SMARTMUSIC® TERMS OF SERVICE

LAST UPDATED ON August 16, 2016.

THESE SMARTMUSIC® TERMS OF SERVICE ARE LEGALLY BINDING. IF YOU ACCESS OR USE THE SMARTMUSIC SERVICE IN ANY MANNER, YOU AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS POLICY. IF YOU DO NOT AGREE TO BE BOUND, YOU MAY NOT USE THE SMARTMUSIC SERVICE.

This SmartMusic® Terms of Service ("Agreement") governs the terms of use of the SmartMusic® music education service and all related features/services ("SmartMusic service"). This Agreement becomes effective when you click the "I Accept" button and when you access or use any part of the SmartMusic service.

1. **Background & Purpose of this Agreement.** MakeMusic, Inc. ("MakeMusic" or "we" or "us") provides the web-based SmartMusic service to end users, who include individuals, schools, students, educators and others ("you, user"). This Agreement is intended to protect MakeMusic's rights in its proprietary software and related services and features. It also sets forth the restrictions and permissible uses of the SmartMusic service by others. MakeMusic is providing you with access to the SmartMusic service only in accordance with the terms and conditions of this Agreement.

2. **SmartMusic Service Defined.** In the context of this Agreement, the "SmartMusic service" refers to the web-based SmartMusic service offered to users accessible at admin.smartmusic.com/login and any related downloadable applications that allow for online accessibility to the SmartMusic service. This Agreement does not apply to the classic SmartMusic downloadable software program that must be installed on a user's computer.

3. **Revisions.** From time to time, MakeMusic, Inc. may change the terms of this Agreement. If we make a change to this Agreement, we will post a notice on the login or homepage of the SmartMusic service. Changes will also appear in this document, which you can access at any time via www.makemusic.com/terms-conditions.

4. **Service Provided.** Subject to and conditioned on your compliance with the terms and conditions of this Agreement, during the Term, MakeMusic will use commercially reasonable efforts to provide you and any of your authorized users with access to the SmartMusic service.

    a. Account Requirements. To establish an account, you must set up an account, select your access level and payment terms through SmartMusic. You may not

access the SmartMusic service until you create and verify your account. You are responsible for all users under your account. You may not allow more users to access your account than allowed under your specific account.

b. Computer Requirements. You will be responsibility 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 SmartMusic service.

c. Credentials. You are solely responsible for your user credentials of your SmartMusic service account and any other authorized users on your account.

5. **License Grant.** You may use the SmartMusic service solely for the purpose identified in your account registration and/or renewal process. If you would like broader rights than those granted in your subscription, contact MakeMusic for further permissions, if applicable.

6. **Ownership Rights & Confidentiality.** MakeMusic and, as applicable, its licensors, own all right, title and interest in and to the SmartMusic service, as well as in any related intellectual property rights. MakeMusic also owns all right to, title to and interest in any output or materials created through the SmartMusic service. MakeMusic reserves all rights that are not expressly granted herein. The SmartMusic service is considered confidential and proprietary to MakeMusic, and is provided only to authorized users.

7. **Trial Access.** If you access or use any version of the SmartMusic service 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 purposes.

8. **GRADEBOOK™.** Educator subscribers/users of the SmartMusic service may elect to use MakeMusic's SMARTMUSIC GRADEBOOK™ services. Only one individual educator is authorized to use the SMARTMUSIC GRADEBOOK™ service per teacher slot of the SmartMusic service. Educators responsible for grading individual students must obtain their own slot to the SmartMusic service. Classes that are taught by multiple educators can share access to the SMARTMUSIC GRADEBOOK™ service.

9. **Free and Premium Access.** Creating a free SmartMusic account gives you access to the limited catalog of free SmartMusic content which can be played, performed, assigned,

and graded. To access the full catalog of SmartMusic content, you must purchase premium teacher slots and/or premium student slots or subscriptions by contacting SmartMusic Sales and Support.

a. Fees and Payments. The fees for your premium subscription(s) will be billed to you via your authorized credit card or via an invoice. You agree to pay or have paid all fees and charges, including any applicable taxes incurred in connection with your account for the SmartMusic service premium subscriptions you select, at the rates in effect when you purchased. 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 SmartMusic service through an Internet access provider, mobile service provider, or other third party service.

b. Subscription Terms. A subscription allows the user to use the SmartMusic service only after the user has been authenticated by MakeMusic. Term length and renewal depends on the type of subscription, user, or MakeMusic-specified attributes:
    i. "Teach Subscriptions" consist of teacher premium slot(s), student premium slot(s), or a combination of both and must be purchased by educators who are using the SmartMusic service for the purpose of teaching students as part of a Teach Platform. Educators may choose a term end date during the purchase process that is at least twelve (12) months from the order date. At the time of order, and at any time prior to the term end date, the educator can choose to have the subscription renew automatically each year until cancelled.
    ii. "Play Plus Subscriptions" can be purchased either by educational institutions and allocated to students so that they can access the full catalog of SmartMusic content outside of assignments from the school, or by students, the student's parent or legal guardian, or musicians who are using the SmartMusic service on their own. Play Plus Subscriptions may not be used to educate others. Play Plus Subscriptions have a term of either one (1) year from the order date or month-to-month. At the time of order, the purchaser can choose to have the Play Plus Subscription renew automatically each year until cancelled.

c. Termination of Access. MakeMusic may discontinue or change your access at any time, and you may terminate your slot or subscription at any time. If you wish to terminate your slot or subscription, please contact MakeMusic via one of the methods listed at the bottom of this document. If you terminate your slot or

subscription prior to the end of its term, you will not receive a refund for any reason. Your slot or subscription may terminate without notice if you breach the applicable use limitations for any of the access types described above or any other term of this Agreement.

d. Suspension. Payment terms are by default, due within thirty (30) days of initial order, unless specifically negotiated prior to sale. If payment is not timely received, MakeMusic may terminate or suspend services until payment is made.

e. Account Name. MakeMusic may refuse to grant you an account name that impersonates someone else, is protected by trademark or other proprietary right law, or is vulgar or otherwise offensive, as determined by MakeMusic.

10. **Account Information & Access.** You are responsible for maintaining the confidentiality of your username, password, and other account information and for all activities that occur under your username or account. You agree to provide accurate information and to update your account as necessary to keep it accurate. We will use your information in accordance with our Privacy Policy. You agree that you will not allow others to access and use your account. You agree to notify us immediately of any unauthorized use of your account.

11. **Content.** The content available through the SmartMusic service is the property of MakeMusic or its licensors and is protected by copyright and other intellectual property laws. Content licenses may change or be terminated and if this occurs, MakeMusic reserves the right to modify and/or remove content from the SmartMusic service at any time without notice to its users. CONTENT AVAILABLE TO YOU THROUGH THE SMARTMUSIC SERVICE MAY BE USED ONLY FOR YOUR PERSONAL, NON-COMMERCIAL USE. YOU MAY NOT SELL THE PROPERTY OBTAINED THROUGH SMARTMUSIC.

12. **Noninfringement.** You agree that you will not use the SmartMusic service 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 the content received or generated through the SmartMusic service to anyone, including (without limitation) to others in the same company or organization, without the express prior written consent of the copyright holder(s) and MakeMusic; provided, however, that subject to the Limitation of Liability and Indemnification sections below, you may distribute copies of your recorded performances along with SmartMusic 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 SmartMusic service, original source attribution, and the phrase "Used with permission from MakeMusic, Inc." ANY OTHER DISTRIBUTION IS PROHIBITED. UNDER NO CIRCUMSTANCES MAY RECORDED PERFORMANCES OF SMARTMUSIC ACCOMPANIMENTS WITHOUT A SOLOIST PERFORMING BE MADE FOR THE PURPOSE OF USING SMARTMUSIC WITHOUT A SUBSCRIPTION. To request consent for other matters, please contact MakeMusic via one of the methods listed at the end of this document.

13. **Geographic Scope.** MakeMusic makes no representation or warranty that the contents of the SmartMusic service are appropriate or permitted by the laws and regulations of countries other than the U.S.A. If you choose to access the SmartMusic service from other countries, you do so at your own risk and are responsible for compliance with applicable local laws. By accepting this Agreement, you understand and agree that such information is sent to and processed by a United States entity and that your information is stored on computers in the United States or other countries.

14. **User-Created Content or Third-Party Content.** MakeMusic is not responsible or liable in any manner for any user-created content or content received from a third party used in connection with the SmartMusic service. You are responsible for determining that content you create or acquire from a third party for use with the SmartMusic service does not infringe on any works under copyright. You agree to hold MakeMusic harmless from and against any loss, damage, or expense, including court costs and attorneys' fees arising out of or in connection with any user-created or third-party content you use or distribute for use in the SmartMusic service.

15. **Use & Disclosure of Data.** MakeMusic and its agents may collect, maintain, process, use and disclose various types of data through the SmartMusic service. You hereby grant MakeMusic permission, at its option and whenever you are using the SmartMusic service, to access, review, analyze, gather, and otherwise use and disclose any information relating to your use of the SmartMusic service (herein, "Data Collection"). You agree not to use any program, routine, device, code, or instructions or other feature on your machine which would block or otherwise not allow MakeMusic to perform Data Collection. The MakeMusic Privacy Policy governs our Data Collection and is incorporated into the terms of this Agreement. It is your responsibility to read the MakeMusic Privacy Policy and understand how we collect and use information about Districts, Schools, Educators, and Students. You can view our Privacy Statement here: http://www.makemusic.com/privacy

16. **Children's Online Privacy and Protection.** We care about protecting the online privacy of children. To view our complete policy, see the MakeMusic Privacy Policy at http://www.makemusic.com/privacy. We may collect certain information about

children ONLY for the purpose of providing our educational services through the SmartMusic service.

a. Verifiable Consent. MakeMusic does not knowingly collect any information from children under the age of 13 unless the school or teacher working with the student has obtained appropriate, verifiable consent directly from the parent or legal guardian for the student to use the SmartMusic service. **IF YOU ARE A SCHOOL, EDUCATOR OR OTHER PERSON/ENTITY WORKING WITH AN INDIVIDUAL UNDER THE AGE OF 13 THROUGH THE SMARTMUSIC SERVICE, IT IS YOUR RESPONSIBILITY TO OBTAIN AND VERIFY CONSENT FROM A PARENT OR LEGAL GUARDIAN BEFORE ANY CHILD UNDER 13 YEARS OF AGE MAY USE THE SMARTMUSIC SERVICE. PROVIDING A CLASS CODE TO A STUDENT UNDER THE AGE OF 13 OR CREATING AN ACCOUNT FOR A STUDENT UNDER THE AGE OF 13, WHETHER MANUALLY THROUGH THE SMARTMUSIC WEBSITE, BY IMPORTING A SPREADSHEET OF BULK STUDENT DATA, OR BY ANY OTHER MEANS, CONSTITUTES YOUR TACIT CONFIRMATION THAT YOU HAVE OBTAINED VERIFIABLE CONSENT FROM THE STUDENT'S PARENT OR LEGAL GUARDIAN.**

b. Notification. The new web-based SmartMusic service does not allow students who report themselves as under the age of 13 to create an account without consent from a parent/legal guardian; it is a violation of this Agreement for children to create an account by misrepresenting their age. If a student under the age of 13 creates an account in this manner 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 account and to provide them with information regarding their right to access and manage the data associated with the account.

c. Providing or Withdrawing Consent. MakeMusic allows parents and legal guardians to review information submitted by their children, and to request the removal of any information. Details on these procedures can be found in our Privacy Policy at http://www.makemusic.com/privacy.

d. Schools that Act as the Parent's Agent. Schools that contract with MakeMusic to provide the SmartMusic service for legitimate educational purposes only may consent to the collection of student information on the parent's behalf (see "Verifiable Consent" above) and may also request to review and/or delete a student's personal information. Schools should consider making these same notices available to parents. As a best practice, the school or school district should make the decision to contract with MakeMusic rather than placing that responsibility upon individual teachers.

17. **Restrictions.** Except as otherwise expressly permitted under this Agreement, Customer shall not, either directly or indirectly:

a. copy the SmartMusic service application or content, in whole or in part;

b. modify, correct, adapt, translate, enhance or otherwise prepare derivative works or improvements of the SmartMusic service;

c. rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the SmartMusic service 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;

d. reverse engineer, disassemble, decompile, decode or adapt the SmartMusic service web applications, or otherwise attempt to derive or gain access to the source code of the SmartMusic service, in whole or in part;

e. access or attempt to access the SmartMusic service by any means other than the interface provided or authorized by MakeMusic;

f. bypass or breach any security device or feature used for or contained in the SmartMusic service;

g. remove, alter, or obscure any warranties, disclaimers, intellectual property notices or other symbols, notices, marks or serial numbers on or relating to the SmartMusic service;

h. use the SmartMusic service 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;

i. use the SmartMusic service for purposes of: (i) benchmarking or competitive analysis of the SmartMusic service; (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;

j. use any data mining or similar data gathering and extraction methods in connection with the SmartMusic service;

k. use the SmartMusic service in any manner that is not expressly permitted by this Agreement; or

l. violate applicable law.

18. **Customer Representations.** You expressly represent that: (a) you will adhere to the terms of this Agreement, MakeMusic's Privacy Policy, and any other terms provided by MakeMusic when you access the SmartMusic service; and (b) you will maintain the confidentiality of the SmartMusic service.

19. **Termination**. This Agreement will terminate automatically without notice from MakeMusic if you fail to comply with any of the terms or limitations of this Agreement. Upon termination, MakeMusic may require that you cease all use and access to the SmartMusic service.

20. **Mobile Software from the Apple App Store**. THIS PARAGRAPH APPLIES ONLY IF YOU DOWNLOAD THE SMARTMUSIC PROGRAM APPLICATION THROUGH THE APPLE APP STORE. To the extent that the terms and conditions of this Agreement are less restrictive than, or otherwise conflict with, the terms and conditions of this paragraph, the more restrictive or conflicting terms and conditions in this paragraph apply, but solely with respect to any software or applications downloaded from the Apple App Store. You acknowledge and agree that this Agreement is solely between you and MakeMusic, not Apple, and that Apple has no responsibility for the SmartMusic program or content thereof. Your use of the SmartMusic program, if downloaded from the Apple App Store, must comply with the App Store Terms of Service. You acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the SmartMusic program. In the event of any failure of the SmartMusic program from the Apple App Store to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price of the SmartMusic program (if any) to you; and, to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the SmartMusic program, and any other claims, losses, liabilities, damages, costs, or expenses attributable to any failure to conform to any warranty will be solely governed by the terms of this Agreement. You and MakeMusic acknowledge that Apple is not responsible for addressing any claims by you or any third party relating to the SmartMusic program or your possession and/or use of the SmartMusic program, including, but not limited to: (i) product liability claims; (ii) any claim that the SmartMusic program fails 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 SmartMusic program or your possession and use of the SmartMusic program 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 this Agreement. You 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. 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 this Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce this Agreement against you as a third party beneficiary thereof.

21. **DISCLAIMER OF WARRANTIES.** MAKEMUSIC MAKES NO WARRANTIES REGARDING THE SMARTMUSIC SERVICE, DOCUMENTATION MATERIALS, OR MEDIA, EITHER EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ALL WARRANTIES, INCLUDING (WITHOUT LIMITATION) WARRANTIES RELATING TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND SECURITY. THE SMARTMUSIC SERVICE AND RELATED MATERIALS ARE PROVIDED SOLELY ON AN "AS IS" BASIS, WITHOUT WARRANTY OF ANY KIND. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SOFTWARE AND ANY ACCOMPANYING DOCUMENTATION 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 SMARTMUSIC SERVICE. NO ORAL OR WRITTEN INFORMATION OR ADVICE PROVIDED BY MAKEMUSIC, ITS DEALERS, DISTRIBUTORS, AGENTS, OR EMPLOYEES SHALL CREATE ANY OTHER WARRANTY, AND YOU MAY NOT RELY ON SUCH INFORMATION OR ADVICE.

22. **EXCLUSION OF CONSEQUENTIAL DAMAGES.** NEITHER MAKEMUSIC NOR ANYONE ELSE INVOLVED IN THE CREATION, PRODUCTION, LICENSING, OR DELIVERY OF THE SOFTWARE AND DOCUMENTATION MATERIALS SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES (INCLUDING DAMAGES FOR LOST PROFITS OR THE LIKE) RESULTING FROM THE ACCESS, PAYMENT, USE OR INABILITY TO USE THE SOFTWARE, EVEN IF MAKEMUSIC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. MAKEMUSIC SHALL NOT BE LIABLE FOR CHANGES TO ANY FINALE FAMILY NOTATION FILES THAT MAY OCCUR UPON CONVERSION TO THE SOFTWARE.

23. **CAP ON LIABILITY.** YOU AGREE THAT THE LIABILITY OF MAKEMUSIC, ITS AFFILIATES, AGENTS, AND LICENSORS, IF ANY, ARISING OUT OF ANY KIND OF LEGAL CLAIM (WHETHER IN CONTRACT, TORT, OR OTHERWISE) IN ANY WAY CONNECTED WITH THE SMARTMUSIC SERVICE OR THE CONTENT IN THE SMARTMUSIC SERVICE SHALL NOT EXCEED THE AMOUNT YOU PAID TO MAKEMUSIC FOR THE USE OF THE SMARTMUSIC SERVICE IN THE 12 MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM.

24. **Indemnification.** You agree to indemnify, defend and hold harmless MakeMusic and its subsidiaries, affiliates, officers, directors, employees, agents, successors and assigns from and against all losses (including attorneys' fees) incurred by MakeMusic in connection with any claim or threatened claim by a third party if such losses arise out of or relate to any allegation that would constitute a breach by you of any representation, warranty, covenant or obligation under this Agreement.

25. **Entire Agreement.** This Agreement, as well as the MakeMusic Privacy Policy and any subscription terms provided to you at the time of enrollment, make up the complete and exclusive agreement between you and MakeMusic relating to the SmartMusic service.

26. **Governing Law.** This Agreement, your rights and obligations, and all actions contemplated by this Agreement shall be governed by the laws of the United States of America and the State of Colorado, as if the Agreement was a contract wholly entered into and wholly performed within the State of Colorado. Any disputes arising out of this Agreement shall be venued in the state or federal courts sitting in the State of Colorado.

27. **Assignment.** This Agreement is personal to you. You may not assign your rights or obligations to anyone.

28. **Severability.** If any provision in this Agreement is invalid or unenforceable under applicable law, the remaining provisions will continue in full force and effect.

29. **CONSENT TO RECEIVE ELECTRONIC NOTICES.** By clicking to agree to the SmartMusic® 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 e-mail 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.

30. **Contact Us / Notices.** If you have questions or comments about this Agreement, please contact MakeMusic directly:

- Visit us on-line at http://www.makemusic.com/contact-us
- Email us at team@makemusic.com,
- Call us Toll Free (for the U.S.A.): 1-800-843-2066

- Send us a letter addressed by First Class Postage Prepaid U.S. Mail or overnight courier to the following address:
    - Customer Success
      MakeMusic, Inc.
      7007 Winchester Circle, Suite 140
      Boulder, CO 80301
      USA

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