

## SMARTMUSIC® END USER LICENSE & SUBSCRIBER AGREEMENT

LAST UPDATED ON DECEMBER 6th, 2018.

**THESE SMARTMUSIC® TERMS OF SERVICE ARE LEGALLY BINDING. IF YOU ACCESS OR USE THE SMARTMUSIC SERVICES 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 SERVICES.**

This SmartMusic® End User License & Subscriber Agreement (the "Agreement") governs the terms of use of the SmartMusic® music education Services and all related features/Services (the "SmartMusic Services" or "Services"). This Agreement becomes effective when you acknowledge your acceptance of the terms during registration, or when you otherwise access or use any part of the SmartMusic Services.

1. **Definition.** In the context of this Agreement, "SmartMusic" refers to the SmartMusic Services offered to users on the web and any related downloadable applications that allow for online accessibility to the SmartMusic Services. This Agreement does not apply to the SmartMusic downloadable software Program that must be installed on a user's computer.
2. **Background & Purpose of this Agreement.** MakeMusic, Inc. ("MakeMusic" or "we" or "us") provides the SmartMusic Services 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 Services by others. MakeMusic is providing you with access to the SmartMusic Services only if you agree with the terms and conditions of this Agreement.
3. **Revisions.** From time to time, MakeMusic, Inc. may change the terms of this Agreement. If we make a material change to this Agreement, we will post a notice on the login or homepage of the SmartMusic Services. Changes will also appear in this document, which you can access at any time via [www.makemusic.com/terms-conditions](http://www.makemusic.com/terms-conditions).
4. **Service(s) 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 Services.
  - a. **Account Requirements.** An account must be created and verified through SmartMusic in order to access the SmartMusic Services. You are responsible for usage on your account and all associated user accounts under your platform/educational institution. You may not allow more users to access paid content and/or features within SmartMusic than have been paid for during the subscription period.

- b. Computer Requirements. 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 SmartMusic Services.
  - c. Credentials. You are solely responsible for your user credentials of your SmartMusic Services account and any other authorized users on your account.
5. **Ownership Rights & Confidentiality**. MakeMusic and, as applicable, its licensors, own any and all right, title and interest in and to the SmartMusic Services, including any related intellectual property rights. With the exception of user-created content or content uploaded from a third-party, created, modified or otherwise used in connection with the SmartMusic Services, MakeMusic also owns all right to, title to and interest in any output or materials created through the SmartMusic Services. MakeMusic reserves all rights that are not expressly granted herein. The SmartMusic Services are considered confidential and proprietary to MakeMusic, and are provided only to authorized licensees/users.
6. **License Grant**. MakeMusic grants you a non-exclusive, revocable, limited license to access and use the SmartMusic Services solely for the purposes identified in your account registration and/or subscription purchase and/or renewal process. You may access and use content or material from the SmartMusic library solely with the intention of using the SmartMusic Services for its intended music education purposes. If you would like broader rights than those granted in your subscription, contact MakeMusic for further permissions, if applicable.
7. **Trial Access**. If you access or use the SmartMusic 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 purposes.
8. **SMARTMUSIC GRADEBOOK™**. Educator subscribers/users of the SmartMusic Services may use the GRADEBOOK Service. GRADEBOOK may be used in one of two ways. One individual educator may use the GRADEBOOK Service per purchased teacher subscription of the SmartMusic Services for multiple courses. Educators responsible for grading individual students must obtain their own subscription to the SmartMusic Services. Alternatively, a single class that is taught by multiple educators may share access to the GRADEBOOK Service provided all educators have a subscription.
9. **Subscriptions - Free, Basic, Standard and Premium Content 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 teacher subscriptions and/or student subscriptions.

1. Fees and Payments. The fees for your 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 Services 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 Services through an Internet access provider, mobile service provider, or other third party service.
2. Subscription Terms. A subscription allows the user to use the SmartMusic Services only after the user has been authenticated by MakeMusic. Term length and renewal depends on the type of subscription, user, or MakeMusic-specified attributes. For ease of comprehension, the below subscriptions have been defined as either paid for by an educational institution or paid for by an adult.

Subscriptions paid by an educational institution:

- a. "SmartMusic Premium Subscriptions" consist of student Premium subscription(s) which grants student access to Premium content through class assignments and full catalog access outside of class assignments. Premium subscriptions can be purchased by educators or school officials who are using the SmartMusic Services for the purpose of teaching students as part of an educational Platform. Educators may choose a term end date during the purchase process.
- b. "SmartMusic Standard Subscriptions" consist of student Standard subscription(s) which grants student access to Premium content through class assignments; MakeMusic's Free and "Essentials" content may be explored by students outside of class assignments. Standard subscriptions must be purchased by educators or school officials who are using the SmartMusic Services for the purpose of teaching students as part of an educational Platform. Educators may choose a term end date during the purchase process.
- c. "SmartMusic Basic Subscriptions" consist of Student Basic subscription(s) which grants Student access to "Essentials" and Method Book content through class assignments and through individual exploration of the SmartMusic application. Basic subscriptions must be purchased by educators or school officials who are using the SmartMusic Services for the purpose of teaching students as part of an educational SmartMusic Platform. Educators may choose a term end date during the purchase process.

Subscriptions paid by an adult:

- a. "SmartMusic Premium Subscriptions" consist of student Premium subscription(s) which grants student access to the full catalog outside of class assignments.

Premium subscriptions can be purchased by adults not associated with the educational institution owning the SmartMusic platform and who wish to have full SmartMusic content catalog access at the individual account level within an educational platform. Individuals may choose a term end date during the purchase process.

3. **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.

- a. **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.
- b. **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. 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. We will use any personal information we collect from you in accordance with our Privacy Policy, available at <https://www.makemusic.com/privacy>.

11. **Content.** The SmartMusic subscription library is available through the SmartMusic Services 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 Services at any time without notice to its users. CONTENT AVAILABLE TO YOU THROUGH THE SMARTMUSIC SERVICES MAY BE USED ONLY FOR YOUR PERSONAL, NON-COMMERCIAL OR EDUCATIONAL USE. YOU MAY NOT SELL ANY CONTENT OR PROPERTY OBTAINED THROUGH SMARTMUSIC OR YOUR USE OF THE SERVICES OR IPAD APPLICATION.

12. **Noninfringement.** You agree that you will not use the SmartMusic 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 the content received or generated through the SmartMusic Services 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 Services, 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. 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 Services. You represent and warrant that any and all content you create or content you acquire from a third party for use with the SmartMusic Services does not infringe any third-party intellectual property right, including 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 Services. For more information, please visit the DMCA website at <https://www.dmca.com>.

**14. Copyright Owners. Important - Copyright Infringement Notice.** MakeMusic, Inc. respects the intellectual property of others. MakeMusic Inc. reserves the right, in appropriate circumstances and at its discretion, to terminate the accounts of users who infringe the intellectual property rights of others. If you believe that your work has been copied in a way that constitutes copyright infringement, please contact the licensing manager, providing the information requested below. If we find that there is infringement upon your property, we will remove the material in question immediately.

1. an electronic or physical signature of the person authorized to act on behalf of the copyright owner;
2. a description of the copyrighted work that you claim has been infringed;
3. a description of where the material that you claim is infringing is located on our website;
4. your address, telephone number, or email address so we can contact you;
5. a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and
6. a statement by you, made under penalty of perjury, that the information in your notice to us is accurate and you are the copyright owner or authorized to act on the copyright owner's behalf.

By email:  
[licensing@makemusic.com](mailto:licensing@makemusic.com)

By mail:  
Licensing Manager

MakeMusic, Inc.  
7007 Winchester Circle, #140  
Boulder, Colorado 80301  
USA

**14. Use & Disclosure of Data.** MakeMusic and its agents may collect, maintain, process, use and disclose various types of data through the SmartMusic Services. You hereby grant MakeMusic permission, at its option and whenever you are using the SmartMusic Services, to access, review, analyze, gather, and otherwise use and disclose any information relating to your use of the SmartMusic Services (herein, "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>.

**15. Data Policy.** You may be aware that there is a technology called "cookies". For the purposes of this Privacy and Cookies Statement, cookies include similar technologies, for example clear gifs, internet tag technologies, web beacons, and embedded scripts. These are small text files that are transferred from the website to the hard drive of your computer. We use cookies to enable the website to work more efficiently and to provide us with information about your activities on the website.

Our cookies will not allow us to obtain information of a personal nature that will identify you to us, such as your name and address. We will only be aware of such information if you provide the information to us, or you have set the preferences in your browser to provide this information automatically.

Details of the cookies we use are as follows:

- (a) **Strictly Necessary Cookies:** These cookies are essential in order to enable you to move around the website and use its features. Without these cookies the services you have asked for, such as print baskets, cannot be provided.
- (b) **Performance Cookies:** These cookies collect information about how visitors use a website, for instance which pages visitors go to most often. These cookies do not collect information that identifies a visitor. All information these cookies collect is aggregated and therefore anonymous. It is only used to improve how the website works. By using our website, you agree that we can place these types of cookies on your device.
- (c) **Functionality Cookies:** These cookies allow the website to remember choices you make and provide enhanced, more personal features. For instance, these cookies can be used to remember the volume level you prefer to use when watching videos on a website. The information these cookies collect may be anonymized and they cannot track your browsing activity on other websites.

- (d) Targeting cookies: These cookies record your visit to our websites, the pages you have visited and the links you have followed. We will use this information to make our websites and the advertising displayed on it more relevant to your interests. We may also share this information with third parties for this purpose. By using our website or otherwise clicking on the “Accept” button of our cookies notice, you agree that we can place these types of cookies on your device.

By using our website or otherwise clicking on the “Accept” button of our cookies notice, you agree that we can place these types of cookies on your device.

Cookie name	Cookie Category	Purpose
.mmaorg-production	Strictly necessary cookies	<b>A MakeMusic cookie which stores information about a user's connected platform(s). Expires after 365 days.</b>
.mmaccount-production	Functionality cookies	<b>MakeMusic cookie which stores a user's account information (i.e., if they're in a 30 day free trial, their trial start date and trial end date). Expires after 30 days.</b>
.mmauth-production	Strictly necessary cookies	<b>A MakeMusic cookie which stores information about a user's role (i.e., what pages an administrator may access versus a student and what teacher a student is connected to). Expires after 30 days.</b>
.mmcoppa-production	Strictly necessary cookies	<b>A MakeMusic cookie that maintains information about a student's birthday (if under the age of 13 in the United States and Canada) in order to comply with COPPA regulations.</b>
.mmrpsc-production	Functionality cookies	<b>A MakeMusic cookie for a temporary password reset request. Expires after 15 minutes.</b>
_cfduid	Functionality cookies	<b>A CloudFare cookie which identifies trusted web traffic. Expires after 5 years</b>
_zcmid	Functionality cookies	<b>A Zendesk Chat cookie that stores user identity across visits and the user's preference to disable our Live Chat feature. Expires at the end of the session.</b>
mmGdpr	Functionality cookies	<b>A MakeMusic cookie which stores information about a user's acceptance of our cookie policy. Expires after 365 days.</b>
_dc_gtm_UA-2326290-1	Functionality cookies	<b>A Google Tag Manager cookie that sets and reads cookie values.</b>

_fbp	Targeting Cookies	<b>A Facebook cookie that reports a user’s website activity after seeing a MakeMusic Facebook ad.</b>
_ga	Analytics cookies	<b>A Google Analytics cookie used to distinguish users. Expires after 2 years.</b>
_gid	Analytics cookies	<b>A Google Analytics cookie used to distinguish users. Expires after 24 hours.</b>
_gat	Analytics cookies	<b>A Google Analytics cookies used to throttle the request rate. Expires after 1 minute.</b>
ajs_anonymous_id	Analytics cookies	<b>A Segment cookie that counts which counts the number of site visitors. Expires after 1 year.</b>
ajs_group_id	Analytics cookies	<b>A Segment cookie that gathers user activity information. Expires after 1 year.</b>
mp__mixpanel	Analytics cookies	<b>A Mixpanel cookie used to gather analytics about site traffic and how users reached SmartMusic. Expires after 1 year</b>

**16. External Processing.** In order to provide our users with the best experience possible, we use subprocessor tools in order to analyze and improve our products, resolve errors or issues, or manage billing and accounting information.

<b>Subprocessor name</b>	<b>Subprocessor Activities</b>	<b>Subprocessor Country</b>
Atlassian	Cloud-based defect tracking services	Australia
Avalara	Cloud-based tax compliance services	United States
Amazon Web Services, Inc.	Cloud Service Provider	United States
Braintree	Cloud-based payment system services	United States
FullStory	Cloud-based business analytics services	United States
Google, Inc.	Cloud Service Provider	United States
Iterable	Cloud-based messaging, analytic services	United States
Kibana/Elasticsearch	Cloud-based data visualization services	The Netherlands
Mixpanel	Cloud-based business analytics services	United States
Netsuite	Cloud-based accounting services	United States
RabbitMQ	Cloud-based messaging services	United States
Redis	Cloud database services	United States

Responsys	Cloud-based messaging services	United States
Rollbar	Cloud-based error monitoring services	United States
SatisMeter	Cloud-based analytics	Czech Republic
Segment	Cloud-based user analytics services	United States
Slack	Cloud-based messaging services	United States
Zendesk	Cloud-based Customer Support services	United States

**17. 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 will collect certain information about children under the legally required age, ONLY for the purpose of providing our users the opportunity to participate in educational services through the SmartMusic Services and in accordance with applicable law.

The SmartMusic 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 this Agreement for children to create an account by misrepresenting their age. If a student under the age of 13 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 a student's account is not brought into compliance within a reasonable amount of time, we will delete the account and the student's information.

- a. Users in the United States.
  - (i) Verifiable Consent. In the United States, the legally required age is 13. MakeMusic does not knowingly collect any information from children under 13 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.
  - (ii) **Educational Uses.** Schools that contract with MakeMusic to provide the SmartMusic Services for legitimate educational purposes will comply with the obligations in section 19 below. Schools should consider making these same notices available to parents.
- b. Users in Canada.
  - (i) Verifiable Consent. In Canada, the legally required age is [18]. 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.

**(ii) Educational Uses.** Schools that contract with MakeMusic to provide the SmartMusic Services for legitimate educational purposes will comply with the obligations in section 19 below. Schools should consider making these same notices available to parents.

c. Users in Europe.

**(i) Verifiable Consent.** In Europe, we consider the legally required age to be [16]. MakeMusic does not knowingly collect any information from children under [16] without obtaining the consent of such child's parent or guardian.

**(ii) Educational Uses.** Schools that contract with MakeMusic to provide the SmartMusic Services for legitimate educational purposes will comply with the obligations in section 19 below. Schools should consider making these same notices available to parents.

**d. IF YOU ARE A SCHOOL, EDUCATOR OR OTHER PERSON/ENTITY WORKING WITH AN INDIVIDUAL UNDER THE LEGALLY REQUIRED AGE THROUGH THE SMARTMUSIC 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 SMARTMUSIC 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 SMARTMUSIC WEBSITE OR THROUGH IMPORTING A SPREADSHEET OF BULK STUDENT DATA OR BY ANY OTHER MEANS.**

e. **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 the 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 our Privacy Policy at <http://www.makemusic.com/privacy>.

**16. Obligations of Educational Institutions Providing SmartMusic to Students or Requiring use of SmartMusic for educational purposes.**

- a. 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 SmartMusic Services. 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.
- b. Each school or teacher utilizing the SmartMusic Services must create and maintain a roster or accurate listing of the students who are actively participating in the SmartMusic 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 SmartMusic Services.
- c. 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 SmartMusic 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 SmartMusic Services on behalf of the parents.
- d. By using the SmartMusic 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.

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

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

- b. modify, correct, adapt, translate, enhance or otherwise prepare derivative works or improvements of the SmartMusic Services;
- c. rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the SmartMusic 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;
- d. reverse engineer, disassemble, decompile, decode or adapt the SmartMusic Services web applications, or otherwise attempt to derive or gain access to the source code of the SmartMusic Services, in whole or in part;
- e. access or attempt to access the SmartMusic Services 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 Services;
- 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 Services;
- h. use the SmartMusic 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;
- i. use the SmartMusic Services for purposes of: (i) benchmarking or competitive analysis of the SmartMusic 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;
- j. use any data mining or similar data gathering and extraction methods in connection with the SmartMusic Services;
- k. use the SmartMusic Services 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 and any other terms provided by MakeMusic when you access the SmartMusic Services; and (b) you will maintain the confidentiality of the SmartMusic Services.

**19. Termination.**

- a. 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 Services.

b. To have your or your child's account and associated data deleted, you must provide MakeMusic with a written request of account deletion to [team@makemusic.com](mailto:team@makemusic.com). By agreeing to these terms, you agree to allow MakeMusic to maintain your or your child's SmartMusic account before, during and/or after subscription terms and/or during or after an affiliation with an educational institution in accordance with our Privacy Policy.

**20. Mobile Software from the Apple App Store.** THIS PARAGRAPH APPLIES ONLY IF YOU DOWNLOAD THE SMARTMUSIC SERVICES APPLICATION THROUGH THE APPLE APP STORE. MakeMusic provides this Agreement and this Agreement will apply to your use of the SmartMusic Services. You acknowledge and agree that this Agreement is solely between you and MakeMusic, not Apple, and that Apple has no responsibility for the SmartMusic Services or content thereof. You acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the SmartMusic Services. You and MakeMusic acknowledge that Apple is not responsible for addressing any claims by you or any third party relating to the SmartMusic Services or your possession and/or use of the SmartMusic Services, including, but not limited to: (i) product liability claims; (ii) any claim that the SmartMusic 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 SmartMusic Services or your possession and use of the SmartMusic 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 this Agreement. 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.** TO THE MAXIMUM EXTENT ALLOWED BY LAW, MAKEMUSIC MAKES NO WARRANTIES REGARDING THE SMARTMUSIC SERVICES, 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, NON-INFRINGEMENT AND SECURITY. THE SMARTMUSIC SERVICES 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 SERVICES. 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 SMARTMUSIC SERVICES 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 SMARTMUSIC SERVICES, 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 SERVICES OR THE CONTENT IN THE SMARTMUSIC SERVICES SHALL NOT EXCEED THE AMOUNT YOU PAID TO MAKEMUSIC FOR THE USE OF THE SMARTMUSIC SERVICES 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 (“Indemnitees”) from and against all losses (including attorneys’ fees) incurred by such Indemnitees 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 available at <http://www.makemusic.com/privacy> 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 Services.
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. **Electronic Marketing.** 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 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.
30. **Restriction on Users.** 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.
31. **Contact Us / Notices.** If you have questions or comments about this Agreement, please contact MakeMusic directly:

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- Visit us online at <http://www.makemusic.com/contact-us>
- 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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