

# MakeMusic Cloud Terms of Service

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## 1. WHO WE ARE

MakeMusic, Inc. ("**MakeMusic**," "**we**," or "**us**") provides a variety of services, including the MakeMusic Cloud Services. These MakeMusic Cloud Terms of Service ("**Terms of Service**") govern our end user's ("**you**," "**your**" or "**user**") access to and use of the MakeMusic Cloud Services. The

MakeMusic Cloud Services is a web-based music practice application with content, tools and functionality for teachers, students, hobbyists and composers (the “**Services**”).

The MakeMusic Cloud Services are provided through the following websites:

[www.makemusic.com/makemusic-cloud/](http://www.makemusic.com/makemusic-cloud/), [home.makemusic.com](http://home.makemusic.com), [admin.makemusic.com](http://admin.makemusic.com), [asm.makemusic.com](http://asm.makemusic.com), [search.makemusic.com](http://search.makemusic.com), [compose.makemusic.com](http://compose.makemusic.com), [srstudio.makemusic.com](http://srstudio.makemusic.com), [contentmanager.makemusic.com](http://contentmanager.makemusic.com), [assigner.makemusic.com](http://assigner.makemusic.com), [grades.makemusic.com](http://grades.makemusic.com), [analytics.makemusic.com](http://analytics.makemusic.com), [classdetails.makemusic.com](http://classdetails.makemusic.com), [billing.makemusic.com](http://billing.makemusic.com), [account.makemusic.com](http://account.makemusic.com), [quotes.makemusic.com](http://quotes.makemusic.com) and all related mobile applications, (collectively, the “**Sites**” or “**MakeMusic Cloud Services**”), which are owned and operated by MakeMusic, Inc. and, as components of MakeMusic Cloud, are governed by these Terms of Service.

## **2. THESE TERMS FORM A BINDING LEGAL AGREEMENT**

These Terms of Service (“**Terms of Service**”), along with our [Privacy Policy](#) (“**Privacy Policy**”) constitute a legally binding agreement between you and us and govern your access to and use of our Sites and Services. MakeMusic is providing you with access to the Sites and Services only if you agree to these Terms of Service. Please read the Terms of Service and [Privacy Policy](#) carefully. Your access to and use of our Sites and Services is subject to these Terms of Service, the [Privacy Policy](#) and all applicable laws. By accessing and using our Sites and our Services in any manner, you agree to be bound by these Terms of Service. If you do not agree to adhere to these Terms of Service or the [Privacy Policy](#), you may not use our Sites or Services.

We reserve the right to change these Terms of Service and our [Privacy Policy](#). We may also change, suspend, or end access to all or any part of the Sites and Services at any time, in our discretion. It is your responsibility to periodically review these Terms of Service.

## **3. YOUR REPRESENTATIONS**

BY USING AND/OR ACCESSING ANY PART OF OUR SITES OR SERVICES, YOU UNCONDITIONALLY AND EXPRESSLY ACKNOWLEDGE, REPRESENT AND AGREE THAT YOU: (A) HAVE READ AND UNDERSTAND THESE TERMS OF SERVICE AND THE [PRIVACY POLICY](#); (B) UNDERSTAND THAT YOU ARE BOUND BY THESE TERMS OF SERVICE AND THE [PRIVACY POLICY](#); AND (C) WILL COMPLY WITH THESE TERMS OF SERVICE, THE [PRIVACY POLICY](#) AND ANY APPLICABLE LAWS AND REGULATIONS.

## **4. PRIVACY & USE OF DATA**

Our Sites and Services require the collection of personally identifiable data or sensitive personal data to provide our Sites and Services. MakeMusic and its service providers may collect, maintain, process, use and disclose various types of data through the Sites and Services. You hereby grant MakeMusic and its service providers permission, at its option and whenever you are using the Sites and Services, to access, review, analyze, gather, and otherwise use and disclose any information relating to your use of the Sites and Services (our “**Data Collection**”). MakeMusic will have the perpetual right to collect, extract, compile, synthesize, and analyze the information collected

through the Data Collection, and may use it for any lawful business purpose without a duty of accounting to you provided that any such information is used only in a form that is de-identified and aggregated with the information of other users. The MakeMusic Cloud [Privacy Policy](#) governs our use of Personal Information included in the Data Collection. It is your responsibility to read the MakeMusic Cloud [Privacy Policy](#) and understand how we collect and use information about Districts, Schools, Educators, and Students.

## 5. CHILDREN'S ONLINE PRIVACY AND PROTECTION

We are committed to protecting the online privacy of children. To view our complete policy, see the MakeMusic Cloud [Privacy Policy](#). As part of providing our educational service offerings, we do collect certain personal information about children. However, we collect such information only for the purpose of providing our users the opportunity to participate in educational services through the Sites and Services, and only in accordance with applicable law.

The Sites and Services do not allow students who report themselves as under the legally required age in the applicable jurisdiction to create an account without consent from a parent/legal guardian or as otherwise allowed by law. It is a violation of these Terms of Service for children to create an account by misrepresenting their age. If a student under the legally required age creates an account by misrepresenting her/his age and MakeMusic becomes aware of the violation, we will lock the student's account and send a notification to the parent, legal guardian, or educator identified by the student to inform them of the unauthorized account and to provide them the opportunity to bring the account in compliance through provision of legally recognized consent. If such student's account is not brought into compliance within a reasonable amount of time, we will delete the account and the student's information.

**Individual Users in the United States.** In the United States, the legally required age to provide us with personal information is 13 years of age. MakeMusic does not knowingly collect any information from children under 13 years of age unless the use by such children is the result of the child participating in educational services made available to the child through a contracting school or school system and the required legal consent is provided to MakeMusic.

**Individual Users in Canada.** In Canada, the legally required age to provide us with personal information is 18 years of age. MakeMusic does not knowingly collect any information from children under 18 unless the use by such children is the result of the child participating in educational services made available to the child through a contracting school or school system and the required legal consent is provided to MakeMusic.

**Individual Users in Europe.** In Europe, the legally required age to provide us with personal information is 16 years of age. MakeMusic does not knowingly collect any information from children under 16 without obtaining the consent of such child's parent or guardian.

**School Users in the US, Canada & Europe.** IF YOU ARE A SCHOOL, EDUCATOR OR OTHER PERSON/ENTITY WORKING WITH AN INDIVIDUAL UNDER THE LEGALLY REQUIRED AGE THROUGH THE SITES OR SERVICES, IT IS YOUR RESPONSIBILITY TO OBTAIN AND DOCUMENT VERIFIABLE CONSENT FROM A PARENT OR LEGAL GUARDIAN BEFORE ANY CHILD UNDER THE LEGALLY MANDATED AGE MAY USE THE MAKEMUSIC CLOUD SERVICES OR, AS ALLOWED BY APPLICABLE LAW, PROVIDE CONSENT ON THE PARENT'S BEHALF. YOU REPRESENT AND WARRANT THAT YOU (1) HAVE OBTAINED AND DOCUMENTED VERIFIABLE CONSENT FROM THE STUDENT'S PARENT OR LEGAL GUARDIAN OR (2) HAVE THE AUTHORITY TO PROVIDE CONSENT ON THE PARENT OR LEGAL GUARDIAN'S BEHALF UNDER APPLICABLE LAW IF YOU EITHER PROVIDE A CLASS CODE TO A STUDENT UNDER THE LEGALLY REQUIRED AGE OR CREATE AN ACCOUNT FOR A STUDENT UNDER THE LEGALLY REQUIRED AGE, WHETHER MANUALLY THROUGH THE MAKEMUSIC CLOUD WEBSITE OR THROUGH IMPORTING A SPREADSHEET OF BULK STUDENT DATA OR BY ANY OTHER MEANS. YOU AGREE TO PROVIDE PROOF OF RECORDED CONSENT TO MAKEMUSIC AS NECESSARY TO MEET LEGAL OBLIGATIONS.

**Providing or Withdrawing Consent.** MakeMusic allows parents and legal guardians (or schools, if applicable) to request a description of the types of information collected, to review information submitted by their children, to request the removal of any information, and to prevent further use or online collection of their children's information. Details on these procedures can be found in the MakeMusic Cloud [Privacy Policy](#).

## **6. OBLIGATIONS OF EDUCATIONAL INSTITUTIONS PROVIDING MAKEMUSIC CLOUD TO STUDENTS OR REQUIRING USE OF MAKEMUSIC CLOUD FOR EDUCATIONAL PURPOSES**

It is the responsibility of the school or teacher working with a student under the legally required age to obtain and/or provide MakeMusic the legally required consent to collect and use such student's data to allow MakeMusic to provide the Sites or Services to its students. While it is the responsibility of the school or educator to obtain verifiable consent for its students who are under the legally required age, MakeMusic may send a notification to the parent or guardian identified during the enrollment process, if provided, to inform the parent/guardian of the enrollment and to provide the parent/guardian with information regarding their right to cancel the enrollment and to access and manage the enrollment information. As applicable, schools, teachers, and educational institutions agree to provide proof of recorded consent to MakeMusic as necessary per legal obligation.

Each school or teacher utilizing the MakeMusic Cloud Services must create and maintain a roster or accurate listing of the students who are actively participating in the MakeMusic Cloud Services in each class. You represent and warrant that you will add and remove students as applicable to maintain a current list of the participating students for your organization on a regular basis, but not less than once per term (i.e., quarter, trimester, or semester) of each class that utilizes the MakeMusic Cloud Services.

Schools that Act as the Parent's Agent. In the United States, and only in certain situations, schools may act as the parent's agent for the collection of data for educational purposes. U.S.-based Schools

that contract with MakeMusic to provide the MakeMusic Cloud Services for legitimate educational purposes are providing consent to the limited collection and use of personal information of users under the legally required age as allowed under COPPA. In addition to the rights of the child's parents and guardians, the school may also request to review and/or delete a student's personal information. Schools should consult their compliance officers on the necessary notices, if any, to provide parents due to the Schools' provision of this necessary consent for the student's use of the MakeMusic Cloud Services on behalf of the parents. By using the MakeMusic Cloud Services for educational purposes, each educational institution and representative thereof represents and warrants that they will comply with any applicable laws related to the collection and use of data, whether educational or personal data, related to its students.

## 7. LICENSE TO USE THE SITES AND SERVICES

Subject to these Terms of Service and our [Privacy Policy](#), and during the term you select when you create an account, we grant you and your authorized users (if applicable) a limited, non-transferable, non-exclusive, revocable, limited license to access and use the functionality, features, catalog, content and information provided through our Sites and/or Services for the purposes of its intended music education services, communicating with us, providing your reviews and participating in features and promotions we may offer from time to time. The scope of your specific license will be limited by the subscription you choose. You may not use the Sites or Services for any other purpose without first obtaining written permission from us. If you would like broader rights than those granted in your subscription, contact MakeMusic to request permission. Any license granted to you to use the Sites and Services is personal to you and you may not assign it to others.

## 8. SUBSCRIPTIONS

Creating a free MakeMusic Cloud account gives you access to the limited catalog of free MakeMusic Cloud content which can be played, performed, assigned, and graded. To access the full catalog of MakeMusic Cloud content, a teacher subscription, a student subscription, or an individual subscription must be purchased. MakeMusic Cloud reserves the right to modify and/or eliminate subscription offerings in its sole discretion without notice to you. Prior to authorizing any subscriptions, MakeMusic will first create an account and authenticate the user. Unless otherwise agreed to by the parties in writing, subscription terms are annual and all listed subscription fees are on an annual basis. Below is a description of the current subscriptions offered by MakeMusic related to the MakeMusic Cloud Services.

- a. **MakeMusic Cloud Free Subscriptions:** MakeMusic Cloud offers the ability for teachers, students, and individuals to use limited features of the MakeMusic Cloud Services for free. "**Free Teacher Subscriptions**" consist of free Teacher subscription(s) which allows teachers to create free classes, enroll students, access the free music catalog, and assign the free music catalog content appropriate to their class(es). MakeMusic Cloud Free subscriptions can be activated by individuals who are invited by a teacher through a Free Subscription, or individuals who are not associated with a teacher or an educational

institution for their own personal use by starting a free trial. Free subscriptions do not have an end date.

- B. MakeMusic Cloud All-Access Subscriptions: **"MakeMusic Cloud All-Access Subscriptions"** allows the individual user to access the entire music catalog, access the Sight Reading Studio, access Compose, import music xml content, access the Content Manager, and access Practice Analytics. MakeMusic Cloud All-Access Subscriptions must be purchased for non-organization affiliated individual users who will be using the MakeMusic Cloud Services for the purpose of individual use.
- C. MakeMusic Cloud Teacher Subscriptions: **"MakeMusic Cloud Teacher Subscriptions"** consist of Teacher subscription(s) which allows teachers to create classes, enroll students, access the entire music catalog, access the Sight Reading Studio, access Compose, import music xml content, access the Content Manager, access Practice Analytics and create Student-Funded classes. MakeMusic Cloud Teacher Subscriptions must be purchased for each educator who is affiliated with a contracting organization and who will be using the MakeMusic Cloud Services for the purpose of teaching students.
- D. MakeMusic Cloud Student Subscriptions: **"MakeMusic Cloud Student Subscriptions"** grants the subscription holder access to the full music catalog. Student subscriptions can be purchased by organizations for each student that is to use the MakeMusic Cloud Services for the purpose of receiving educational services through a contracting educational institution. Student subscriptions allow students to access the entire music catalog for practice and assignment submission, access Compose, import music xml content, share content created in Compose, and create and share playlists.
- E. MakeMusic Cloud Digital Sheet Music Offerings: **"MakeMusic Cloud Digital Sheet Music Library"** provides users the limited right to view sheet music PDF files within the MakeMusic Cloud Service. This library is included in the All-Access, paid Teacher, and paid Student subscriptions. Subscribers will have access to the provided catalog of sheet music. Such sheet music may be MakeMusic Cloud content or Third-Party Content. The PDFs may have geographical restrictions based on the licensing rights provided through the third-party content providers. **"MakeMusic Cloud Digital Sheet Music Print Subscription,"** or "Print Add On," provides users, in addition to the MakeMusic Cloud Digital Sheet Music Library, the limited right to print sheet music through the application. Users will be limited to printing only the current page of a composition of sheet music. MakeMusic may monitor the numbers of copies made under each account for a number of commercial purposes, such as calculating royalties, or monitoring for misuse or abuse of the rights provided herein. MakeMusic reserves the right to modify the scope of this subscription to limit the number of pages which may be printed in a given time period, such as a monthly or annual limit. For each printed page, a watermark will be added to the PDF that will place the user's information on the PDF, such as "Authorized use for [Subscriber]. No copying or distributing allowed." In any event, any subscribers to the Digital Sheet Music offering shall not have the right to use the sheet music or printed copy thereof for any commercial purpose or to share or distribute the sheet music or the printed copy to any third party.
- F. MakeMusic Cloud Gradebook: Educator subscribers/users of the MakeMusic Cloud Services may use the Gradebook Service. Gradebook may be used in accordance with the documentation.

## 9. MULTI-YEAR COMMITMENTS

We will provide quotes for multi-year commitment discounts via our quote tool located at [quotes.smartmusic.com](https://quotes.smartmusic.com). This will permit you to purchase annual subscriptions at a discounted rate if you agree to a multi-year commitment. Please contact [sales@makemusic.com](mailto:sales@makemusic.com) for more information about multi-year commitment quotes.

Please note that there are specific requirements and restrictions for multi-year commitments. For example, if you receive a multi-year commitment discount, you may not reduce your total number of subscriptions during the term by more than 10% of the number of subscriptions you held at the time of receiving the discount without first obtaining MakeMusic's express permission. Increases of your total number of subscriptions during the term by more than 10% of the number of subscriptions you held at the time of receiving the discount are subject to review and acceptance by MakeMusic. If you do not meet the requirements for the multi-year commitment discount, we reserve the right to revoke the discount and require payment of the full standard subscription cost.

## 10. FEES AND PAYMENTS

If you subscribe to a paid account, the fees for your subscription(s) will be billed to you via your authorized credit card or via an invoice. You agree to pay all fees and charges, including any applicable taxes incurred in connection with your MakeMusic Cloud Services subscriptions in advance, at the rates in effect or mutually agreed to in writing when you purchased. Failure to pay the respective subscription fee shall result in the loss of access to the subscription's enhanced content access. MakeMusic may change the fees and charges then in effect, or add new fees or charges, by giving you notice in advance. You are solely responsible for any fees or charges incurred to access the MakeMusic Cloud Services through an Internet access provider, mobile service provider, or other third-party service. No refunds shall be provided once the annual subscription fee is paid.

## 11. TRIAL ACCESS

If you access or use any version of the Sites and Services designated by MakeMusic as "trial", "evaluation", "not for resale", or other similar designation ("**Evaluation Versions**"), you may use the Evaluation Version only during the evaluation period and only for evaluation purposes. You may not use any materials, features or data provided in or through the Evaluation Version for anything other than non-commercial, educational purposes.

## 12. ACCOUNT REQUIREMENTS

You will be required to create an account that is verified by us to access the MakeMusic Cloud Services. You are responsible for the accuracy of all information you provide to us and expressly



agree to provide accurate information and to update your account as necessary to keep it accurate. We will use any personal information we collect from you in accordance with our [Privacy Policy](#).

You will also be required to set a password to create your account. You will be solely responsible for the security of your account credentials and any activity (whether authorized or unauthorized) that takes place through your account. You agree to notify us immediately of any unauthorized uses of your account or any other breach of security. You agree not to submit false information to us or anyone else through the Sites or Services.

You may not allow more users to access paid content and/or features within the MakeMusic Cloud Services than have been paid for during the subscription period. You agree that you will not allow others to access and use your account.

You will be responsible for your own Internet connection and information technology infrastructure (including computers, software, hardware, databases, electronic systems, and networks) that are necessary to access and use the MakeMusic Cloud Services.

### **13. TERMINATION OF ACCESS**

You may terminate your subscription at any time. If you wish to terminate your subscription, please contact us. If you terminate your subscription prior to the end of its term, you will not receive a refund for any reason. Your subscription may terminate without notice if you breach the applicable use limitations for any of the access types described above or any other provision of these Terms of Service.

We may terminate or suspend your subscription if you fail to timely pay fees owed or if you violate any of the provisions of these Terms of Service.

### **14. OWNERSHIP RIGHTS**

Our Sites and Services are confidential and proprietary to MakeMusic, and are provided only to authorized licensees/users. Our Sites and Services contain and make available works and content owned by third parties ("**Third-Party Content**"). You may not use the Sites or Service (or the content thereon, including Third-Party Content) in any manner or for any purpose that would constitute infringement of MakeMusic's, its licensors', or other users' intellectual property rights. You expressly acknowledge and agree that MakeMusic and its content providers (as applicable) own all content, trademarks, copyrights and other intellectual property located on and related to the Sites and Services, excepting only the User Content described below.

The content offered through our Sites and Services, including Third-Party Content may change from time to time. MakeMusic reserves the right to modify and/or remove content from the Sites and Services at any time without notice to its users. CONTENT AVAILABLE TO YOU THROUGH THE SITES AND SERVICES MAY BE USED ONLY FOR YOUR PERSONAL, NON-COMMERCIAL, OR



EDUCATIONAL USE. YOU MAY NOT SELL OR DISTRIBUTE ANY CONTENT OR MATERIAL OBTAINED THROUGH THE SITES OR SERVICES.

## 15. USER CONTENT

The Sites and Services contain features that allow users to post, submit, publish, display, or transmit to their account, to us and/or to others certain data, recordings and materials, including (without limitation) compositions, audio recordings or performances, video recordings of performances, comments, reviews and other materials ("**User Content**"). You retain all rights in and to your User Content.

- By uploading or creating User Content through the Sites or Services, you grant MakeMusic and our related companies, agents, sublicensees, service providers, instructors, contractors and assigns ("**Licensed Parties**"), an irrevocable, royalty-free, fully paid up, sublicensable perpetual license to use, store and distribute your User Content so that we can provide our Sites and Services to you.
- We will not pay you for the use of your User Content and we reserve the right to remove or delete any User Content, in our sole discretion. It is your responsibility to keep a copy of your own User Content in the event it is lost, altered or destroyed.
- All User Content that you post, submit, publish, display, or transmit using the Sites or Services must comply with our content standards. MakeMusic reserves the right to remove or delete any and all User Content hosted or transmitted through the Sites or Services that does not comply with our content standards or these Terms of Service.
- All User Content you post, submit, publish, display, or transmit using the Sites or Services will be deemed non-confidential and, except for any copyright you own (such as in an original composition), non-proprietary.
- You understand and acknowledge that you are responsible for all User Content you post, submit, publish, display, transmit or otherwise upload or introduce to the MakeMusic Cloud Services, and you, not MakeMusic, have full responsibility for such content, including its legality, reliability, accuracy, and appropriateness. MakeMusic is not responsible or liable to any third party for the content or accuracy of any content you provide or create through the Sites and Services.
- You represent and warrant that (i) you are solely responsible for User Content you upload or otherwise provide to us, (ii) you own all rights in and to your User Content and/or have obtained appropriate rights and permissions from any and all other persons and/or entities who own, manage or otherwise claim any rights with respect to such User Content, (iii) the Licensed Parties' use of your User Content as described herein will not violate the rights, including but not limited to copyright, trademark, patent, trade secret, privacy, publicity, moral, proprietary or other rights, of any third party, or any law, rule or regulation, (iv) the User Content is not libelous, defamatory, obscene, pornographic, abusive, indecent, threatening, harassing, hateful, or offensive or otherwise unlawful; and (v) all User Content complies with these Terms of Service and applicable law.

- To the fullest extent allowable by law, you release the Licensed Parties from, and agree to indemnify, defend and hold harmless the Licensed Parties for, all claims, demands and damages of every kind and nature, known and unknown, arising out of or in any way connected with your User Content.

## **16. RANDOMLY GENERATED SITE READING STUDIO EXERCISES**

MakeMusic offers its [Sight Reading Studio \(SRS\) program](#) through the services. When using the SRS program, you may specify certain musical parameters and the program will randomly generate site-reading exercises that fall within the parameters you have chosen. The SRS exercises are randomly generated and MakeMusic claims no copyright or other intellectual property rights in such exercises or output. To the contrary, MakeMusic consider such content User Content. Accordingly, you may use the randomly generated exercises you generate through the SRS program without requiring additional licenses or permissions from MakeMusic, and without requiring MakeMusic to separately license such content if you upload it or use it in the Sites or Services.

## **17. RECORDINGS**

The Sites and Services offer functionality that will permit you to record your performance. One feature is our video recording capability. We will not record you or your performances unless you request that we do so or engage in the feature and provide us with permission to access your device's camera.

## **18. INTELLECTUAL PROPERTY & SHARING CONTENT**

You agree that you will not use the Sites or Services to infringe the copyrights or other intellectual property rights of others in any way. Without limiting the foregoing, you agree not to reproduce, retransmit, distribute, disseminate, sell, publish, broadcast, or circulate content received or generated through the Sites or Services, including (without limitation) to others in the same company or organization, without the express prior written consent of the copyright holder(s) and MakeMusic, as applicable. Notwithstanding the above, you may distribute copies of your recorded performances along with MakeMusic Cloud accompaniments to your teachers, your family members or friends, but only for (1) noncommercial and (2) educational or evaluation purposes, and provided that you include all copyright and other proprietary rights notices with any portion of the content in the same form in which the notices appear in the MakeMusic Cloud Services, original source attribution, and the phrase "Used with permission from MakeMusic, Inc." ANY OTHER DISTRIBUTION OR SHARING IS PROHIBITED. UNDER NO CIRCUMSTANCES MAY RECORDED PERFORMANCES OF MAKEMUSIC CLOUD ACCOMPANIMENTS WITHOUT A SOLOIST PERFORMING BE MADE FOR THE PURPOSE OF USING THE MAKEMUSIC CLOUD SERVICES WITHOUT A SUBSCRIPTION. To request permission to use any content, please contact us.

## **19. MOBILE SOFTWARE FROM THE APPLE APP STORE**

THIS PARAGRAPH APPLIES ONLY IF YOU DOWNLOAD THE MAKEMUSIC CLOUD SERVICES APPLICATION THROUGH THE APPLE APP STORE. MakeMusic provides these Terms of Service, which apply to your use of the Sites and Services. You acknowledge and agree that these Terms of

Service apply to you and to MakeMusic, not Apple, and that Apple has no responsibility for the Sites, Services or content thereon. You acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Sites or Services. You and MakeMusic acknowledge that Apple is not responsible for addressing any claims by you or any third party relating to the Sites or Services, including, but not limited to: (i) product liability claims; (ii) any claim that the Sites or Services fail to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation. You and MakeMusic acknowledge that, in the event of any third-party claim that the Sites or Services, or your possession and use of the MakeMusic Cloud Services infringes that third party's intellectual property rights, MakeMusic, not Apple, will be solely responsible for the investigation, defense, settlement, and discharge of any such intellectual property infringement claim to the extent required by these Terms of Use or applicable law. You and MakeMusic acknowledge and agree that Apple, and Apple's subsidiaries, are third party beneficiaries of the Agreement, and that, upon your acceptance of the terms of these Terms of Service, Apple will have the right (and will be deemed to have accepted the right) to enforce this provision of these Terms of Service Agreement against you as a third-party beneficiary thereof.

## **20. YOUR OBLIGATIONS TO US**

In addition to the representations provided above, in exchange for use of the Sites and/or any Services, you represent that you will not engage in any of the following activities, directly or indirectly:

- Modify, adapt, translate or prepare derivative works or improvements to any part of the Sites or Services;
- Rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the Sites or Services to any person or entity, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service;
- Reverse engineer, disassemble, decompile, decode, or adapt the Sites or Services, or otherwise attempt to derive or gain access to the source code of the Sites or Services in whole or in part;
- Access or attempt to access the Sites or Services by any means other than the interface provided or authorized by MakeMusic;
- Bypass or breach any security device or feature used for or contained in the Sites or Services;
- Use the Sites or Services in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person or entity, or that violates any applicable law;
- Use the Sites or Services for purposes of: (i) benchmarking or competitive analysis of the MakeMusic Cloud Services; (ii) developing, using, or providing a competing software product or service; or (iii) any other purpose that is to MakeMusic's detriment or commercial disadvantage;
- Violate applicable law through the use of the Sites or Services;

- Use or submit any offensive content including, without limitation, obscene language, obscene references, obscene images, threatening or harassing messages, discriminatory actions, messages, or images, and defamatory statements.
- Submit or post any false, misleading, or fraudulent statements or content.
- Engage in activity that is unauthorized advertisements or promotions, including unauthorized solicitation of other users.
- Collect personal information of other users of the Sites or Services without that user's consent.
- Engage in activity that compromises the Sites or Services (such activity may include, without limitation, hacking, IP attacks, worms, viruses, spamming, phishing, cancel bots, Trojan horses, mail bombing or crashing, or introducing malware);
- Engage in any activity designed to impede the use of the Sites or Services by other users, including overloading and flooding.
- Access the Sites or Services by means of automated process, spiders, bots, or similar device;
- Use any data mining or similar data gathering and extraction methods in connection with the Sites or Services; or
- Use the Sites or Services in any manner that is not expressly permitted by this Agreement.
- Allowing unauthorized access, whether intentionally or unintentionally, to the Sites and/or Services.

You also represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.

The license granted to you under these Terms of Service to access and use the Sites and Services shall terminate if you violate any of the restrictions in these Terms of Service. We reserve the right to disclose the identity of anyone posting or transmitting information or materials violating the above prohibitions.

## **21. ELECTRONIC MARKETING**

By agreeing to these Terms of Service, you expressly agree and consent to receiving all notices from MakeMusic relating to your personal information, your account or any license or relationship that you have with MakeMusic via electronic mail via the address you have provided to MakeMusic as your email address. You have the right to revoke consent to receive such notices via electronic mail, but until such consent is revoked, your consent to receive notices via electronic mail will remain in full force and effect.

## **22. ACCESSIBILITY**

We value all of our users, and it is our goal to provide an excellent experience for all our users, including our users with disabilities. You understand and accept, however, that some of the features of the Sites and Services may not be fully accessible because they are provided by third-parties or have errors. If you have comments regarding the accessibility of any part of the Sites or Services, or

would like to report an issue you are experiencing, please email us at [accessibility@makemusic.com](mailto:accessibility@makemusic.com). You expressly agree to attempt to work with us in good faith to obtain access to our Sites and Services and that you will not threaten or assert any claims regarding accessibility against us unless you have first provided us with notice of the inaccessibility problem(s) and a thirty (30) day period to remedy the problem.

## **23. DISCLAIMERS AND LIMITS ON LIABILITY; WAIVER OF CLASS ACTION RIGHTS; WAIVER OF JURY TRIAL**

- a. Disclaimer of Warranties. THE SITES AND SERVICES, AND ALL INFORMATION AND CONTENT AVAILABLE THROUGH THE SITES AND SERVICES ARE PROVIDED TO YOU ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT ANY IMPLIED OR EXPRESS WARRANTY OF ANY KIND (INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY, SECURITY, CORRECTNESS, ACCESSIBILITY AND NON-INFRINGEMENT). MAKEMUSIC, ITS PARENT COMPANY, AFFILIATES, OFFICERS, DIRECTORS, DISTRIBUTORS, MEMBERS, MANAGERS, EMPLOYEES, CONTRACTORS, AGENTS, AND SUPPLIERS (COLLECTIVELY THE "**MAKEMUSIC PARTIES**") MAKE NO REPRESENTATION OR WARRANTY REGARDING: (A) THE CONTINUED AVAILABILITY, RELIABILITY, ACCURACY, ACCESSIBILITY, RESULTS OR PERFORMANCE OF THE SITES AND SERVICES; (B) THE EXISTENCE (OR ABSENCE) OF ANY VIRUS, WORM, MALWARE, MALICIOUS CODE OR OTHER DISABLING DEVICES OR HARMFUL CODE FROM ANY SOURCES; (C) THE UNAUTHORIZED ACCESS TO OR USE OF YOUR INFORMATION BY THIRD PARTIES; (D) ANY TECHNICAL FAILURES (INCLUDING HARDWARE OR SOFTWARE FAILURES); (E) LOSS, USE OR MISUSE OF YOUR DATA; OR (F) OUTCOMES OR INTENDED RESULTS FROM USE OF THE SITES OR SERVICES.
- b. Assumption of Risk. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SITES AND SERVICES AND ANY ACCOMPANYING MATERIALS IS WITH YOU. YOU ASSUME ALL RESPONSIBILITY FOR SELECTION OF THE SOFTWARE, FEATURES AND ACCOMPANYING DOCUMENTATION MATERIALS TO ACHIEVE YOUR INTENDED RESULTS, AND FOR THE USE AND RESULTS OF THE SITES AND SERVICES. NO ORAL OR WRITTEN INFORMATION OR ADVICE PROVIDED BY THE MAKEMUSIC PARTIES SHALL CREATE ANY OTHER WARRANTY, AND YOU MAY NOT RELY ON SUCH INFORMATION OR ADVICE.
- c. Right to Modify and Terminate Sites and Services. MAKEMUSIC IS ENTITLED TO TERMINATE ALL OR PART OF ANY OF THE SITES AND SERVICES AT ANY TIME, IN ITS SOLE DISCRETION WITHOUT NOTICE TO YOU.
- d. Exclusion of Certain Types of Damages. YOU AGREE THAT THE MAKEMUSIC PARTIES ARE NOT LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, DIRECT, INDIRECT, EXEMPLARY, OR PUNITIVE DAMAGES RELATING TO YOUR USE OF THE SITES AND SERVICES.
- e. Cap on Liability. IN NO EVENT SHALL THE MAKEMUSIC PARTIES' TOTAL LIABILITY TO YOU FOR ANY DAMAGES, LOSSES, FEES AND EXPENSES (INCLUDING ATTORNEYS' FEES), WHETHER IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE AMOUNT PAID BY YOU TO US FOR THE USE OF THE SITES AND SERVICES WITHIN THE LAST TWELVE MONTHS. IF YOU LIVE IN A STATE THAT DOES NOT ALLOW THE WAIVER OF CERTAIN WARRANTIES, OR LIMITATIONS OR DAMAGES WAIVERS DESCRIBED IN THIS SECTION, SOME OF THESE PROVISIONS MAY NOT APPLY TO YOU.

- f. Notice of Claims. YOU AGREE TO PROMPTLY NOTIFY US IN WRITING IF YOU BELIEVE YOU HAVE ANY CLAIM AGAINST ANY OF THE MAKEMUSIC PARTIES, AND, YOU AGREE THAT IF YOU HAVE ANY CLAIM AGAINST ANY OF THE MAKEMUSIC PARTIES, YOU WILL BRING IT WITHIN ONE YEAR FROM THE TIME IT ARISES (OR SUCH SHORTER PERIOD UNDER APPLICABLE STATUTES OF LIMITATION) OR SUCH CLAIM SHALL BE WAIVED AND RELEASED.
- g. Waiver of Rights to Jury Trial and to Participate in Class Actions. YOU EXPRESSLY AGREE TO RESOLVE ANY AND ALL CLAIMS AGAINST THE MAKEMUSIC PARTIES ON AN INDIVIDUAL BASIS AND KNOWINGLY WAIVE: (A) YOUR RIGHT TO PARTICIPATE IN ANY CLASS ACTION AGAINST THE MAKEMUSIC PARTIES; AND (B) YOUR RIGHT A JURY TRIAL IN ANY DISPUTE BETWEEN YOU AND THE MAKEMUSIC PARTIES.

## **24. AVAILABILITY**

WE CANNOT GUARANTEE THE SITES OR SERVICES WILL BE AVAILABLE OR SECURE 100% OF THE TIME BECAUSE PUBLIC NETWORKS, SUCH AS THE INTERNET, OCCASIONALLY EXPERIENCE DISRUPTIONS. ALTHOUGH WE STRIVE TO PROVIDE THE MOST RELIABLE SITES AND SERVICES REASONABLY POSSIBLE, INTERRUPTIONS, THIRD PARTY INTERFERENCE AND DELAYS DO OCCUR AND THE MAKEMUSIC PARTIES EXPRESSLY DISCLAIM ANY LIABILITY FOR DAMAGES RESULTING FROM SUCH PROBLEMS.

## **25. INDEMNIFICATION**

You agree to indemnify, defend and hold harmless the MakeMusic Parties and any of our third-party service providers, from and against any and all claims, demands, actions, liability, fines, penalties and expenses, whether based on warranty, contract, negligence, strict liability or otherwise, that may arise from: (a) your breach of these Terms of Service; (b) your access or use of the Sites and/or Services; (c) your intellectual property infringement or the intellectual property infringement of any third-party using your account; and (d) any authorized activity through your account.

## **26. THIRD-PARTY LINKS**

The Sites and Services may contain links to other third-party websites. Our linking to such third-party sites does not imply an endorsement or sponsorship of such sites, or the information, products or services offered on or through the sites. Such third-party websites are maintained by persons or organizations over which MakeMusic exercises no control. MakeMusic disclaims any responsibility for the content or results from your use of such third-party websites.

## **27. COPYRIGHT COMPLAINTS**

MakeMusic respects the intellectual property of others. If you believe that your work has been copied in a way that constitutes copyright infringement, please provide us with the following information.

- An electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest;

- Description of the copyrighted work that you claim has been infringed;
- The location on the Sites of the material that you claim is infringing;
- Your address, telephone number and e-mail address;
- A statement that your claim of infringement is based on a good faith belief; and
- A statement made under penalty of perjury that the information you have provided is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.

Our copyright agent for notice of claims of copyright infringement can be reached as follows:

Licensing manager  
 MakeMusic, Inc.  
 285 Century Pl.  
 Louisville, CO 80027, USA  
[licensing@makemusic.com](mailto:licensing@makemusic.com)

## **28. SEVERABILITY**

If any term or provision in these Terms of Service is found to be void, against public policy, or unenforceable by a court of competent jurisdiction and such finding or order becomes final with all appeals exhausted, then the offending provision shall be deemed modified to the extent necessary to make it valid and enforceable. If the offending provision cannot be so modified, then the same shall be deemed stricken from these Terms of Service in its entirety and the remainder of these Terms of Service shall survive with the said offending provision eliminated.

## **29. CONTROLLING LAW AND VENUE**

It is understood and agreed that all the construction and interpretation of these Terms of Service and the relationship between the parties shall at all times and in all respects be governed by the internal laws of the State of Colorado, without giving effect to the conflict of laws provisions thereof. Venue of any action brought to enforce or relating to these Terms of Service or arising out of the relationship between the parties shall be brought exclusively in the courts located in Colorado, Colorado. If MakeMusic successfully enforces or defends its rights under these Terms of Service or otherwise, it shall be entitled to recover its reasonable attorneys' fees and expenses from you.

## **30. ENTIRE AGREEMENT**

These Terms of Service, along with our [Privacy Policy](#), contain the entire agreement between the parties with respect to the Sites and Services, and supersedes all prior and contemporaneous representations, promises, agreements and understandings, whether oral or written, between the parties. If any provision of these Terms of Service is deemed to be invalid or unenforceable, the remaining provisions of these Terms shall be valid and binding and of like effect as though such provision were not included.

## **31. QUESTIONS**



If you have any questions about us, the Sites, our Services, our [Privacy Policy](#), or these Terms of Service, you may contact us at:

MakeMusic, Inc.  
Attn: Privacy Team  
285 Century Place, Louisville, CO 80027  
United States of America  
Visit us at [www.makemusic.com/support](http://www.makemusic.com/support)  
Email us at [privacy@makemusic.com](mailto:privacy@makemusic.com)  
Call us toll free (for the U.S.A.): 1-800-843-2066  
International callers: (952) 937-9611