

## **Vivamusic Distribution Agreement**

This Distribution Agreement and Terms of Service (this “Agreement ”) is a binding legal agreement between you and Vivamusic Inc, a Delaware limited liability company (“Vivamusic”, “our” or “us”) regarding your use of our Vivamusic service to distribute your musical recordings to selected digital services and stores (our “Service”), Vivamusic’s content blocking and acoustic fingerprint service currently known as Vivamusic (defined further below), and any other uses of your musical recordings and musical compositions by Vivamusic and its licensees as described herein. If you are entering into this Agreement on behalf of one or more other people, a group, or a company or other entity, then by accepting this Agreement you represent and warrant to us that you are duly authorized to do so on behalf of all such person(s)/entity(ies) and to bind them to this Agreement and that Vivamusic is fully entitled to rely on that fact (in which case, the term “you ” includes all such people and entities) in our performance under this Agreement.

By clicking to agree to this Agreement, you are accepting the terms and conditions below, so please read and understand them completely before doing so. This Agreement will automatically become effective on the date you click to agree to this Agreement (the “Effective Date ”).

Vivamusic DOESN'T TAKE ANY COPYRIGHT OR OTHER INTEREST IN ANY OF YOUR MUSIC, ONLY A LIMITED LICENSE TO DISTRIBUTE.

PLEASE UNDERSTAND THAT YOU MUST OWN OR OTHERWISE HAVE THE LEGAL RIGHT TO REPRODUCE AND DISTRIBUTE 100% OF THE RECORDINGS, MUSICAL COMPOSITIONS, LITERARY WORKS, DRAMATIC WORKS, SPOKEN WORD CONTENT, ARTWORK AND ANY OTHER MATERIAL THAT YOU INTEND TO UPLOAD AND DISTRIBUTE VIA THE Vivamusic SERVICE, INCLUDING THE RIGHT TO MAKE AND DISTRIBUTE DIGITAL DOWNLOADS EMBODYING THE MUSICAL COMPOSITIONS THEREIN, AND ELECTRONIC TRANSMISSIONS OF SUCH MUSICAL COMPOSITIONS (INCLUDING, WITHOUT LIMITATION, VIA STREAMING SERVICES), AS NECESSARY.

FOR EXAMPLE, YOU CANNOT DELIVER TO US ANY REMIXES, OR RECORDINGS THAT INCLUDE SAMPLES UNLESS YOU HAVE ALL NECESSARY WRITTEN PERMISSION FROM THE SONGWRITERS AND FROM THE OWNERS OF THE APPLICABLE ORIGINAL RECORDINGS. WE OFFER A SERVICE TO HELP YOU OBTAIN LICENSES FOR RECORDINGS OF COVER VERSIONS OF MUSICAL COMPOSITIONS, BUT YOU MUST OPT-IN TO AND REGISTER FOR THAT SERVICE IF YOU UPLOAD ANY COVER VERSIONS TO US. YOUR RECORDINGS OF COVER VERSIONS WILL NOT BE AVAILABLE IN ANY DIGITAL STORE UNTIL Vivamusic RECEIVES NOTICE THAT THE APPROPRIATE LICENSES HAVE BEEN CLEARED.

Please note that if you are a user of the Vivamusic service only, you agree to the applicable portions of this Agreement, as well as the “Vivamusic Addendum” located at the end of this Agreement.

### **1. THE VIVAMUSIC SERVICE AND YOUR RECORDINGS**

a. The Vivamusic Service enables you to upload to our servers digital files containing audio-only musical sound recordings or audio-visual works and the underlying musical compositions, literary works, dramatic works or spoken word content embodied therein (“collectively, “Recordings ”) for distribution to your choice of digital stores, streaming services, and other digital services within our distribution network ( “Digital Stores”; which shall include UGC Services [as defined below]), who may make your Recordings available to their customers and end users (“Customers”). Such musical compositions, literary works, dramatic works or spoken word content embodied in the Recordings are sometimes referred to herein collectively as “Compositions”).

b. Recordings must be musical sound recordings in single track, EP, or album configuration (however, please note that Digital Stores will make your Recordings available to Customers to purchase or stream as individual tracks i.e., you cannot require that a Customer purchase or stream an entire album or EP as a single unit). We typically do not accept or distribute ringtones, audio books, spoken-word records, digital booklets, or other types of content; however, if we choose to do so, as determined by us on a case-by-case basis in our discretion, the terms of this Agreement shall apply to such formats.

c. We can currently accept Recordings in WAV, MP3, AIFF, CDDA, MP4 (m4a), Windows Media (WMA) and FLAC formats up to 250 MB in size (or up to 24-bit / 96kHz for WAV files). We and/or the Digital Stores may require different formats or file sizes from time to time during the Term, and Vivamusic reserves the right to convert audio files of the Recordings as necessary.

d. When uploading each Recording, you must provide us with all accompanying data that we or a Digital Store may require (e.g., artist name, album title, each track title, genre), plus any available cover art (in JPG format with RGB color or any other format that we or a Digital Store may require). For purposes of this Agreement, all such data, metadata, information, image files, artwork and any other materials you provide to us are included in the definition of “Recordings.” We may also require that you indicate if the Recording contains explicit content, in which case a Digital Store may tag it accordingly.

e. We will automatically generate unique identifying codes for each Recording and provide them to your chosen Digital Stores. If you have a “Musician Plus” or “Label” account you can choose to specify your own ISRC codes, but not UPC codes.

f. Once you have uploaded a Recording to our Site (defined below) for distribution, you can delete it at any time during the Term. However, you can't remove a single track that was included within an album if you want to do that, you must delete the entire album and then re-upload the album with that song removed.

## **2. DIGITAL STORES**

a. The rights granted by you to Vivamusic are non-exclusive. Be advised, however, that if you send your Recording(s) to the same Digital Stores via Vivamusic and a separate service, the double listing of your Recordings may cause complications and/or problems in those Digital Stores.

b. We undertake to provide your Recordings to Digital Stores as quickly as possible. However, it can take a few hours to a few days to several weeks for a Digital Store to integrate, process and make your Recordings available to Customers, depending on the particular Digital Store and the territory. Please be patient.

c. Each Digital Store will determine its pricing to its Customers, as well as format or media and other terms on which it offers recordings (including your Recordings) to its Customers, in its discretion and according to its business model. For example, in some cases your Recordings may be available for permanent digital download on a pay-per-unit basis, in others Customers may pay a monthly subscription fee to be able to stream or temporarily download your Recordings along with other recordings. By way of further example, Digital Stores may also offer your Recordings for free on a promotional basis, alone or together with other recordings, may include (or decline to include) your Recordings in marketing promotions, may create editorial content about your Recordings and the featured artists, may group Recordings by genre or other designation, may create and allow Customers and others to listen to free preview clips of your Recordings, all in their discretion. If you have a "Musician Plus" or "Label" account you can specify suggested retail pricing for certain stores. Note that these prices are just suggestions, and while stores usually adhere to custom pricing, ultimately stores can price however they like. We aren't responsible for what Digital Stores do, and by opting into a particular Digital Store, you agree to accept and have your Recordings made available to its Customers in accordance with its pricing structure and other practices and policies from time to time, and in accordance with its agreement with Vivamusic.

d. We will distribute your Recordings to your selected Digital Stores (you can't specify only certain countries or territories for particular Recordings). The "Territory" of this Agreement is united states, except where noted with respect to certain territories outside of the United States.

e. Digital Stores may choose not to carry one or more of your Recordings at all or in certain territories (or to remove Recordings at any time) per their policies and practices, so we can't make any guarantees. We may also decline to distribute (or may remove from Digital Stores) one or more Recordings from any or all Digital Stores if we receive any legal claims regarding the particular Recording(s), if we reasonably believe that any legal claims or issues may arise, if a Recording may violate the terms and conditions of any Digital Store, or for any other reason in our business judgment. And if our agreement with any Digital Store expires or terminates, or if that Digital Store ceases to operate entirely or in a particular territory, then your Recordings will no longer be available through that Digital Store.

f. By opting into a Digital Store, you warrant to Vivamusic that you have read, understand, and agree to be bound by all of the terms and conditions of that Digital Store, and that you and your Recordings and other content will comply fully with those terms and conditions.

### **3. YOUR ACCOUNT**

a. When you register for our Service and/or Vivamusic you will establish a username and password that will provide access to an online user dashboard for your account on our website, currently [www.Vivamusic.net](http://www.Vivamusic.net) (our "Site"). Please keep your username and

password safe and secure, as you will be solely responsible for any Recordings and other content uploaded and for all financial transactions and other activity conducted through your account. We will not be responsible for any activity transacted via or through your account.

b. At the time of registration, you choose which level of user account you would like, depending on your budget and the level of services you want.

c. The artist name(s) you choose will last for the duration of the term of your Agreement with us, and can't be changed. If you'd like to upgrade the level of your account during the year to add artist names and/or services, please do so online. If you upgrade within your first 12 months as a paying Vivamusic member, we will process your payment for the new account level and refund a prorated portion of your fee for the original account level (or refund the original fee in full if you upgrade within fourteen (14) days after signing up). Any other refunds are in Vivamusic's sole discretion.

d. Your annual registration fee must be paid with a valid credit card and, as described below under "Term," will not automatically recur annually until you terminate the Term of this Agreement. Therefore, you must maintain a valid credit card on account with us throughout the Term. We currently accept Visa, MasterCard and American Express, but reserve the right to add or change payment methods during the Term. You expressly authorize Vivamusic to charge the applicable amount, plus any applicable taxes, to the credit card you provided or, in our sole discretion, to deduct that amount from monies payable by us to you. Any refunds are in Vivamusic's sole discretion. In addition, if you owe any fees or other amounts to Vivamusic, we may deduct or set-off such amounts from any current or future payments to you, in addition to our other rights and remedies.

#### **4. TERM**

a. The term of this Agreement (the "Term") will begin on the Effective Date and will continue for one (1) year, unless renewed or terminated earlier.

b. The Term will not renew automatically at the end of each annual contract period. Unless you terminate your account prior the end of the then-current contract year via your account on the user dashboard on the Site.

c. Vivamusic may terminate the Term for any reason, including but not limited to if we reasonably believe that you or any of your Recordings or other content have violated this Agreement or the terms and conditions of any Digital Store, that you or your Recordings infringe the intellectual property or other rights of any person or entity, if we are told by any Digital Store or reasonably believe that Digital Stores will not accept your Recordings or other content specifically or categorically, or that you are otherwise abusing our Service or any Digital Store or engaging in fraudulent or illegal activity. We may also terminate the Term if the credit or debit card that you provided to us expires, is cancelled, if our attempts to charge your Service fee are declined for any reason, or if we reasonably believe that charges were incurred fraudulently. So if the number, expiration date, billing address, or any other card or account information changes, please be sure to update your Vivamusic account promptly via the Site user dashboard. At our sole option, we may nevertheless elect to renew the Term and to deduct the applicable renewal fee from any and all sums payable

to you hereunder. We may also terminate the Term if our Service is discontinued for any reason.

d. After the end of the Term, we will notify all applicable Digital Stores to remove your Recordings and will have no further obligation to you other than to account and pay for monies earned during the Term. Customers who downloaded or otherwise accessed your Recordings may be able to retain and continue listening to your Recordings even after the Term of this Agreement is over.

## **5. GRANT OF RIGHTS**

a. In order for us to provide the Service and to distribute your Recordings (which, solely for purposes of clarity, and as a reminder to you, includes the Compositions) and related content to your selected Digital Stores via our Service and/or on Vivamusic's sites/services or digital platforms, including, without limitation, HyperFollow (collectively, "Vivamusic Sites"), our lawyers and the Digital Stores need us to confirm that you grant us the non-exclusive, sub-licensable right and license during the Term and throughout the Territory to:

i. reproduce and distribute your Recordings, to Digital Stores for them to sell or sublicense to their Customers by any and all applicable digital (non-physical) formats, configurations, technologies and methods (including, without limitation, permanent downloads, temporary or "tethered" download, interactive and non-interactive streaming, "scan and match" services, "cloud" services, digital jukeboxes, digital and online/wireless karaoke services, business establish background services, home exercise background and audiovisual services, and other audiovisual services) to any and all capable devices (including, without limitation, to personal and tablet computers and smartphones), in each case as now or hereafter known. Without limiting the foregoing, you acknowledge that the foregoing rights include the rights to allow Digital Stores and/or their users to synchronize your Recordings in timed relation with visual images, and any necessary rights of performance and reproduction required for the operation of such Digital Stores;

ii. create, reproduce, publicly perform and make available, and to authorize Digital Stores to reproduce, create and publicly perform and make available, free preview clips of your Recordings via streaming format either on Vivamusic Sites or via the Digital Stores;

iii. authorize third-party partners and/or licensees of Vivamusic, which offer services permitting the creation, use and exploitation of so-called "remixes" of your Recordings and so-called "user generated content" embodying your Recordings, including, without limitation, YouTube, Facebook and Instagram (collectively, the "UGC Services"). Without limiting the foregoing, you agree that Vivamusic shall have the right to grant UGC Services the following related rights: (1) to synchronize and authorize others to synchronize your Recordings (which again, solely for clarification, includes the Compositions), with visual images and/or combine excerpts of your Recordings with any series of still or moving images, either pre-capture, post-capture or as a live stream; (2) to use and include your Recordings and/or remixes of your Recordings in "Mix Content" which shall mean the combination of two (2) or more whole or partial audio-only tracks which may be harmonically, rhythmically or otherwise mixed, remixed, edited or mashed up; (3) to store, host, reformat, make on-demand streams of, make conditional ("limited" or "tethered") downloads of, and display your Recordings as

have been embodied in user videos, "art tracks," audio-only tracks (including remixes), label videos and Mix Content, and to make your Recordings available on and through the UGC Services, including without limitation, in embedded YouTube video players; (4) to reproduce, distribute, and prepare derivative works (including synchronization rights and remix rights) based upon your Recordings, to the extent necessary for the purpose of engaging in any of the foregoing activities, to collect all income from the foregoing activities, and to create reference files and fingerprints of the Recordings, and to store and use such files; (5) grant the UGC Services all necessary rights to (and to pass through such rights to users as applicable) include the Recordings, in Google's so-called "AudioSwap Library" (or any successor product thereto which is owned or controlled by Google) and similar "libraries" of the UGC Services, which consist of master recordings any of which users may add to their user videos and/or Mix Content, as applicable; and (6) display album artwork in association with videos and audio-only tracks created in connection with the UGC Services. The UGC Services will also have the rights to (and to pass through such rights to labels and users as applicable): (AA) create so-called "art tracks" using your Recordings; (BB) create reference files and fingerprints of your Recordings; and (CC) use your Recordings in Facebook properties that include musical emojis/stickers, video re-mix, send-a-lyric, virtual reality experiences, singalong with lyrics. "UGC Services" shall include all mirror and derivative sites, including mobile, all replacements or successor versions thereof, and all international versions thereof, and any features thereof made available to paying or non-paying users through application programming interfaces (or "apps," as such term is commonly understood in the technology industry), and any other product, device or service (including mobile devices), including embeds and playback pages, capable of accessing the videos and audio-only tracks made available on or through the UGC Services websites, even if accessed through a means other than such websites.

iv. display and otherwise use your artist(s) and/or label name and logo (if you have one) and all artwork, song and album titles, all trademarks, service marks, logos and trade names, and all artist, songwriter, producer and mixer names and approved likenesses, each as embodied in metadata within the Recordings or otherwise provided by you ("Materials"), on Vivamusic Sites, on the Digital Stores' sites and services, and in any marketing, advertising or promotional materials for our Service or for the Digital Stores. Without limiting the foregoing, the Digital Stores may (but shall have no obligation to) create editorial content regarding you and your Recordings and may classify or categorize the same for inclusion within one or more genres;

v. collect income from the Digital Stores from their exploitation of your Recordings (and to collect income after the Term from exploitation of your Recordings during the Term); and

vi. notify Digital Stores and other third parties of our rights and relationship per this Agreement, and to include your name and logo (if you have one) in any listing of Vivamusic licensors.

b. You also grant to us and to your selected Digital Stores the right and license during the Term and throughout the Territory to take all steps desired or required to effect the foregoing rights and to distribute your Recordings and Materials as contemplated in this Agreement, including without limitation, to store, host, cache, reproduce, convert, edit, serve, transmit and publicly perform such Recordings, and as otherwise required pursuant to our

agreements with those Digital Stores, as may be amended from time to time during the Term. You understand that Digital Stores may grant to Customers rights to use your Recordings beyond the Term of this Agreement, even perpetual rights. As noted above, Digital Stores and/or we may decline to distribute or otherwise exploit any Recordings or other Materials (or to remove any Recordings that have already been distributed or offered to Customers) in our reasonable business judgment. You will be deemed to have approved any artwork, photographs, biographical material or other information or materials that you provide to us.

c. Additionally, and in no way limiting any rights granted by you herein above, you hereby grant to Vivamusic a direct license to publicly perform your Recordings (which, solely for purposes of clarity, include the Compositions) on the Vivamusic Sites (including, without limitation, HyperFollow). In the event you are affiliated with a performing rights society, performing rights organization or other collection society (“PRO”) to which you have granted the non-exclusive right to administer the public performance rights in and to your Recordings and/or Compositions, you agree to notify each such PRO, in accordance with the requirements of your applicable PRO membership agreement(s), of your agreement to grant the direct public performance license pursuant to this paragraph and as otherwise provided in this Agreement.

## **6. YOUR RESPONSIBILITIES**

a. You are solely responsible for and must have obtained all necessary rights, licenses, waivers, clearances and permissions, including without limitation all music publishing rights and licenses in order to distribute, reproduce, display, publicly perform, synchronize with audiovisual works or otherwise exploit the Compositions (including the lyrics of such Compositions), throughout the Territory for all Recordings and other Materials in order to enable Vivamusic and your selected Digital Stores to fully exploit all their rights hereunder free of any claims, liens, encumbrances or other restrictions. Your uploading of Recordings and delivery of any other Materials shall be your unqualified warranty and representation to us that you have obtained any and all such rights required and necessary for Vivamusic and your selected Digital Stores to sell, distribute, publicly perform, promote, and otherwise exploit such Recordings and Materials as contemplated under this Agreement, including the waiver of all so-called “moral rights”, under the laws of any jurisdiction, on your behalf as well as on behalf of any and all contributors involved in any manner with the creation and delivery of your Recordings.

b. Without limiting anything in this Agreement, you are solely responsible for and shall timely pay (i) any and all royalties, including without limitation all mechanical royalties and synchronization fees, and all other amounts due to artists, producers, mixers, engineers, licensors and any other royalty participants from the sales, license, performance and/or other exploitation of your Recordings and Materials, (ii) any and all royalties, including without limitation all mechanical royalties and synchronization fees, that may be payable by you to the owners or administrators of copyrighted recordings (e.g., samples) and/or musical compositions embodied in your Recordings, (iii) all payments that may be required under union, guild or other collective bargaining agreements applicable to you or third parties, and (iv) any other royalties (including without limitation mechanical royalties), fees and/or sums payable with respect to the Recordings or Materials, including, without limitation, any

royalties that may be required to be paid, pursuant to the applicable laws of any jurisdiction, as a result of authorized exploitations by Vivamusic or your selected Digital Stores of your Recordings (including, for purposes of clarity, the Compositions) for so-called performer's rights, equitable remuneration rights or neighboring rights, however characterized under local law. If any portion of your Recordings are now or in the future administered in any territory(ies) by any PRO, you are obligated to notify such third party PRO(s) of this Agreement. You understand and acknowledge that Vivamusic will not be making any such payments on your behalf or otherwise. If you want Vivamusic to route a percentage of your earnings to another Vivamusic member, you may specify member(s) and percentages using Vivamusic's "Teams" feature. WE DO NOT AND CANNOT PROVIDE YOU WITH LEGAL ADVICE REGARDING YOUR OBLIGATIONS TO THIRD PARTIES, SO PLEASE CONSULT A QUALIFIED LAWYER BEFORE ENTERING INTO THIS AGREEMENT AND UPLOADING ANY RECORDINGS TO OUR SERVICE.

## **7. PAYMENT & ACCOUNTING TERMS**

a. In full consideration of the rights and licenses granted hereunder, we will post to your Vivamusic account one hundred percent (100%) of any and all monies that we actually earn and receive in U.S. Dollars in the U.S.A. from your selected Digital Stores which are directly attributable to their exploitation of your Recordings, after deducting (i) any applicable PayPal fees or other payment processing fees and (ii) if you have opted-into and registered for our separate mechanical licensing service for cover songs, we will also deduct the fee for that service and all applicable royalties paid to songwriters and publishers and (iii) if you have opted-into and registered for our separate Content ID service, such as YouTube Money service, which uses YouTube's ContentID service and other methods to detect videos that contain your Recordings, we will deduct 20% from monies paid to us attributable to videos that exploit your Recordings that were detected using these methods. If Vivamusic receives a lump-sum payment from a digital store that is not attributable to any particular artist account(s) or specific Recordings from any particular artist account(s), Vivamusic will, in its sole discretion, determine if, and to what extent, any portion of such monies shall be payable hereunder. Without limiting the immediately preceding sentence, Vivamusic may determine to distribute such monies (i) on a pro-rata basis based on the number of artists with whom Vivamusic has distribution agreements; (ii) in its discretion among artists based on an historical earnings and/or proxy formula determined solely by Vivamusic; or (iii) based upon the amount the Digital Store actually credits Vivamusic for your Recordings subsequent to the payment to Vivamusic. Once payment has been credited to your account, you will be able to withdraw monies from your account at your discretion. You will be responsible for any bank fees or other charges related to such withdrawals. Any sums that we receive in foreign currency will be converted to U.S. Dollars at either the same rate received by us, or current spot exchange rate at the time of transaction from store to Vivamusic, or from Vivamusic to you. For the avoidance of doubt, your payment is an "all-in" pay-through payment, from which you are solely responsible for paying and accounting to all applicable taxes, tariffs, licensors, songwriters, publishers, artists, producers, mixers and other third parties (unless you have opted into our optional mechanical licensing service or optional YouTube Money service, in which case mechanical royalty payments to songwriters and publishers, and YouTube Money fees, will be deducted prior to monies being credited to your account ). We cannot offer any legal, tax, accounting and other advice; please consult your own advisors regarding those matters.



b. You understand and acknowledge that Digital Stores may retain for themselves a portion of income that they receive from Customers and may deduct or withhold sums from the amount that they pay to Vivamusic. Sums retained or withheld by Digital Stores may include, without limitation, taxes and tariffs, administration fees, royalties or fees paid to third parties, wire transfer fees, and credit card processing fees and chargebacks. Vivamusic shall be entitled to rely on payments and accountings received from Digital Stores. Any objection relating to any accounting statement or any lawsuit arising therefrom must be made (and/or lawsuit commenced) no later than one (1) year after the date the statement is rendered, and you waive any longer statute of limitation that may be permitted by law. You shall have no right to inspect or audit our books and records, or those of Digital Stores.

c. Vivamusic makes payments via PayPal and various other methods and may deduct fees incurred by Vivamusic in remitting payment. Unless you use PayPal, you **MUST BE APPROVED BY Vivamusic FOR ALL OTHER PAYMENT METHODS BEFORE RECEIVING PAYMENT FROM Vivamusic. IT IS YOUR RESPONSIBILITY TO MAKE SURE YOUR PAYMENT METHOD IS FUNCTIONAL.** During the Term, we may change or add additional payment methods. Vivamusic also communicates with you via email so **YOU ALSO MUST PROVIDE Vivamusic WITH AN ACTIVE EMAIL ACCOUNT TO RECEIVE IMPORTANT NOTICES FROM Vivamusic,** and you are responsible for making sure the email account is active, able to receive emails from Vivamusic, and that your email address on file with Vivamusic is up-to-date.

d. After we receive a payment for you from a Digital Store, we will notify you via your Vivamusic account dashboard. You must then affirmatively accept and withdraw the payment from your Vivamusic account in order for us to transmit the royalties to you. We will also make available to you via your user dashboard a portion of accounting statements that we receive from your selected Digital Stores for the applicable period. We may redact those statements for any confidential information or information related to third parties. If your account is maintained on behalf of a group, company, partnership, or anything other than you alone, then you shall be responsible for paying anyone else. We will only make payments to the individual accountholder, or any paid accountholders you've specified in your Splits dashboard.

e. In Vivamusic's sole discretion, and subject to your Recording(s) meeting certain streaming and/or sales metric qualifications as determined by Vivamusic, from time to time throughout the Term, Vivamusic may notify you of the option to receive an advance payment of royalties less a processing fee which shall be a specified percentage of each such advance payment (each, an "Accelerated Payment"), the amount of which, including such processing fee, shall be determined by Vivamusic in its sole discretion. In the event Vivamusic notifies you during the Term of the opportunity to receive an Accelerated Payment, Vivamusic will provide notice of the proposed Accelerated Payment amount (and the processing fee percentage), in each case. You shall have the option to accept or decline each such Accelerated Payment, and if accepted, Vivamusic will make such Accelerated Payment in accordance with your approved payment method. Each Accelerated Payment (less the processing fee) will be fully recoupable against any monies otherwise payable to you hereunder. If this Agreement is terminated for any reason prior to Vivamusic's recoupment of any Accelerated Payment,

Vivamusic will be entitled to keep your account active and collect any resulting monies received by Vivamusic until such Accelerated Payment is fully recouped by Vivamusic.

f. If required by applicable law, we may withhold payments to you, in whole or in part, pending receipt of your correctly completed Form W-9 (if you are a US resident for tax purposes), Form W-8 (if you are a non-US resident for tax purposes), updated [annually / at our request], or any other applicable tax-related forms evidencing that no withholding is required. If any information provided on such tax forms is incomplete, incorrect or misrepresented, we reserve the right to withhold sums due to you until all appropriate and correct information is submitted to and received by us that relieve withholding. We also reserve the right to withhold sums due to you if, based on appropriate and correct information that is timely submitted to and received by us, withholding is required under applicable law. You agree to indemnify us and you will be responsible for any costs, expenses and liabilities we may pay or incur as a result of any incorrect, inaccurate or misrepresented tax or financial information provided by you.

g. If we receive a claim or notice or otherwise reasonably suspect that any of your Recordings or Materials or your use of our Site or Service breaches any agreement, infringes any third party rights, violates this Agreement or any law, rule or regulation, that there is a dispute regarding the Recordings or Materials (including without limitation as to ownership or payment of monies), or that your activities involve misrepresentation, misconduct, deception, fraud, or other inappropriate conduct, then in addition to any other available rights and remedies, we may suspend or terminate the distribution of your Recordings and/or the Term of this Agreement and/or withhold payment of monies to you in an amount reasonably attributable in our discretion to such Recording(s), Material and activity until and unless any and all claims or other conduct are favorably resolved to our reasonable satisfaction, and we may deduct from your payments our related attorneys' fees and legal costs in connection. You will forfeit any monies that are attributable to your fraud, infringement or other illegal activity.

h. For the avoidance of doubt, this paragraph 7 shall not apply to you if you are only a client of Vivamusic and not the Service generally.

## **8. REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION**

a. You represent and warrant to Vivamusic that: (i) you are at least 18 years of age and have the legal capacity, right and authority to enter into this Agreement; (ii) you own or are otherwise fully vested of the necessary copyrights and other rights in order to make the grant of rights, licenses and permissions herein, and that the exercise of such rights, licenses and permissions by Vivamusic, your selected Digital Stores, and our and their respective permitted successors and assigns shall not violate or infringe any applicable law, rule or regulation or the rights of any third party; (iii) you have secured all third-party grants of rights, consents, licenses and permissions necessary, including without limitation mechanical, synchronization and any other licenses from copyright owners or proprietors, to grant all rights and licenses and otherwise fully perform all obligations hereunder, and shall make all payments and otherwise comply with all of your obligations under this Agreement; (iv) your Recordings and Materials, including, without limitation, all visual content embodied in your audio-visual Recordings, do not and will not, and the authorized use thereof by Vivamusic,

Digital Stores and their Customers shall not, infringe any copyright, trademark or other intellectual property or other rights (including without limitation rights of publicity, privacy or moral rights), of any third party, or violate any applicable treaty, statute, law, order, rule or regulation; (v) the files containing the Recordings and Materials that you upload or otherwise provide to us do not and will not contain any bugs, viruses, trojan horses or other defects or harmful elements or digital rights management restrictions; (vi) there are no actual or threatened claims, litigation, administrative proceedings or other actions regarding any Recordings or Materials or otherwise adverse to full exploitation of all rights and licenses granted hereunder; (vii) all data, metadata, and information provided by you under or in connection with this Agreement is and will be true, accurate and complete, and you agree to update the same promptly as necessary during the Term; (viii) you will make, and Vivamusic will not be responsible for, any payments other than those specified in paragraph 7.a above in connection with the Recordings and Materials; (ix) you will use the Site and Service only in accordance with this Agreement and not for any fraudulent, infringing or inappropriate purposes; (x) any sale, assignment, transfer, mortgage or other grant of rights in or to your interest in any of the Recordings or Materials shall be subject to our rights hereunder and the terms and conditions hereof; (xi) there is no existing agreement, and you will not enter into any agreement or perform any act, which materially interferes or is inconsistent with the rights granted to us hereunder; (xii) you covenant and agree not make any claim or bring any legal action related to this Agreement, against any Digital Store or UGC Service so long as such entities are not in violation of the rights you have granted to Vivamusic hereunder; and (xiii) you have read and understand this Agreement and have had the opportunity to consult with independent legal counsel in connection with them.

b. You shall indemnify and hold harmless, and upon our request, defend, Vivamusic and our affiliates, sublicensees (including your selected Digital Stores and their Customers), successors and assigns, and the respective directors, officers, shareholders, members, managers, employees, agents and representatives of the foregoing, from and against any and all claims, suits, proceedings, disputes, controversies, losses, liabilities, damages, costs and expenses (including reasonable attorneys' fees and costs) resulting from: (i) a breach or alleged breach of any of your warranties, representations, covenants or obligations under this Agreement; (ii) any claim that the Recordings, Materials, data or information provided or authorized by you or on your behalf hereunder or the use thereof by Vivamusic, a Digital Store, or an ID Service (if applicable) violates or infringes the rights of another party; or (iii) any other act or omission by you or any of your licensors, agents or representatives. You will promptly reimburse Vivamusic and any other indemnified parties on demand for any amounts subject to indemnification. We shall notify you of any such claim and shall control the defense thereof, though you may participate in such defense at your own expense. You may not settle any claim for which we may be liable without our prior written consent, which we will not withhold unreasonably. If any facts, claims, proceedings or other circumstances arise that would be subject to indemnification, then Vivamusic, in addition to any other right or remedy, shall have the right to withhold from any payments otherwise due to you an amount reasonably related thereto until the claim, proceeding or circumstance has been finally resolved, settled or fully adjudicated and the judgment satisfied, or that the statute of limitations on such claim has run, or when you have provided reasonable and adequate security for the claim. Vivamusic reserves the right to charge you (or deduct from monies payable to you) for any legal fees incurred by Vivamusic as a result of your violation of this Agreement.

## **9. NO WARRANTIES; LIMITATION OF LIABILITY**

a. THE SITE AND SERVICE (INCLUDING Vivamusic) ARE OFFERED AND PROVIDED TO YOU AS-IS. Vivamusic MAKES NO GUARANTEES, REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION AS TO THE AMOUNT OF INCOME THAT MAY BE EARNED BY OR PAYABLE TO YOU HEREUNDER, OR AS TO THE CONDITION, QUALITY, CONTINUITY OF OPERATION, PERFORMANCE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF OUR SITE OR SERVICE. WE DO NOT GUARANTEE THAT ACCESS TO OR USE OF THE SITE OR SERVICE WILL BE CONTINUOUS, UNINTERRUPTED, ERROR-FREE OR SECURE. ANY AND ALL WARRANTIES ARE EXPRESSLY DISCLAIMED AND EXCLUDED. ADDITIONALLY, IN CONNECTION WITH Vivamusic, Vivamusic MAKES NO GUARANTEES, REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION, THAT ALL MUSIC SERVICES AND STREAMING SERVICES WILL CROSS-REFERENCE THEIR MUSIC LIBRARIES AND UPLOADS WITH THE Vivamusic DATABASE OR THAT OF ANY ID SERVICE, OR THAT SO-CALLED "FINGERPRINT" TECHNOLOGY WILL IDENTIFY ALL UNAUTHORIZED UPLOADS OF CONTENT ON ANY SERVICE OR PLATFORM.

b. TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER Vivamusic NOR ANY OF ITS AFFILIATES, EMPLOYEES, OWNERS, EMPLOYEES, REPRESENTATIVES OR AGENTS WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, LOST SALES, LOSS OF DATA OR LOSS OF GOODWILL, FOR ANY ACTS OR OMISSIONS OF DIGITAL STORES OR THEIR CUSTOMERS, ID SERVICES, OR FOR YOUR USE OF OR ACCESS TO THE SITE OR SERVICE, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT WE HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. IN NO EVENT WILL Vivamusic'S AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT EXCEED THE SUMS ACTUALLY DUE TO YOU IN ACCORDANCE WITH PARAGRAPH 7.a ABOVE. THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE AGREEMENT BETWEEN Vivamusic AND YOU.

## **10. MISCELLANEOUS**

a. This Agreement, together with the Privacy Policy applicable to our Site generally, contains the parties' entire understanding and supersedes any prior or contemporaneous correspondence, agreements or understandings regarding the subject matter herein. We may amend the terms of this Agreement from time to time, in which case we will notify you by changing the date at the top of this Agreement (so please be sure to check back often) and/or via e-mail or by notice to your dashboard on the Site. You must terminate your account if you do not agree to the revised Agreement; your continued use of the Site or Service (including Vivamusic) will be deemed your acceptance.

b. A party's waiver of a breach of any provision of this Agreement by the other shall not operate or be construed as a waiver of any subsequent breach of the same provision or any other provision of this Agreement. If any provision hereof is found invalid or unenforceable pursuant to judicial decree or decision, the remainder of this Agreement shall remain valid and enforceable according to its terms, such determination shall not affect any other provision hereof, and the unenforceable provision shall be limited solely as necessary or replaced by an enforceable provision that most closely meets the commercial intent of the parties.

c. Vivamusic will not be liable for a curable breach of this Agreement unless you provide us with written notice specifying the alleged breach that we confirm receipt of, and we fail to cure such breach within ninety (90) days thereafter.

d. We may direct all notices and communications to you via the email address or street address associated with your account and/or via your dashboard account on the Site. All notices to Vivamusic shall be sent to us at [legal@vivamusic.net](mailto:legal@vivamusic.net).

e. You may not assign, transfer or delegate any of your rights or obligations hereunder without our prior written consent, and any purported attempt otherwise will be null and void ab initio. We may assign, delegate, pledge, encumber, sublicense and otherwise transfer, this Agreement and/or any or all of our rights and obligations in order to operate the Service and Site. This Agreement will be binding on and inure to the benefit of the parties and their respective assigns and successors in interest.

f. We reserve the right to modify, discontinue or terminate the Service (including Vivamusic) at any time and without prior notice. We are under no obligation to provide the Service (including Vivamusic) continuously, or at all.

g. The relationship between the parties is that of independent contractors. This Agreement shall not be deemed to create a partnership or joint venture, and neither party is the other's agent, partner, employee, or representative.

h. This Agreement shall be construed and enforced exclusively in accordance with the laws of the State of New York, without regard to its conflict of laws principles. Any action or proceeding brought by either party against the other arising out of or related to this Agreement shall be brought only in a state or federal court of competent jurisdiction located in New York County, New York, and the parties irrevocably consent to the in personam jurisdiction and venue of said courts. You agree that service of process by us to you by one of the methods designated above for the giving of notices will be deemed effective as personal service within New York County, and hereby consent to service of process by such methods.