

## Musicadium Terms and Conditions of Use and Distribution Agreement

**Musicadium Summary:** Welcome to Musicadium. We offer you digital distribution services through the Musicadium Website and the Musicadium Services. We offer to distribute your singles, EPs, albums and related material to various Digital Distribution Outlets and to manage the income received from the Exploitation of that material in accordance with the terms and conditions below. We charge a once-off upload fee for each of your Releases and then charge an annual renewal fee, but apart from those fees, we pay to you all money we receive from the sale of Your Recordings under this Agreement.

**Summary of this Agreement:** Please read this Agreement carefully. It describes the way you may and may not use Musicadium, the way we may use and distribute Your Recordings and the promises we make to you and you make to us about Musicadium and its use. This Agreement also describes, the Musicadium Website and the Musicadium Services and the rules relating to the ownership of any material used in or in association with Musicadium. Among other things, this Agreement also sets out our limitations of liability, the way you or we can terminate this Agreement and the way we will handle complaints and disputes.

**Acceptance of this Agreement:** By clicking “I Agree” below, you (in your personal capacity and/or on behalf of any entity of which you are an officer, employee or agent and which you warrant you are authorised to represent) agree that you have read and understood this Agreement and have entered a legally binding agreement with Musicadium Pty Ltd (ACN 120 745 842) (referred to in this Agreement as “we”, “our” or “us”) for the use of Musicadium. If you do not agree to the terms of this Agreement, please click “I Do Not Agree” and do not use Musicadium.

**Your Age:** If you are under the age of 18, you agree that you have had your parent or guardian explain this Agreement to you and that you understand and agree to the terms of this Agreement.

**Changes to this Agreement:** We may amend, change or modify (including adding to or deleting parts from) this Agreement. We will do our best to notify you of any such changes, but it is your responsibility to regularly review this Agreement. Your continued use of Musicadium, Our Content, the Musicadium Services or the Musicadium Website constitutes your acceptance of any such amendments to this Agreement.

**Collecting Information:** Please note that when you use Musicadium we may collect information about your use of Musicadium and other related information. This is explained in more detail in our Privacy Policy.  
<[http://www.musicadium.com/digital\\_distribution/legals](http://www.musicadium.com/digital_distribution/legals)>

**Capitalised and Other Terms:** Certain terms in this Agreement start with capital letters; unless the context provides otherwise, those terms have the meaning given to them in the final clause of this Agreement under the heading “*Meaning of Capitalised Terms*”. Any terms defined in the *Copyright Act 1968* shall have the same meaning in this Agreement unless otherwise defined or the context indicates otherwise.

### What You May Do With Musicadium

**Licence:** We grant you a licence to use the Musicadium Website, the Musicadium Services and any of Our Content made available to you through the Musicadium Website and to create and use your Profile in accordance with this Agreement. You promise only to use Musicadium for that purpose.

### What You May Not Do With Musicadium

**Sole User:** No other person may use your Profile. If any other person does use your Profile, you shall be responsible for that person's use of your Profile and you shall be deemed to have authorised that person's use and activities.

**No Illegal Conduct:** You promise not to use (or encourage others to use) Musicadium in any illegal manner or for any illegal purpose including in any way that infringes another person's intellectual property rights (such as copyright or trade mark rights). For example, you may not use a third party's artwork, music or sound recording in any material you provide to us, without that third party's authorisation.

### You Retain All Rights in Your Recordings, We Retain All Rights in Musicadium and Our Content

**Our Content:** We retain all rights in Our Content. You acknowledge you obtain no ownership in Our Content.

**Your Recordings:** You retain all rights you have in Your Recordings. You promise that if you use Your Recordings and/or Your Content in connection with Musicadium, your use of Your Recordings or Your Content does not infringe the rights of others and does not breach any laws.

### Your Further Promises To Us

**True Information:** You promise that any information you provide us or our affiliates will be (and will be kept and maintained) accurate, current and complete.

**Use of Musicadium and Profile Security:** You promise that you will be fully and solely responsible for your use of Musicadium and your Profile. You promise to keep your Profile details (including passwords) confidential.

**Liability For Infringements:** You promise that you will be solely liable for any breaches by you of the rights of any other party, including any breach of any intellectual property rights belonging to any third party.

**Compliance with Local Laws:** You are solely responsible for complying with all relevant laws (including tax, criminal, trade, copyright and data-protection laws) that apply to you and your use of Musicadium or any money we pay to you.

**Indemnity:** You agree to fully indemnify and hold us harmless, and upon our request, defend us and our licensees and affiliates (and their respective directors, officers and employees) from and against any and all losses, liabilities, damages, costs or expenses (including reasonable attorneys' fees and costs) concerning any claim against us relating to your use of Musicadium, Your Content and/or Your Recordings. Accordingly, you agree to reimburse us and our licensees and our affiliates on demand (and/or allow us to retain your income received in accordance with this Agreement) for any such claim, cost, loss, damage or expense that is subject to indemnification under this clause and/or any payments made in resolution of any liability. We will promptly notify you of any such claim, and by obtaining, posting and maintaining an adequate bond for our benefit you may assume control of the defence of such claim, provided that we will have the right in all events to participate in the defence thereof.

**Power to Enter Agreement:** You promise that you have the full power and authority to enter this Agreement and make the promises set out in this Agreement.

#### What You Should And Should Not Expect From Us

**Musicadium Modifications and Upgrades:** We may modify or upgrade Musicadium or any software used in connection with Musicadium at any time.

**Operability of Musicadium:** We are not responsible for providing any hardware, further software or application that allows proper access to or use of Musicadium. It is your sole responsibility to upgrade your software and hardware to ensure Musicadium runs on your computer.

**Suspension or Cancellation of Any Part of Musicadium:** We make no promises that Musicadium (including any and all parts of Musicadium) will be available to you at all times. Furthermore, we may suspend or discontinue, whether intentional, unintentional or through negligence, any part of Musicadium temporarily or permanently for any or no reason and the only recourse available to you is that set out in this Agreement.

**Your Confidential Information and Personal Details:** We respect your privacy and shall use our best endeavours to keep your confidential information and your Profile details confidential in accordance with the Privacy Policy [http://www.musicadium.com/digital\\_distribution/legals](http://www.musicadium.com/digital_distribution/legals) However, we assume no responsibility for protection of such information and/or Profile details and the limitations of liability set out in the following paragraphs shall apply to such information and/or Profile details.

**Limited Promises and Liability:** To the maximum extent permitted by law, all express or implied terms, conditions, warranties, statements, assurances and representations in relation to any product or service provided by us, our business and the Musicadium Website are expressly excluded. In particular, we assume no responsibility for (and you agree we will not be liable for) any cost, damage or loss incurred by you as a result of your use of Musicadium including arising from or in relation to any error, action, omission, "bug", interruption, interference, deletion, defect, delay in operation or transmission, communication line failure, theft, destruction or unauthorised access to, or alteration of Musicadium, whether negligent or otherwise.

If any of the exclusions or limitations set out in the preceding paragraph are declared illegal or void or if you claim that there has been a breach of a term, condition, warranty, statement or assurance which cannot be excluded by this Agreement, to the extent permitted by law, our entire liability and your exclusive remedy is limited, in our discretion, to any fee we have charged you for the use of Musicadium and any sums owing to you.

In no event will we (including our agents, employees or contractors) be liable for any direct or indirect or consequential loss (even if we are aware of the possibility of such loss or if such loss was otherwise foreseeable), (including, but not limited to, loss of profits, production, data, opportunity or goodwill; or business interruption) however caused and on any theory of liability, including without limitation, contract or tort (including negligence or otherwise) arising during and/or as a result of the performance or non-performance of this Agreement by us.

#### Distribution and Use of Your Recordings and Your Content

**Distribution of Your Recordings:** Subject to the prior rights of APRA and/or AMCOS, if you provide us with one or more of Your Recordings, you grant us a non-exclusive licence to reproduce, convert, communicate, sell, sublicense, distribute and otherwise Exploit each of Your Recordings by all digital means and media (whether now known or existing in the future) including the right to transmit, perform, distribute, promote and make commercial use of Your Recordings via the internet and via other forms of digital dissemination of music and authorise Digital Distribution Outlets to do the same.

**Digital Distribution Outlet Terms and Conditions:** In order for us to deliver to and authorise Exploitation of Your Recordings by Digital Distribution Outlets, we must agree to the terms and conditions of each Digital Distribution Outlet. It is your sole responsibility to review such terms and conditions and you authorise us to enter such terms and conditions in order to provide our services in accordance with this Agreement.

**Promotion:** You grant us the non-exclusive right to use Your Recordings and/or Your Content (including your name (or your or your group's performing name), the producer's name(s), your photograph(s), likeness(es), biographical material and other related information) for the purpose of marketing and promotion of Your Recordings, our business and Musicadium.

**Removal of Your Recordings:** If Your Content or your conduct is in breach of this Agreement or this Agreement is terminated, we may remove or delete Your Content, your Profile and any material in connection with Your Content or Profile from our systems without your consent and without recourse to you and we may deduct a sum equal to our reasonable costs as a result of your breach from any Net Income due to you under this Agreement.

#### Income Collection, Fees, Payments and Accounting

**Our Right to Collect Income on Your Behalf:** You grant us the right to collect all income from the Exploitation of Your Recordings pursuant to this Agreement.

**Payment to You:** Subject to this Agreement, we shall pay to you 100% of all Net Income from the Exploitation of Your Recordings. Such payments shall be made through your PayPal Account. We shall only make payment to you of such income if:

- (a) the total income due to you is equal to or greater than AUD\$20;
- (b) you have paid to us any sums due to us under this Agreement or otherwise; and
- (c) you request payment of such income by submitting a 'request for payment', which shall be available to you through your Profile once the conditions above have been met in accordance with this Agreement.

**Our Upload Fee:** In consideration for the services provided under this Agreement and depending on the number of Digital Distribution Outlets you select for us to deliver your Release to, you shall pay to us a one-off fee as set out below in respect of each Release:

- (a) For one Digital Distribution Outlet: AUD\$39 plus GST;
- (b) For two Digital Distribution Outlets: AUD\$69 plus GST;
- (c) For three Digital Distribution Outlets: AUD\$79 plus GST;
- (d) For more than three Digital Distribution Outlets: AUD\$99 plus GST.

**Our Renewal Fee:** Upon the expiration of 12 months from the payment of the Upload Fee or previous Renewal Fee in connection with each Release (the "**Renewal Date**"), you shall pay to us a renewal fee of AUD\$20 plus GST.

As the Renewal Fee is calculated quarterly and is payable in arrears, if this Agreement is validly terminated at a time:

- (a) prior to 3 months before the Renewal Date and after 6 months before the Renewal Date, then you shall only be required to pay us 75% of the Renewal Fee (AUD\$15 plus GST);

- (b) prior to 6 months before the Renewal Date and after 9 months before the Renewal Date, then you shall only be required to pay us 50% of the Renewal Fee (AUD\$10 plus GST);
- (c) prior to 9 months before the Renewal Date and after 12 months before the Renewal Date, then you shall only be required to pay us 25% of the Renewal Fee (AUD\$5 plus GST).

For the avoidance of doubt, we may deduct the Renewal Fee (or any part of the Renewal Fee) from any income credited to you in accordance with this Agreement.

**Bar Codes:** Each Release requires a separate Bar Code (or UPC). You can obtain your own Bar Code(s), or, if you want us to do it, then you must pay us AUD\$39 plus GST for each Bar Code. For more information on Bar Codes please see the “*What is a barcode (UPC)?*” tab at:

[http://www.musicadium.com/digital\\_distribution/what\\_else\\_do\\_i\\_need\\_to\\_know](http://www.musicadium.com/digital_distribution/what_else_do_i_need_to_know).

**Accounting:** We shall make available to you through your Profile, an electronic statement of accounts, which shall show any income owing to you, the number of Releases sold, the individual tracks sold, your previous and current invoices and such other related material. The statement of accounts is updated by Musicadium on each occasion we receive income to be credited to you from a Digital Distribution Outlet or after we make a payment to you or after you make a payment to us.

#### How You Or We Can End This Agreement

**Your Termination:** You may terminate this Agreement on the 30th day after giving us written notice of your intention to terminate this Agreement and by ceasing to use any and all parts of Musicadium from that day.

**Our Termination:** We may terminate this Agreement and delete your Profile:

- (a) by notice in writing to you (including via email to the address you have provided), if you breach this Agreement including not having paid to us the Renewal Fee; or
- (b) upon 30 days notice to you;

at which time, all your rights to use Musicadium and Our Content will cease immediately and you must cease all use of Musicadium.

**Rights Upon Termination:** Promptly after termination of this Agreement we will remove your Releases we control from any Digital Distribution Outlets and we will pay to you any outstanding Net Income due to you less any sums owing to us or any fees in dispute. We may also delete your Profile.

#### Miscellaneous

**Entire Agreement:** The terms of this Agreement constitute the entire agreement between you and us with respect to the subject matter of this Agreement. You acknowledge that we do not give any warranties or make any representations other than those expressly set out in this Agreement. If any have been given, you acknowledge they were not relied upon by you in entering this Agreement.

**Arbitration and Mediation:** We shall use our best endeavours to help resolve any complaint you may have of us or Musicadium or any dispute that may arise between you and us. In the event of dispute between you and us concerning any matter arising from this Agreement or the use of Musicadium, you must provide written notice of the dispute to us and any other party to the dispute. Upon receipt of such notice, the parties to the dispute shall use best efforts to resolve the dispute within 28 days through commercial negotiations. If the dispute is not

resolved within 28 days of the provision of such notice, the parties shall submit the dispute to the mediation service of the Arts Law Centre of Australia. If the dispute is not resolved within 28 days of the commencement of the mediation, either party may bring proceedings in relation to the matter. This clause shall not apply to any application for urgent interlocutory relief.

**No Waiver:** The waiver or failure of either party to exercise in any respect any right provided for in this Agreement shall not be deemed a waiver of any further right under this Agreement.

**Unenforceability:** If any provision of this Agreement is held to be invalid or unenforceable for any reason, it shall be severable and shall not affect the remaining provisions of this Agreement.

**Jurisdiction:** The construction, validity and performance of this Agreement shall be governed in all respects by the law of Queensland, and the parties submit unconditionally to the jurisdiction of the Courts of Queensland.

#### Meaning of Capitalised Words

**"Agreement"** means the terms and conditions set out in these 'Website Terms and Conditions and Distribution Agreement'. It should be read in conjunction with the Privacy Policy and expressly excludes the paragraphs above titled 'Musicadium Summary' and 'Summary of Agreement'.

**"Bar Code"** means a 'universal product code' that is required for tracking the sale of products sold through the Digital Distribution Outlets and which must be attached to each Release.

**"Digital Distribution Outlet"** means any third party that we authorise to carry out the marketing, distribution and sale or other use of Your Recordings in accordance with this Agreement. For a list of Digital Distribution Outlets we currently deal with please click here: [http://www.musicadium.com/digital\\_distribution/partners](http://www.musicadium.com/digital_distribution/partners).

**"Exploitation"** or **"Exploit"** means the reproduction, sale, license, communication, editing, marketing and/or distribution of one or more of Your Recordings, including any and all reproductions made and distributed of any and all Your Recordings.

**"Upload Fee"** means our one-off fee set out in the clause above titled *"Our Upload Fee"*.

**"Musicadium"** means any and all of the Musicadium Website, the Musicadium Services and Our Content that we make available to you from the Musicadium Website and includes any related material and services.

**"Musicadium Services"** means the services we provide in connection with the Musicadium Website and as set out in this Agreement.

**"Musicadium Website"** means the set of internet web pages hosted by us and available for access in accordance with this Agreement, and which publish certain content and which are currently located at the URL: [www.musicadium.com](http://www.musicadium.com) and <http://www.blog.musicadium.com>.

**"Net Income"** means all income credited to you from the Digital Distribution Outlets for the Exploitation of Your Recordings in accordance with this Agreement less any Renewal Fee due to us and any further costs, damages or expenses incurred by us on your behalf or as a result of your breach of this Agreement.

**"Our Content"** means any graphics, images, text, video and other intellectual property (including copyright works and trade marks) that we own or control and offer to you through Musicadium specifically for the purposes of use in connection with Musicadium in accordance with this Agreement.

**“PayPal Account”** means your registered account with PayPal, which you will maintain in accordance with PayPal’s policies, and into and from which account all payments required under these Terms and Conditions of Use will be made by you and Musicadium.

**“Privacy Policy”** means the privacy policy located on the Musicadium Website as amended from time to time.

**“Profile”** means the account you set up when registering with us via the Musicadium Website and includes all data, personal details, passwords and associated information.

**“Release”** means each of Your Recordings or each collection of Your Recordings delivered in accordance with the Agreement which is connected to a single Bar Code and which we Exploit or provide to Digital Distribution Outlets in accordance with this Agreement.

**“Renewal Fee”** means the renewal fee set out in the clause above titled *“Our Renewal Fee”*.

**“you”** and **“your”** means the person who clicks “I Agree” in that person’s personal capacity and/or on behalf of any entity or other person(s) you warrant you are authorised to represent.

**“Your Content”** means any graphics, images, text, video and other intellectual property you own or control or are authorised to use, share, reproduce, communicate, upload, distribute, licence and deal with in any way and includes website links you have “posted” on the Musicadium Website.

**“Your Recordings”** means any sound recordings and audio-visual recordings or together with all underlying copyright works and other such subject matter such as videos and films embodied in such recordings and any related material (including copyright material such as artworks) which you have complete authority to use, share, reproduce, communicate, upload, distribute, licence and deal with in any way.