

# Terms of Use And Conditions

Indie Mic.com is a music-oriented member based website that provides the service of marketing and promotion of any independent musician(s) by way of online video submission regardless of genre of music. These terms and conditions of use (“Terms and Conditions”) apply to: all members future products/ services and companies.

Any usage of service or product of on Indie Mic that does not have a separate legal agreement, the terms and conditions set forth here will be applicable. Indie Mic LLC and/or the Indie Mic companies also may use the terms and conditions with posted guidelines or rules applicable to specific areas of Indie Mic. In addition, Indie Mic LLC and/or the Indie Mic companies may provide other services from time to time that are governed by the terms of service of the respective service partners. Indie Mic LLC reserves the right to amend these terms and conditions at any time.

By using Indie Mic you agree to be bound by these terms and conditions, whether or not you register as a member because the terms and conditions contain legal obligations, please read them carefully.

The terms and conditions contain a variety of provisions that are generally applicable to the products and services and some provisions that apply to particular products and services. You should understand that you will be bound by the complete terms and conditions.

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## **1. ACCEPTANCE**

By using our products and services, you agree without limitation or qualification, to be bound by, and to comply with, these terms and conditions and any other posted guidelines or rules applicable to Indie Mic or any other product or services. All such guidelines and rules are hereby incorporated by reference into the terms and conditions.

## **2. CONDITIONS AND RESTRICTIONS ON USE**

Usage of products and services is subject to compliance with these terms and conditions. You shall be authorized to use the products and services for personal, non-commercial use only. You acknowledge and agree that Indie Mic LLC may terminate your access to Indie Mic's website or to any of the products and services should you fail to comply with the terms and conditions or any other guidelines and rules published by Indie Mic LLC. Any such termination shall be in Indie Mic's sole discretion and may occur without prior notice, or any notice. Indie Mic LLC further reserves the right to terminate any user's access to Indie Mic or to any of the products and services for any conduct that Indie Mic LLC, in its sole discretion, believes is or may be directly or indirectly harmful to other users, to Indie Mic LLC or its subsidiaries, affiliates, or business contractors, or to other third parties, or for any conduct that violates any local, state, federal, or foreign laws or regulations. Indie Mic LLC further reserves the right to terminate any user's access to Indie Mic or to any of the products and services for any reason or for no reason at all, in Indie Mic's sole discretion, without prior notice, or any notice.

In order to use the products and services, users must have access to the World Wide Web and must navigate the Internet to HYPERLINK "http://www.indiemic.com"<http://www.indiemic.com>. Individuals who are less than 18 years of age are not permitted to access such adult content that may be contained on Indie Mic. under the laws of any applicable jurisdiction. Indie Mic LLC does not discriminate on the basis of age, gender, race, ethnicity, nationality, religion, sexual orientation, or any other protected status.

## **3. REGISTRATION AND PRIVACY**

All products and services will require the user to register and provide certain data. In consideration of use of such products and services, in registering and providing such data, you represent and warrant that: (a) the information about yourself is true, accurate, current, and complete (apart from optional items) as required by various Indie Mic LLC registration forms ("Registration Data") and (b) you will maintain and promptly update the registration data to keep it true, accurate, current and complete. If you provide any information that is untrue, inaccurate, not current or incomplete or Indie Mic LLC has a reasonable ground to suspect that such information is untrue, inaccurate, not current or incomplete, Indie Mic LLC has the right to suspend or terminate your account and refuse any and all current or future use of the products and services.

All Indie Mic's LLC registrations become the exclusive property of Indie Mic LLC and the Indie Mic companies. Indie Mic LLC reserves the right to use and reuse all registration and other personally identifiable user information subject to Indie Mic's privacy policy. Members may edit, update, alter or obscure their personally identifiable information at any time by following the instructions located in Indie Mic's privacy policy and on Indie Mic.com

## **4. MEMBER CONDUCT**

You acknowledge and agree that all information, code, data, text, software, music, sound,

photographs, pictures, graphics, video, chat, messages, files, or other materials (“Content”), whether publicly posted or privately transmitted, are the sole responsibility of the person from which such content originated. This means that you, and not Indie Mic, are entirely responsible for all content that you upload, post, email or otherwise transmit through our services. Indie Mic LLC does not control the user or third party content posted through the products and services, and, as such, does not guarantee the accuracy, integrity or quality of such user or third party content. You acknowledge and agree that by using the products and services, you may be exposed to content that may be deemed offensive, indecent or objectionable. You agree to use Indie Mic at your sole risk. Under no circumstances will Indie Mic LLC be liable in any way for any user or third party content, including, but not limited to, for any errors or omissions in any such content, or for any loss or damage of any kind incurred as a result of the use of any such content posted, emailed or otherwise transmitted via the products and services. As a general matter, Indie Mic LLC does not pre-screen user or third party content posted on Indie Mic, although Indie Mic LLC reserves the right to do so. Indie Mic LLC does not guarantee that any screening will be done to your satisfaction or that any screening will be done at all. Indie Mic LLC reserves the right to monitor some, all, or no areas of the products and services for adherence to these terms and conditions or any other rules or guidelines posted by Indie Mic LLC.

The products and services may only be used for the intended purpose for which such products and services are being made available.

#### *Prohibited Conduct*

You agree that you will not use Indie Mic’s products and services to:

Upload, post, email, otherwise transmit, or post links to any content, or select any member or user name or email address, that is unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, pornographic, libelous, invasive of privacy or publicity rights, hateful, or racially, sexually, ethnically or otherwise objectionable.

Upload, post, email, otherwise transmit, or post links to any Content that promotes illegal activity, including without limitation the provision of instructions for illegal activity.

Upload, post, email, otherwise transmit, or post links to any Content that exploits the images of children under 18 years of age, or that discloses personally identifying information belonging to children under 18 years of age.

Harm minors in any other way.

Make any sexual request on behalf of a minor or make any sexual request of a minor.

“Stalk” or otherwise harass another.

Collect or store personally identifying information about other users for commercial or unlawful purposes.

Impersonate any person or entity, including, but not limited to, a Indie Mic LLC official, employee, consultant, or otherwise, or falsely state or otherwise misrepresent your affiliation with a person or entity.

Employ misleading email addresses or falsify information in the header, footer, return path, or any part of any communication, including emails, transmitted through the products and services.

Upload, post, email, otherwise transmit, or post links to any content that you do not have a right to transmit under any law or regulation or under contractual or fiduciary relationships (such as inside information, or proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements).

Upload, post, email, or otherwise transmit, or post links to any content that facilitates hacking.

Upload, post, email, otherwise transmit, or post links to any content that infringes any patent, trademark, service mark, trade secret, copyright or other proprietary rights (“Rights”) of any party, or contributing to inducing or facilitating such infringement. This prohibition shall include, without limitation, the following forms of software piracy:

Making available copyrighted software or other content that has had the copyright protection removed.

Making available serial numbers for software that can be used to illegally validate or register software.

Making available tools that can be used for no purpose other than for “cracking” software or other copyrighted content.

Making available any software files for which the user does not own the copyright or have the legal right to make available.

Upload, post, email, otherwise transmit, or post links to any unsolicited or unauthorized advertising, promotional materials, “junk mail,” “spam,” “chain letters,” “pyramid schemes,” or any other form of solicitation, except in those areas that are designated for such purpose.

Upload, post, email, otherwise transmit, or post links to any material that contains software viruses, worms, trojan horses, time bombs, trap doors or any other computer code, files or programs or repetitive requests for information designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment or to diminish the quality of, interfere with the performance of, or impair the functionality of the products and services of Indie Mic.

Use automated means, including spiders, robots, crawlers, or the like to download data from any Indie Mic LLC network database.

Conduct your own contest.

Upload, post, email, otherwise transmit, or post links to any content regarding any raffle, contest or game requiring a fee by participants.

Modify, publish, transmit, transfer or sell, reproduce, create derivative works from, distribute, perform, link, display or in any way exploit any content from any Indie Mic LLC database, including, without limitation, by incorporating data from any Indie Mic LLC database into any e-mail or “white pages” products or serviced, whether browser-based, based on proprietary client-site applications, web-based, or otherwise.

Sell, distribute, or make any commercial use of data obtained from any Indie Mic LLC database or make any other use of data from any Indie Mic LLC database in a manner which could be expected to offend the person for whom the data is relevant.

Create and maintain a Indie Mic artist site that (i) redirects to another web page or (ii) stores or hosts content for remote loading by other web pages. For example, you cannot create a Indie Mic artist site, post pictures to the Indie Mic artist site, and have other web pages call the Indie Mic artist site to retrieve those pictures.

Create and maintain a Indie Mic artist site that contains hyperlinks to content not permitted on Indie Mic.

Disrupt the normal flow of dialogue in a chat room, cause a screen to “scroll” faster than other users of the products and services are able to type, or otherwise act in a manner that negatively affects other users’ ability to engage in real time exchanges.

Interfere with or disrupt the products and services or servers or networks connected to the products and services, or disobey any requirements, procedures, policies or regulations of networks connected to the products and services.

Intentionally or unintentionally violate any applicable local, state, national or international law, including, but not limited to, regulations promulgated by the U.S. Securities and Exchange Commission, any rules of any national or other securities exchange, including, without limitation, the New York Stock Exchange, the American Stock Exchange or the NASDAQ, and any regulations having the force of law.

Upload, post, email, otherwise transmit, or post links to any material that is false, misleading, or designed to manipulate any equity, security, or other market.

Disobey any Indie Mic LLC employee or representative or interfere with any action by any Indie Mic LLC employee or representative to redress any violation of these terms and conditions.

Access the products and services after your account or access has been terminated by Indie Mic LLC.

Fail to complete any transaction after submitting an order to purchase any goods or services from individual artist sites, subject to the individual artist site's terms and conditions governing such transactions.

Submit any order to purchase goods or services from individual artist sites where you do not intend to complete the transaction.

Purchase any goods or services that you are prohibited from purchasing or possessing by any law applicable to you in your jurisdiction. The responsibility for ensuring compliance with all such laws shall be the user's alone. By submitting an order to purchase goods or services, you represent and warrant that you have the legal right to purchase such goods or services.

Use any software deployed in connection with the products and services to process data as a service to other entities without the express written consent of Indie Mic LLC or the party from whom such software may be licensed.

Decompile, disassemble, modify, translate, adapt, reverse engineer, create derivative works from, or sublicense any software deployed in connection with the products and services.

Upload, post, email, otherwise transmit, or post links to any material, or act in any manner that is offensive to Indie Mic community or the spirit of these terms and conditions.

Advertise, offer for sale, or sell any of the following items:

Any firearms, explosives, or weapons.

Any food that is not packaged or does not comply with all laws governing the sale of food to consumers by commercial merchants.

Any alcoholic beverages.

Any tobacco products for human consumption, including, without limitation, cigarettes and cigars.

Any items that are indecent or obscene, that are hateful or racially, sexually, ethnically or otherwise objectionable, that contain child pornography, that are otherwise pornographic in nature, or are harmful to minors.

Any controlled substances or pharmaceuticals.

Any counterfeit or stolen items.

Any dangerous items.

Any goods or services that do not, in fact, exist.

Any registered or unregistered securities.

Any items that violate or infringe the rights of other parties.

Any items that you do not have the legal right to sell.

Any items where paying Indie Mic LLC any of the required transactional or listing fees would cause Indie Mic LLC or the Indie Mic companies to violate any law.

You acknowledge and agree that Indie Mic LLC and its designees shall have the right (but not the obligation), in their sole discretion, to refuse to publish, remove, or block access to any Content that is available via the products and services at any time, for any reason, or for no reason at all, with or without notice. Without limitation Indie Mic LLC and its designees shall have the right (but not the obligation), in their sole discretion, to refuse to publish, remove, or block access to any content that violates the terms and conditions or is otherwise objectionable as determined by Indie Mic LLC, in its sole discretion. Indie Mic LLC may also terminate access to, or membership in, Indie Mic, or any portion thereof, for violating these terms and conditions. You acknowledge and agree that you must evaluate, and bear all risks associated with, the use of any content, including any reliance on the accuracy, completeness, or usefulness of such content. In this regard, you acknowledge that you may not rely on any content created by or obtained through the use of Indie Mic, including without limitation, information posted on message boards.

You expressly acknowledge and agree that Indie Mic LLC may preserve content and may also disclose content if required to do so by law or in the good faith belief that such preservation or disclosure is reasonably necessary to: (a) comply with legal process; (b) enforce the terms and conditions; (c) respond to claims that any content violates the rights of third-parties; or (d) protect the rights, property, or personal safety of Indie Mic LLC, its users and the public. You acknowledge and agree that the technical processing and transmission of the products and services, including your content, may involve (a) transmissions over various networks; and (b) changes to conform and adapt to technical requirements of connecting networks or devices. You further acknowledge and agree that other data collected and maintained by Indie Mic LLC with regard to its users may be disclosed in accordance with Indie Mic's privacy policy.

#### **5. LIMITED LICENSE TO CONTENT**

Indie Mic LLC claims no ownership interest in any of the content (including, without limitation, master recordings, artwork and photographs) posted by you on Indie Mic LLC and the copyright to all such content shall remain with its original owner.

By posting content on Indie Mic, you warrant and represent that you own the content posted by you or otherwise have the right to grant the license set forth in this section, and that such content does not violate the rights of any third party. You agree to pay all royalties and fees owing to any person by reason of any content you post on Indie Mic.

In order to make it possible for Indie Mic LLC to provide the products and services, you hereby grant Indie Mic LLC a limited, non-exclusive, worldwide, royalty-free license to use, reproduce, modify (for example, re-sizing of photos and/or encoding of audio or video files), transmit, publicly display, publicly perform and distribute any content posted by you on or through Indie Mic, to publish and promote such content in connection with the particular products and services, to publish and promote such content on any other Indie Mic LLC website through links to Indie Mic, and to sublicense such rights solely as necessary to provide the products and services. The license shall terminate at such time as you remove your content from Indie Mic.

#### **6. THIRD PARTY MERCHANDISE SALES**

Indie Mic may contain links to third party websites where members can purchase goods or services from third party merchants ("Merchants"). By submitting an order to purchase any goods or services from Merchants, members are obligated to complete such transactions, subject to the individual Merchant's terms and conditions governing such transactions. Members are prohibited from submitting orders to purchase goods or services where they do not intend to complete such transactions.

By submitting an order to purchase goods or services from an individual Merchant, you acknowledge that you are entering into a transaction with that Merchant, and that Indie Mic, Indie Mic LLC and the Indie Mic companies are not parties to the transaction.

Members are obligated to submit information that is true, accurate, current, and complete. By accepting these terms and conditions, you represent and warrant that all such information submitted by you is true, accurate, current, and complete. Members are also required to maintain and update all such information in order to ensure that it remains true, accurate, current, and complete. Each time you update such information, you represent and warrant that such information is true, accurate, current, and complete.

Members may not purchase goods or services that they are prohibited from purchasing or possessing by any law applicable to them in their jurisdictions. The responsibility for ensuring compliance with all applicable laws shall be the member's alone. By submitting an order to purchase goods or services, you represent and warrant that you have the legal right to purchase and possess such goods or services.

Indie Mic LLC has no partnership, joint venture, employer-employee, or franchisor-franchisee relationship with any Merchant accessible through Indie Mic. Indie Mic LLC cannot confirm that any particular Merchant is who that Merchant claims to be. Nor can Indie Mic LLC confirm the truth or accuracy of any statements made by Merchants or control whether Merchants who post statements on Indie Mic will act in accordance with those statements. Indie Mic LLC will not get involved in any dispute between Members of the service and Merchants who post links on. The Indie Mic ability to include links is provided only as a convenience, and the inclusion of any link by an artist or Member does not imply affiliation, endorsement, or adoption by Indie Mic LLC of the linked site or any information contained therein.

## **7. PURE PLAYER**

The Pure Player Audio Player and any software contained therein (collectively, the "Pure Player Software") are made available to you free of charge subject to the terms and conditions of this license. You may load the Pure Player Software into the temporary storage of your computer each time you use it for the sole purpose of engaging in that use, provided that you do so in accordance with these terms and conditions, and such use does not violate Indie Mic's LLC intellectual property rights. You agree not to attempt to, or assist another person to attempt to, circumvent, tamper with, modify, disassemble, decompile, reverse engineer, derive the source code of, or create derivative works from, the Pure Player Software, and you may not copy, distribute, publicly display, or publicly perform the Pure Player Software except as expressly authorized by these terms and conditions. You agree not to modify the Pure Player Software in any manner or form, or to use modified versions of the Pure Player Software, for any purposes. You may not use the Pure Player Software to engage in or allow others to engage in any illegal activity. You may not claim any sponsorship by, endorsement by, or affiliation with Indie Mic LLC.

By uploading any skins or plug-ins to the Indie Mic Audio Player, you grant to Indie Mic LLC and to Members of the Indie Mic web site the perpetual, world-wide, royalty free license to copy, distribute, publicly display, publicly perform, and create derivative works from such skins or plug-ins. You represent and warrant that all such skins or plug-ins are original works, created by you, which do not infringe any third party intellectual property, proprietary, or other rights.

**AS WITH OTHER PRODUCTS AND SERVICES, THE INDIE MIC SOFTWARE IS SUBJECT TO THE CAPITALIZED LANGUAGE BELOW REGARDING DISCLAIMERS OF WARRANTIES AND LIMITATION OF LIABILITY.**

Indie Mic LLC makes available through Indie Mic certain music files solely for your personal use. All such music files are subject to copyright and/or other intellectual property protections afforded to the owners of such works. PLEASE BE ADVISED THAT THE UNAUTHORIZED REPRODUCTION, DISTRIBUTION, PUBLIC DISPLAY, PUBLIC PERFORMANCE, OR CREATION OF DERIVATIVE WORKS FROM SUCH WORKS IS STRICTLY PROHIBITED Please read the entire terms and conditions as all Indie Mic LLC properties, products and services are subject to these terms and conditions.

## **8. PROFILES**

Members are invited to post content to their profile (“Profile”) subject to the following limitations: (a) Indie Mic LLC may limit the amount of bandwidth dedicated to any account; and (b) Indie Mic LLC reserves the right to display advertising on profile pages. Please consult the Indie Mic privacy policy for special terms as they relate to profiles. Profiles are governed by the entire terms and conditions, including, without limitation, Section 5 (Member Conduct), and you are encouraged to review these terms carefully. Under no circumstances may profiles be used to infringe the copyright or any other right of any person or entity. Indie Mic LLC reserves the right to modify or discontinue the profiles service at any time, and you are encouraged to maintain back-up copies of the content you post on your profile by registering on Indie Mic, you represent and warrant that all registration information you submit is truthful and accurate and that you will maintain the accuracy of such information your membership is for your sole, personal use, and you will not authorize others to use your account, including your profile. You are solely responsible for all content published or displayed through your account, and for your interactions with other Members.

Please choose carefully the information you post on your profile and that you provide to other members. Your Profile may include the following items: telephone numbers, street addresses, URLs or email addresses. Any photographs posted by you may not contain nudity .Please read Section 5 above, Member Conduct, for additional terms and conditions regarding your use of Indie Mic.

The information provided by other users in their profiles may contain inaccurate, inappropriate or offensive material, products or services for which Indie Mic LLC assumes no responsibility or liability.

Indie Mic LLC reserves the right, in its sole discretion, to reject, refuse to post or remove any content posted by you, or to restrict, suspend, or terminate your access to all or any part of the Indie Mic network, including Indie Mic at any time, for any or no reason, with or without prior notice, and without liability.

## **9. DISCLAIMER OF WARRANTIES**

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#### **10. LIMITATION OF LIABILITY**

YOU EXPRESSLY UNDERSTAND AND AGREE THAT UNDER NO CIRCUMSTANCES SHALL INDIE MIC LLC OR ITS LICENSORS BE LIABLE TO ANY USER ON ACCOUNT OF THAT USER'S USE OR MISUSE OF AND RELIANCE ON THE PRODUCTS AND SERVICES. SUCH LIMITATION OF LIABILITY SHALL APPLY TO PREVENT RECOVERY OF DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, AND PUNITIVE DAMAGES (EVEN IF INDIE MIC LLC OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES).

SUCH LIMITATION OF LIABILITY SHALL APPLY WHETHER THE DAMAGES ARISE FROM USE OR MISUSE OF AND RELIANCE ON THE PRODUCTS AND SERVICES, FROM INABILITY TO USE THE PRODUCTS AND SERVICES, OR FROM THE INTERRUPTION, SUSPENSION, OR TERMINATION OF THE PRODUCTS AND SERVICES (INCLUDING SUCH DAMAGES INCURRED BY THIRD PARTIES).

SUCH LIMITATION SHALL ALSO APPLY WITH RESPECT TO DAMAGES INCURRED BY REASON OF OTHER SERVICES OR GOODS RECEIVED THROUGH OR ADVERTISED ON THE PRODUCTS AND SERVICES OR RECEIVED THROUGH ANY LINKS PROVIDED IN THE PRODUCTS AND SERVICES, AS WELL AS BY REASON OF ANY INFORMATION OR ADVICE RECEIVED THROUGH OR ADVERTISED ON THE PRODUCTS AND SERVICES OR RECEIVED THROUGH ANY LINKS PROVIDED IN THE PRODUCTS AND SERVICES. SUCH LIMITATION SHALL APPLY, WITHOUT

LIMITATION, TO THE COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOST PROFITS, OR LOST DATA. SUCH LIMITATION SHALL APPLY WITH RESPECT TO THE PERFORMANCE OR NON-PERFORMANCE OF THE PRODUCTS AND SERVICES OR ANY INFORMATION OR MERCHANDISE THAT APPEARS ON, OR IS LINKED OR RELATED IN ANY WAY TO, INDIE MIC SUCH LIMITATION SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. SUCH LIMITATION SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW.

SUCH LIMITATION OF LIABILITY SHALL ALSO APPLY TO ANY DAMAGE CAUSED BY LOSS OF ACCESS TO, DELETION OF, FAILURE TO STORE, FAILURE TO BACK UP, OR ALTERATION OF PROFILES, ARIST PAGES OR OTHER CONTENT STORED THROUGHOUT INDIE MIC.

UNDER NO CIRCUMSTANCES SHALL INDIE MIC LLC OR ITS LICENSORS BE HELD LIABLE FOR ANY DELAY OR FAILURE IN PERFORMANCE RESULTING DIRECTLY OR INDIRECTLY FROM ACTS OF NATURE, FORCES, OR CAUSES BEYOND ITS REASONABLE CONTROL, INCLUDING, WITHOUT LIMITATION, INTERNET FAILURES, COMPUTER EQUIPMENT FAILURES, TELECOMMUNICATION EQUIPMENT FAILURES, OTHER EQUIPMENT FAILURES, ELECTRICAL POWER FAILURES, STRIKES, LABOR DISPUTES, RIOTS, INSURRECTIONS, CIVIL DISTURBANCES, SHORTAGES OF LABOR OR MATERIALS, FIRES, FLOODS, STORMS, EXPLOSIONS, ACTS OF GOD, WAR, GOVERNMENTAL ACTIONS, ORDERS OF DOMESTIC OR FOREIGN COURTS OR TRIBUNALS, NON-PERFORMANCE OF THIRD PARTIES, OR LOSS OF OR FLUCTUATIONS IN HEAT, LIGHT, OR AIR CONDITIONING.

In some jurisdictions, limitations of liability are not permitted. In such jurisdictions, the foregoing limitation may not apply to you.

#### **11. DISCLAIMER REGARDING THIRD PARTY CONTENT**

Indie Mic offers access to numerous third party web pages and content available over the internet. In overwhelming majority instances, including, but not limited to, sites contained within a directory of links, Indie Mic LLC has no control whatsoever over the content of such sites. In other instances, including, but not limited to, web pages hosted on Indie Mic or provided to Indie Mic by third parties, Indie Mic LLC may set guidelines for what may appear on such web pages and may engage in certain screening, but generally exercises no control over the content of such web pages and is unable to police all such content. Third party content accessible through Indie Mic from such sources is developed by people over whom Indie Mic exercises no control.

Similarly, content hosted by Indie Mic which is posted by third parties, and, with the exception of certain random screening functions, Indie Mic LLC cannot and does not screen such web pages before they are made accessible to other users of Indie Mic. Accordingly, neither Indie Mic LLC nor its licensors assume any responsibility for the content of any site linked to the Indie Mic web site or in any web page hosted for a third party within Indie Mic's web site. In instances where Indie Mic does review the sites that are displayed in directories, indices, and/or references, or where Indie Mic makes available directories, indices, and/or references of sites compiled by third parties, the content located at such sites was developed third parties, and review of such sites by Indie Mic LLC, if any, is narrowly limited to that which is necessary for compiling the particular set of links.

#### **12. STORAGE**

Many features of Indie Mic store information on behalf of Members. Examples include, but are not limited to chat, profiles and postings. Indie Mic LLC reserves the right, in its sole discretion, to limit the amount of storage space available per user or to delete materials stored for an excessive period while the Listener's account has been inactive.

### **13. ADVERTISERS AND CONTENT LINKED TO THE INDIE MIC NETWORK**

Indie Mic LLC and the Indie Mic companies may provide, or third parties may provide, links to other sites or resources located on the World Wide Web by allowing a user to leave Indie Mic to access third-party material or by bringing the third party material into this site via "inverse" hyperlinks and framing technology. Indie Mic LLC and the Indie Mic companies have no control over such sites and resources. You acknowledge and agree that Indie Mic LLC and the Indie Mic companies are not responsible for the availability of such external sites or resources, and do not endorse and are not responsible or liable for any content, advertising, products, or other materials on or available from such sites or resources. You further acknowledge and agree that Indie Mic LLC and the Indie Mic companies shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such content, goods or services available on or through any such site or resource.

Your correspondence or business dealings with, or participation in promotions of, advertisers found on or through the Indie Mic's products and services, including payment and delivery of related goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and such advertiser. You agree that Indie Mic LLC and the Indie Mic companies shall not be responsible or liable for any loss or damage of any sort incurred as the result of any such dealings or as the result of the presence of such advertisers on the product and services.

### **14. NO LICENSE; INTELLECTUAL PROPERTY OF INDIE MIC AND OTHERS**

Except as expressly provided, nothing within any of the products and services shall be construed as conferring any license under any of Indie Mic's or any third party's intellectual property rights, whether by implication, waiver, or otherwise. Without limiting the generality of the foregoing, you acknowledge and agree that certain Content available through and used to operate Indie Mic and the products and services is protected by copyright, trademark, patent, or other proprietary rights of Indie Mic LLC and its affiliates, licensors (including, without limitation, Artists), and service providers. Except as expressly provided to the contrary, you agree not to modify, alter, or deface any of the trademarks, service marks, or other intellectual property made available by Indie Mic LLC in connection with the products and services. You agree not to hold yourself out as in any way sponsored by, affiliated with, or endorsed by Indie Mic LLC, any of Indie Mic LLC's affiliates, or any of Indie Mic LLC's service providers. You agree not to use any of the trademarks or service marks or other content accessible through Indie Mic for any purpose other than the purpose for which such content is made available to users by Indie Mic LLC. You agree not to defame or disparage Indie Mic LLC and the Indie Mic companies, the trademarks or service marks of Indie Mic LLC, or any aspect of the products and services. You agree not to adapt, translate, modify, decompile, disassemble, or reverse engineer the products and services or any software or programs used in connection with the products and services or Indie Mic.

### **15. LINKING TO INDIE MIC; USE OF LOGO**

Indie Mic offers a non-assignable, non-transferable, and non-exclusive license to link to Indie Mic web sites, using Indie Mic logos, subject to the following provisions. Indie Mic logos may be placed on a Web site for the sole purpose of creating a link to Indie Mic and allowing users of

your site to access the products and services on Indie Mic. Indie Mic logos and may not be used for any other purpose, including, among other purposes, to suggest sponsorship by, or affiliation with, or endorsement by Indie Mic. Indie Mic logos may only be used in accordance with the Indie Mic LLC trademark usage guidelines and instructions .and may only be used in the exact size, shape, colors, design, and configuration as found on such web page. Indie Mic logos may not be altered in any manner. Indie Mic logos must appear by themselves, with reasonable spacing (at least the height of the logo) between each side of the applicable logo and other graphic or textual elements. Indie Mic logos may not be used to disparage Indie Mic , its products or services, or in a manner which, in Indie Mic LLC's reasonable judgment, may diminish or otherwise damage Indie Mic LLC's good will in Indie Mic logos. By using any such Indie Mic LLC network logo, you acknowledge that Indie Mic has exclusive rights to the logo, and that all good will generated through your use of the logo will insure to the benefit of Indie Mic . Indie Mic LLC reserves the right to take action against any use that does not conform to these provisions.

#### **16. INDEMNITY AND RELEASE**

When using the Indie Mic's web site you agree to indemnify Indie Mic LLC the Indie Mic companies, and their officers, employees, and licensors, and hold them harmless from any and all claims and expenses, including attorney's fees, arising from your use of the Indie Mic web site, your use of the products and services, or your submission of ideas and/or related materials to Indie Mic LLC or from any person's use of any account or password you maintain with Indie Mic, regardless of whether such use is authorized by you. By using Indie Mic's products and services, or submitting any ideas and/or related materials to Indie Mic LLC, you are hereby agreeing to release Indie Mic LLC and its, subsidiaries, affiliates, officers, employees, and licensors from any and all claims, demands, debts, obligations, damages (actual or consequential), costs, and expenses of any kind or nature whatsoever, whether known or unknown, suspected or unsuspected, disclosed or undisclosed, that you may have against them arising out of or in any way related to such disputes and/or to the products and services or to any disputes regarding use of ideas and/or related materials submitted to Indie Mic LLC. YOU HEREBY AGREE TO WAIVE ALL LAWS THAT MAY LIMIT THE EFFICACY OF SUCH RELEASES.

#### **17. LIMITATION OF ACTIONS**

You acknowledge and agree that, regardless of any statute or law to the contrary, any claim or cause of action you may have arising out of, or relating to, your use of Indie Mic or the products and services must be filed within one (1) year after such claim or cause of action arises, or forever be barred.

#### **18. COPYRIGHT, TRADEMARK, AND PATENT NOTICES**

All other marks that appear throughout the products and services belong to Indie Mic LLC, the Members featured on Indie Mic, or the respective owners of such marks, and are protected by U.S. and international copyright and trademark laws. Any use of any of the marks appearing throughout the products and services without the express written consent of Indie Mic LLC or the owner of the mark, as appropriate, is strictly prohibited. Indie Mic LLC and the Indie Mic companies may provide, or third parties may provide, links to other sites or resources located on the World Wide Web by allowing a member to leave Indie Mic to access third-party material or by bringing the third party material into this site via "inverse" hyperlinks and framing technology. Indie Mic LLC and the Indie Mic companies have no control over such sites and resources. You acknowledge and agree that Indie Mic LLC and the Indie Mic companies are not

responsible for the availability of such external sites or resources, and do not endorse and are not responsible or liable for any content, advertising, products, or other materials on or available from such sites or resources. You further acknowledge and agree that Indie Mic LLC and the Indie Mic companies shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such content, goods or services available on or through any such site or resource.

Your correspondence or business dealings with, or participation in promotions of, advertisers found on or through the Indie Mic products and services, including payment and delivery of related goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and such advertiser. You agree that Indie Mic LLC and the Indie Mic companies shall not be responsible or liable for any loss or damage of any sort incurred as the result of any such dealings or as the result of the presence of such advertisers on the product and services.

#### **19. INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS**

It is the policy of Indie Mic LLC to respond expeditiously to claims of intellectual property infringement. Indie Mic LLC will promptly process and investigate notices of alleged infringement and will take appropriate actions under the Digital Millennium Copyright Act ("DMCA") and other applicable intellectual property laws. Upon receipt of notices complying or substantially complying with the DMCA, Indie Mic will act expeditiously to remove or disable access to any material claimed to be infringing or claimed to be the subject of infringing activity and will act expeditiously to remove or disable access to any reference or link to material or activity that is claimed to be infringing. Indie Mic will terminate access for Members who are repeat infringers.

Please put "Notice of Infringement" in the subject line of all such notifications. When Indie Mic LLC removes or disables access to any material claimed to be infringing, Indie Mic LLC may attempt to contact the user who has posted such material in order to give that user an opportunity to respond to the notification, although Indie Mic LLC makes no promise to do so. Any and all counter notifications submitted by the user will be furnished to the complaining party. Indie Mic LLC will give the complaining party an opportunity to seek judicial relief in accordance with the DMCA before Indie Mic LLC replaces or restores access to any material as a result of any counter notification.

#### **20. ARBITRATION, GOVERNING LAW AND FORUM FOR DISPUTES**

Unless expressly stated to the contrary elsewhere within the products and services, all legal issues arising from or related to the use of the products and services shall be construed in accordance with, and all questions with respect thereto shall be determined by, the laws of the Commonwealth of applicable to contracts entered into and wholly to be performed within said state. Any controversy or claim arising out of or relating to these terms and conditions or any user's use of the products and services shall be settled by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. Any such controversy or claim shall be arbitrated on an individual basis, and shall not be consolidated in any arbitration with any claim or controversy of any other party. The arbitration shall be conducted in, and judgment on the arbitration award may be entered into in any state or federal court in having jurisdiction thereof. Any party seeking temporary or preliminary injunctive relief may do so in any state or federal court having jurisdiction thereof. Except as set forth above, the state and federal courts shall be the exclusive forum and venue to resolve disputes arising out of or relating to these terms and conditions or any user's use of the products and services. By using the

products and services and thereby agreeing to these terms and conditions, users consent to personal jurisdiction and venue in the state and federal courts with respect to all such disputes.

## **21. CHANGES IN TERMS AND CONDITIONS AND CHANGES IN PRODUCTS AND SERVICES**

Indie Mic reserves the right to modify the products and services from time to time, for any reason, and without notice, including the right to terminate the products and services. Indie Mic reserves the right to modify these terms and conditions from time to time, without notice. Please review these terms and conditions from time to time so you will be apprised of any changes.

## **22. MERGER**

These terms and conditions constitute the entire agreement between the parties with respect to the subject matter contained herein and supersede any other agreements, proposals and communications, written or oral, between Indie Mic LLC's representations and you with respect to the subject matter hereof; except that any other terms and conditions located on any individual Indie Mic LLC web site or in connection with the products and services are incorporated herein by reference to the extent they do not conflict with these terms and conditions. To the extent that any other terms and conditions or terms of service conflict with these terms and conditions, those other provisions shall control with respect to the use of the particular web site and any products or services available on or through the web site or the respective product or service at which those other provisions may be found.

## **23. NON-WAIVER AND SEPARABILITY**

Indie Mic LLC's failure to exercise any right or provision of these terms and conditions shall not constitute a waiver of such right or provision. If a court of competent jurisdiction holds any provision of these terms and conditions to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and agree that the other provisions of these terms and conditions remain in full force and effect.

## **24. RELATIONSHIP OF PARTIES**

You acknowledge and agree that you and Indie Mic LLC are independent contractors under these terms and conditions, and nothing herein shall be construed to create a partnership, joint venture, agency, or employment relationship. Neither party pursuant to these terms and conditions has authority to enter into agreements of any kind on behalf of the other and neither party shall be considered the agent of the other.

## **25. NO RESALE, ASSIGNMENT, OR SUBLICENSING**

You agree not to resell, assign, sublicense, otherwise transfer, or delegate your rights or obligations under these terms and conditions without prior express written authorization of Indie Mic LLC.

## **26. SUCCESSORS AND ASSIGNS**

Without in any way limiting the prohibition on your resale, assignment, sublicensing, or other transfer of rights or obligations, these terms and conditions shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, and assigns.

## **27. TERMINATION**

These terms and conditions shall continue in effect for as long as you use the products and services, unless specifically terminated earlier by Indie Mic LLC. All provisions of these terms and conditions which impose obligations continuing in their nature shall survive termination of these terms and conditions.

## **28. COMMUNICATIONS WITH USERS**

You consent to receive communications from Indie Mic LLC concerning your use of the

products and services ("Communications"). The Communications may be those that Indie Mic LLC is required to send to you by law concerning the products and services ("Required Communications"). The Communications may also be those that Indie Mic LLC sends to you for other reasons. You consent to receive Communications electronically. Indie Mic LLC may provide these Communications to you by sending an email to the email address you provided in connection with your account or by posting the Communication on Indie Mic.

**29. SUBMISSIONS OF IDEAS** FOR EXAMPLE, YOU SPECIFICALLY AGREE TO WAIVE THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IS KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

Indie Mic is always improving its products and services and developing new features. If you have ideas regarding improvements or additions to Indie Mic , we would like to hear them -- but any submission will be subject to these terms and conditions. UNDER NO CIRCUMSTANCES SHALL ANY DISCLOSURE OF ANY IDEA OR RELATED MATERIALS TO INDIE MIC BE SUBJECT TO ANY OBLIGATION OF CONFIDENTIALITY OR EXPECTATION OF COMPENSATION. BY SUBMITTING THE IDEA AND/OR ANY RELATED MATERIAL TO Indie Mic LLC YOU ARE WAIVING ANY AND ALL RIGHTS THAT YOU MAY HAVE IN THE IDEA OR ANY RELATED MATERIALS AND ARE REPRESENTING AND WARRANTING TO INDIE MIC LLC THAT THE IDEA AND/OR RELATED MATERIALS ARE WHOLLY ORIGINAL WITH YOU, THAT NO ONE ELSE HAS ANY RIGHTS IN THE IDEA AND/OR MATERIALS AND THAT INDIE MIC IS FREE TO IMPLEMENT THE IDEA AND TO USE THE MATERIALS IF IT SO DESIRES, AS PROVIDED OR AS MODIFIED BY IINDIE MIC LLC , WITHOUT OBTAINING PERMISSION OR LICENSE FROM ANY THIRD PARTY.

**30. EXPORT CONTROLS**

Certain software, and related documentation or technical information, available through Indie Mic is subject to applicable laws and regulations of the United States pertaining to export controls. By using such software or related documentation or technical information, you represent and warrant that you are not located in, or under the control of, or a national or resident of any embargoed country or any country on the U.S. Department of Commerce's Table of Denial Orders. You agree not to export or re-export such software or related documentation or technical information directly or indirectly to any countries that are subject to United States export restrictions.