiovisual works (collectively, “Music Videos”), and the musical works embodied within Sound Recordings and Music Videos (“Musical Works” and, collectively with Sound Recordings and Music Videos, the Artist’s “Music”). Company will not have any ownership rights in any elements of an Artist’s Music, however, Company needs the following license to perform the Service. Each Artist uploading Music to the Service grants Company and its authorized sublicensees and distributors, if any, the worldwide, non-exclusive, royalty-free, right and license to: (i) reproduce, distribute, publicly perform (including on a through-to-the-audience basis and by means of a digital audio transmission), publicly display, create derivative works of, communicate to the public, synchronize and otherwise exploit (collectively, “Exploit”) (1) the Artist’s Music and perform the Service on the Artist’s behalf (e.g., reproduce, transcode, copy and store the Artist’s Music on computer servers owned and/or operated by or on behalf of Company or its authorized sublicensees and distributors, and publicly perform, transmit, synchronize, stream, distribute, and playback the Artist’s Music) using any technologies or methodologies now known or hereafter developed, and (2) Exploit all associated copyrightable works or metadata, including, without limitation, song lyrics and musical notations, album cover artwork, photographs, graphics, and descriptive text (“Artworks”) in connection with the Service); (ii) allow users of the Service to receive public performances and public displays of the Artist’s Music and Artworks and to reproduce the Artist’s Music and Artworks on any and all devices owned or controlled by the user for non-commercial purposes and receive performances and displays of same; and (iii) reproduce, use, and publish, and to permit others to reproduce, use and publish, the name(s), trademarks, likenesses, and personal and biographical materials of the Artist, in connection with the provision of the Service.

To enable Company to Exploit your Music pursuant to the above provisions, you hereby grant to Company the worldwide, non-exclusive, royalty-free, sublicensable, and transferable right to use, distribute, reproduce, copy, and display your trademarks, service marks, slogans, logos or similar proprietary rights (collectively, the “Trademarks”) solely in connection with the Service or in the marketing, promotion or advertising of the service, including in all forms of marketing, promotion, and advertising materials now known or hereafter created.

By uploading any Music or Artworks to the Site:

- you represent and warrant, and can demonstrate to Company's full satisfaction upon request, that (i) you own or otherwise control all rights to your Music and Artworks (or that such Music and Artworks are in the public domain or have otherwise been directly licensed to the Artist in writing with a grant of rights sufficient to permit the Artist to enter into this Agreement and to grant all of the rights with respect to the Artist's Music or Artworks as set forth in this Agreement (hereinafter "Direct Licensed"); (ii) you have full authority to act on behalf of any and all owners of any right, title or interest in and to any Music you upload to the Service and to the Artworks; (iii) you have permission to use the name and likeness of each identifiable individual person whose name or likeness is contained or used within the Music and/or Artworks, and to use such individual's identifying or personal information (to the extent such information is used or contained in the Music and/or Artworks) as contemplated by these Terms of Use, and (iv) you are authorized to grant all of the aforementioned rights to the Music and/or Artworks to Company and all users of the Service.
- you represent and warrant that the use or other exploitation of your Music and/or Artworks by Company and its authorized sublicensees and distributors and/or by users of the Site as contemplated by this Agreement will not infringe or violate the rights of any third party, including, without limitation, any privacy rights, publicity rights, copyrights, contract rights, or any other intellectual property or proprietary rights.
- you represent and warrant that, to the extent you are the songwriter of any or all of the Musical Works embodied in your Sound Recordings or Music Videos, whether in whole or in part (e.g., as a co-writer), you have the full right, power, and authority to grant the rights set forth in this Agreement notwithstanding the provisions of any agreement you may have entered into with any performing rights organization ("PRO"), whether based in the United States (e.g., ASCAP, BMI or SESAC) or elsewhere, or any music publisher, and that you are solely responsible for taking all steps necessary to inform such PRO or music publisher of your grant of a royalty free license to Company for the public performances and communications to the public of your Musical Works, and that no fees or payments of any kind whatsoever shall be due to any PRO or music publisher for the public performance or communication to the public of your Musical Works.
- you represent and warrant that no fees of any kind shall be due any third party, including, but not limited to, any union, guild, non-featured vocalist or musician,

engineer or producer, for the use or re-use of your Music as authorized under this Agreement.

If any agreement you have entered into with any third party, including, but not limited to a PRO, music publisher, union or guild, whether by law or contract, prohibits you from granting company the right and license set forth in this Agreement and making the representations and warranties set forth in the four paragraphs immediately above, then you are prohibited from uploading your music to the Service and shall be responsible for indemnifying and holding company harmless from and against any and all claims arising from the exploitation of your music on the Service, including all court costs and legal fees.

Intellectual Property Rights - Fans.

The Service provides users with the ability to add, create, upload, submit, distribute or post (“Submitting” or “Submission”) content, videos (including Music Videos), audio clips (including Music), written forum comments, data, text, photographs, software, scripts, graphics, or other information to the Site (collectively, the “User Submissions”). By Submitting User Submissions on the Site or otherwise through the Service, you:

- acknowledge that by Submitting any User Submission to the Site, you are publishing that User Submission, and that you may be identified publicly by your User ID in association with any such User Submission;
- by Submitting any User Submissions through the Site or the Service, you hereby grant Company a worldwide, non-exclusive, perpetual, irrevocable, royalty-free, fully paid, sublicensable and transferable license to use, edit, modify, reproduce, distribute, prepare derivative works of, publicly display, publicly perform (including on a through-to-the-audience basis and by means of a digital audio transmission), communicate to the public, synchronize and otherwise fully exploit the User Submissions in connection with the Site, the Service and Company’s (and its successors and assigns’) business, including without limitation for promoting and redistributing part or all of the Site (and derivative works thereof) or the Service in any media formats and through any media channels (including, without limitation, third party websites), whether now known or hereafter developed. You also hereby do and shall grant each user of the Site and/or the Service a non-exclusive license to access your User Submissions through the Site and the Service, and to use, edit, modify, reproduce (on any and all devices owned or

controlled by the user), distribute, prepare derivative works of, display and perform such User Submissions solely for personal, non-commercial use. For clarity, the foregoing license grant to Company does not affect your other ownership or license rights in your User Submission(s), including the right to grant additional licenses to the material in your User Submission(s), unless otherwise agreed in writing;

- represent and warrant, and can demonstrate to Company's full satisfaction upon request that you (i) own or otherwise control all rights to all content in your User Submissions, or that the content in such User Submissions is in the public domain or Direct Licensed, (ii) you have full authority to act on behalf of any and all owners of any right, title or interest in and to any content in your User Submissions to use such content as contemplated by these Terms of Use and to grant the license rights set forth above, (iii) you have the permission to use the name and likeness of each identifiable individual person and to use such individual's identifying or personal information as contemplated by these Terms of Use; and (iv) you are authorized to grant all of the aforementioned rights to the User Submissions to Company and all users of the Service;
- you agree to pay all royalties and other amounts owed to any person or entity, including any PROs, due to your Submission of any User Submissions to the Service;
- that the use or other exploitation of such User Submissions by Company and use or other exploitation by users of the Site and Service as contemplated by this Agreement will not infringe or violate the rights of any third party, including without limitation any privacy rights, publicity rights, copyrights, contract rights, or any other intellectual property or proprietary rights; and
- understand that Company shall have the right to delete, edit, modify, reformat, excerpt, or translate any materials, content or information submitted by you; and that all information publicly posted or privately transmitted through the Site is the sole responsibility of the person from which such content originated and that Company will not be liable for any errors or omissions in any content; and that Company cannot guarantee the identity of any other users with whom you may interact in the course of using the Service.

Company does not endorse and has no control over any User Submission. Company cannot guarantee the authenticity of any data which users may provide about themselves. You acknowledge that all Content accessed by you using the Service is at your own risk and you will be solely responsible for any damage or loss to any party resulting therefrom.

Termination.

Company may terminate your access to all or any part of the Service at any time, with or without cause, with or without notice, effective immediately, which may result in the forfeiture and destruction of all information associated with your membership, including, without limitation, any access to any Music you may have purchased through the Service. If you wish to terminate your account, then you may do so by following the instructions on the Site. Any fees paid hereunder are non-refundable, except as provided in this Agreement. All provisions of these Terms of Use which by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, indemnity and limitations of liability.

Warranty Disclaimer.

Company has no special relationship with or fiduciary duty to you. You acknowledge that Company has no control over, and no duty to take any action regarding: which users gains access to the Site; what Content you access via the Site; what effects the Content may have on you; how you may interpret or use the Content; or what actions you may take as a result of having been exposed to the Content. You release Company from all liability for you having acquired or not acquired Content through the Site. The Site may contain, or direct you to websites containing, information that some people may find offensive or inappropriate. Company makes no representations concerning any Content contained in or accessed through the Site, and Company will not be responsible or liable for the accuracy, copyright compliance, legality or decency of material contained in or accessed through the Site or the Service.

The Service is provided "as is" and "as available" and is without warranty of any kind, express or implied, including, but not limited to, the implied warranties of title, non-infringement, merchantability and fitness for a particular purpose, and any warranties implied by any course of performance or usage of trade, all of which are expressly disclaimed. Company, and its directors, employees, agents, suppliers, partners and content providers do not warrant that: (a) the service will be secure or available at any particular time or location; (b) any defects or errors will be corrected; (c) any content or software available at or through the service is free of viruses or other harmful components; or (d) the results of using the service will meet your requirements. Your use of the service is solely at your own risk.

Some states do not allow limitations on how long an implied warranty lasts, so the above limitations may not apply to you.

Electronic Communications Privacy Act Notice (18 U.S.C. §§ 2701-2711): Company makes no guaranty of confidentiality or privacy of any communication or information transmitted on the Site or any website linked to the Site. Company will not be liable for the privacy of e-mail addresses, registration and identification information, disk space, communications, confidential or trade-secret information, or any other Content stored on Company's equipment, transmitted over networks accessed by the Site, or otherwise connected with your use of the Service.

Indemnification.

You shall defend, indemnify, and hold harmless Company and its affiliates, authorized sublicensees and distributors, and each of their employees, contractors, directors, suppliers and representatives, from any and all liabilities, claims, and expenses, including reasonable attorneys' fees and court costs, that arise from or relate to your use or misuse of, or access to, the Site, Service, Content or otherwise from your User Submissions, violation of these Terms of Use, or infringement by you, or any third party using the your account, of any intellectual property or other right of any person or entity, and for breach of any of your representations and warranties in these Terms of Use. For the avoidance of doubt, you hereby agree to defend, indemnify, and hold harmless Company from any and all claims by a third party owning, controlling or claiming any right in or to your Music, including claims for performance royalties, synchronization royalties, mechanical royalties, and use or re-use fees. Company reserves the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will assist and cooperate with Company in asserting any available defenses at your sole expense.

Limitation of Liability.

In no event shall Company, nor its directors, employees, agents, partners, suppliers or content providers, be liable under contract, tort, strict liability, negligence or any other legal or equitable theory with respect to the Service (i) for any lost profits, data loss, cost of procurement of substitute goods or services, or special, indirect, incidental, punitive, or consequential damages of any kind whatsoever, substitute goods or services (however arising), (ii) for any bugs, viruses, trojan horses, or the like (regardless of the source of origination), or (iii)

for any direct damages in excess of (in the aggregate) one-hundred U.S. dollars (\$100.00). Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitations and exclusions may not apply to you.

Because Company is not the buyer or seller in any Merchandise Transaction, if a dispute arises between one or more participants in a Merchandise Transaction, then you release Company (and its affiliates, agents and employees) from claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with such disputes. If you are a California resident, then you waive California civil code §1542, which says: "a general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor." You, being aware of said code section, hereby expressly waive any rights you may have thereunder, as well as under any other statutes or common law principles of similar effect. You acknowledge and agree that this waiver is an essential and material term of this Agreement, and that without such waiver, this Agreement would not have been entered into by Company.

Because Company is not the buyer or seller in any actual Merchandise Transaction between Artists and fans and is not the agent of either for any purpose, Company does not have the duty to resolve and will not be involved in resolving any disputes between participants related to or arising out of any such Merchandise Transaction. Artists are individually responsible for compliance with all consumer rights laws applicable to their Merchandise Transactions, including EU Consumer Rights Laws.

International/Non-California Use.

Company makes no representation that the Content is appropriate or available for use in locations outside of California, and accessing the Service is prohibited from territories where such Content is illegal. If you access the Service from other locations, you do so at your own initiative and are responsible for compliance with local laws.

Dispute Resolution.

A printed version of these Terms of Use and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to these Terms of Use to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. You and Company agree that any cause of action arising out of or related to the Service must commence within one (1) year after the cause of action arose; otherwise, such cause of action is permanently barred.

These Terms of Use shall be governed by and construed in accordance with the laws of the State of California, excluding its conflicts of law rules, and the United States of America. Any dispute arising from or relating to the subject matter of this Agreement shall be finally settled by arbitration in San Francisco County, California, using the English language in accordance with the Arbitration Rules and Procedures of Judicial Arbitration and Mediation Services, Inc. ("JAMS") then in effect, by one commercial arbitrator with substantial experience in resolving intellectual property and commercial contract disputes, who shall be selected from the appropriate list of JAMS arbitrators in accordance with the Arbitration Rules and Procedures of JAMS. The prevailing party in the arbitration shall be entitled to receive reimbursement of its reasonable expenses (including reasonable attorneys' fees, expert witness fees and all other expenses) incurred in connection therewith. Judgment upon the award so rendered may be entered in a court having jurisdiction or application may be made to such court for judicial acceptance of any award and an order of enforcement, as the case may be. Notwithstanding the foregoing, each party shall have the right to institute an action in a court of proper jurisdiction for injunctive or other equitable relief pending a final decision by the arbitrator. For all purposes of this Agreement, the parties consent to exclusive jurisdiction and venue in the United States Federal Courts or state courts located in the Northern District of California. Use of the Service is not authorized in any jurisdiction that does not give effect to all provisions of these Terms of Use, including without limitation, this section.

Integration and Severability.

These Terms of Use are the entire agreement between you and Company with respect to the Service and use of the Site, and supersede all prior or contemporaneous communications and proposals (whether oral, written or electronic) between you and Company with respect to the Site. If any provision of these Terms of Use is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that these Terms of Use will otherwise remain in full force and

effect and enforceable. The failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further rights hereunder.

Miscellaneous.

Company shall not be liable for any failure to perform its obligations hereunder where such failure results from any cause beyond Company's reasonable control, including, without limitation, mechanical, electronic or communications failure or degradation (including "line-noise" interference). These Terms of Use are personal to you, and are not assignable, transferable or sublicensable by you except with Company's prior written consent. Company may assign, transfer or delegate any of its rights and obligations hereunder without consent. No agency, partnership, joint venture, or employment relationship is created as a result of these Terms of Use and neither party has any authority of any kind to bind the other in any respect. In any action or proceeding to enforce rights under these Terms of Use, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under these Terms of Use will be in writing and will be deemed to have been duly given when received, if personally delivered or sent by certified or registered mail, return receipt requested; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; or the day after it is sent, if sent for next day delivery by recognized overnight delivery service. The captions and headings in this Agreement are intended only for convenience, and will in no event be construed to define, limit or describe the scope or intent of this Agreement, or of any provision of this Agreement, nor in any way affect the interpretation of this Agreement.