

# MUZOLOGY TERMS OF SERVICE

**Last Updated: October 7, 2020**

## **Welcome to Muzology®**

These Terms of Service (“**Terms**”) apply to your access to and use of the website (“**Website**”) and other online products and services (collectively, the “**Services**”) provided by Muzology, LLC (“**Muzology**,” “**we**” or “**us**”). By clicking “I Agree” or by using our Services, you acknowledge that you agree to these Terms, including Muzology’s [Privacy Policy](#) and the mandatory arbitration provision and class action waiver in Section 15. If you do not agree to these Terms, do not use our Services.

PLEASE READ THESE TERMS CAREFULLY, INCLUDING THE MANDATORY ARBITRATION PROVISION IN SECTION 15, WHICH REQUIRES THAT DISPUTES BE RESOLVED BY FINAL AND BINDING ARBITRATION ON AN INDIVIDUAL BASIS, NOT A CLASS-WIDE OR CONSOLIDATED BASIS. IF YOU DO NOT WISH TO BE SUBJECT TO ARBITRATION, YOU MAY OPT OUT OF THE ARBITRATION PROVISION BY FOLLOWING THE INSTRUCTIONS PROVIDED IN SECTION 15.

### **1. Eligibility**

If you are a parent or legal guardian of a user under the age of 18 (or the age of legal majority), you agree to be fully responsible for the acts or omissions of such user in relation to our Services. If you use our Services on behalf of another person or entity, (a) all references to “you” throughout these Terms will include that person or entity, (b) you represent that you are authorized to accept these Terms on that person’s or entity’s behalf, and (c) in the event you or the person or entity violates these Terms, the person or entity agrees to be responsible to us.

### **2. User Accounts**

You may need to register for an account to access some or all of our Services. If you register for an account, you must provide accurate account information and promptly update this information if it changes. You also must maintain the security of your account and promptly notify us at [info@muzology.com](mailto:info@muzology.com) if you discover or suspect that someone has accessed your account without your permission. If you permit others to use your account credentials, you are responsible for the activities of such users that occur in connection with your account. We reserve the right to reclaim usernames, including on behalf of businesses or individuals that hold legal claim, including trademark rights, in those usernames.

Each account may be provided for a term and price subject to certain renewal, cancellation, and

other terms and conditions specific to the account ("**Account Terms**"). Account Terms are confirmed by e-mail notification to the email address on file for your account. You may also contact [info@muzology.com](mailto:info@muzology.com) to obtain your Account Terms.

Muzology provides a variety of "account types" which may apply depending on the user and the way a Muzology account is created. Muzology reserves the right to provision accounts that do not belong to any of these default account types and/or to provision accounts with different Account Terms regardless of its account type.

### **3. Services**

3.1 Use of Services. Subject to your continuing compliance with the Terms and timely payment of Fees (as applicable), (i) Muzology will use commercially reasonable efforts to provide the Services to you on a non-exclusive, non-transferable, and revocable basis; and, (ii) you may: (1) on a non-exclusive basis, use the Services and remotely access and view the text, graphics, images, photographs, videos, illustrations and other content provided by Muzology through the Services (collectively, "**Muzology Content**") solely through the Services for noncommercial purposes; and (2) download, copy, and internally distribute the Muzology Content that Muzology expressly identifies as downloadable ("**Downloadable Content**") solely for the number of users for which applicable Fees have been paid. All Muzology Content is subject to, and you will comply with, the Terms and any other terms (including any third-party terms) provided or made available by Muzology that are applicable to such Muzology Content. You will only permit the maximum number of users for which applicable fees have been paid to access the Services and obtain Downloadable Content.

3.2 Ownership. The Services, including the Muzology Content contained therein, are owned by Muzology or our licensors and are protected under both United States and foreign laws. Except as explicitly stated in these Terms, all rights in and to the Services and Muzology Content are reserved by us or our licensors. Subject to your compliance with these Terms, you are hereby granted a limited, nonexclusive, nontransferable, non-sublicensable, revocable license to access and use our Services and Muzology Content as set forth herein. Any use of the Services or Muzology Content other than as specifically authorized herein, without our prior written permission, is strictly prohibited, will terminate the license granted herein and violate our intellectual property rights.

### **4. User Content; Feedback**

4.1 User Content. Our Services may allow you and other users to create, post, store and share content, including messages, text, photos, videos, software and other materials (collectively, "**User Content**"). User Content excludes Feedback. Except for the license you grant below, you retain all rights in and to your User Content, as between you and Muzology. You hereby grant Muzology (a) a nonexclusive, royalty-free, worldwide and sublicenseable

license to reproduce, modify, adapt, publish, translate, create derivative works from, distribute, publicly perform and display the User Content(i) to provide the Services to you, (ii) to share your User Content as you direct via any sharing features of the Services, (iii) to provide feedback to you concerning your use of the Services, (iv) as otherwise required by law, regulation or order, and (v) to respond to an emergency and (b) a worldwide, non-exclusive, royalty-free license to (i) use the User Content to create de-identified or aggregate data so long as the resulting data does not constitute personal data under applicable privacy or data protection law (“**Deidentified or Aggregate Data**”); and (ii) use Deidentified or Aggregate Data solely for Muzology’s lawful business purpose provided that such use does not enable a third party to identify that you are the source of such Deidentified or Aggregate Data. You further grant Muzology a worldwide, perpetual, royalty-free license to use, modify, distribute and create derivative works based on such Deidentified or Aggregate Data, including all reports, statistics or analyses created or derived therefrom. You may not create, post, store or share any User Content that violates these Terms or for which you do not have all the rights necessary to grant us the license described above. You represent and warrant that your User Content, and our use of such content as permitted by these Terms, will not violate any rights of or cause injury to any person or entity. Although we have no obligation to screen, edit or monitor User Content, we may delete or remove User Content at any time and for any reason with or without notice. To learn more about parental control protections (such as computer hardware, software or filtering services) that may assist you in limiting a child user’s access to certain content, visit <https://www.fbi.gov/resources/parents>.

4.2 Feedback. You may voluntarily post, submit or otherwise communicate to us any questions, comments, suggestions, ideas, original or creative materials or other information about Muzology or our Services (collectively, with all intellectual property rights, including patents, copyrights, trade secrets, and any other rights therein, “**Feedback**”). User hereby assigns to Muzology all right, title and interest in and to any Feedback and irrevocably waives all rights under all laws (of the United States and all other countries) now existing or hereafter permitted, with respect to any and all purposes for which the Feedback may be used, including: (a) all rights under the United States Copyright Act, or any other country’s copyright law, including any rights provided in 17 U.S.C. §§ 106 and 106A; and (b) any rights of attribution and integrity or any other "moral rights of authors" existing under statutory, common or any other law. You understand that we may use such Feedback for any purpose, commercial or otherwise, without acknowledgment or compensation to you, including to develop, copy, publish, or improve the Feedback in Muzology’s sole discretion. You understand that Muzology may treat Feedback as nonconfidential.

## 5. Prohibited Conduct and Content

5.1 You will not violate any applicable law, contract, intellectual property right or other third-party right or commit a tort, and you are solely responsible for your conduct while using our Services. You will not:

- (i) Engage in any harassing, threatening, intimidating, predatory or stalking conduct;
- (ii) Use or attempt to use another user's account without authorization from that user or Muzology;
- (iii) Impersonate or post on behalf of any person or entity or otherwise misrepresent your affiliation with a person or entity;
- (iv) Sell, resell or commercially use our Services;
- (v) Copy, reproduce, distribute, publicly perform or publicly display all or portions of our Services, except as expressly permitted by us or our licensors;
- (vi) Modify our Services, remove any proprietary rights notices or markings, or otherwise make any derivative works based upon our Services;
- (vii) Use our Service other than for its intended purpose and in any manner that could interfere with, disrupt, negatively affect or inhibit other users from fully enjoying our Services or that could damage, disable, overburden or impair the functioning of our Services in any manner;
- (viii) Reverse engineer any aspect of our Services or do anything that might discover source code or bypass or circumvent measures employed to prevent or limit access to any part of our Services;
- (ix) Use any data mining, robots or similar data gathering or extracting methods designed to scrape or extract data from our Services;
- (x) Develop or use any applications that interact with our Services without our prior written consent;
- (xi) Send, distribute or post spam, unsolicited or bulk commercial electronic communications, chain letters or pyramid schemes;
- (xii) Bypass or ignore instructions contained in our robots.txt file; or
- (xiii) Use our Services for any illegal or unauthorized purpose, or engage in, encourage or promote any activity that violates these Terms.

5.2 You may also post or otherwise share only User Content that is nonconfidential and that you have all necessary rights to disclose. You may not create, post, store or share any User Content that:

(i) Is unlawful, libelous, defamatory, obscene, pornographic, indecent, lewd, suggestive, harassing, threatening, invasive of privacy or publicity rights, abusive, inflammatory or fraudulent;

(ii) Would constitute, encourage or provide instructions for a criminal offense, violate the rights of any party or otherwise create liability or violate any local, state, national or international law;

(iii) May infringe any patent, trademark, trade secret, copyright or other intellectual or proprietary right of any party;

(iv) Contains or depicts any statements, remarks or claims that do not reflect your honest views and experiences;

(v) Impersonates, or misrepresents your affiliation with, any person or entity;

(vi) Contains any unsolicited promotions, political campaigning, advertising or solicitations;

(vii) Contains any private or personal information of a third party without such third party's consent;

(viii) Contains any viruses, corrupted data or other harmful, disruptive or destructive files or content; or

(ix) In our sole judgment, is objectionable, restricts or inhibits any other person from using or enjoying our Services, or may expose Muzology or others to any harm or liability of any type.

5.3 Enforcement of this Section 5 is solely at Muzology's discretion, and failure to enforce this section in some instances does not constitute a waiver of our right to enforce it in other instances. In addition, this Section 5 does not create any private right of action on the part of any third party or any reasonable expectation that the Services will not contain any content that is prohibitive by such rules.

## 6. Fees

6.1 Prices; Billing and Automatic Renewal. You will pay the fees applicable for the Services ("**Fees**") as quoted to you on the Website when you purchase the Services or as set forth in the Account Terms. Muzology reserves the right to charge Fees for the Services at any time even if

Services are initially or periodically provided for free. Muzology may calculate and collect taxes payable by you based on the billing information you provide at the time of purchase. You are responsible for, and will pay, all charges, related to using the purchased Services (e.g., data charges and currency exchange settlements). You will pay the Fees in U.S. Dollars. The subscription period for the Services will be as quoted to you on the Website when you purchase the Services or as set forth in the Account Terms. Monthly subscriptions will automatically renew unless you cancel the subscription at least 3 business days prior to the renewal date. Annual subscriptions will automatically renew unless you cancel the subscription prior to the renewal date. If you wish to downgrade your subscription you must do so prior to the cancellation deadline. Muzology may change its prices at any time; however, the Fee will remain in force for the duration of that subscription period for which you have paid. After that period ends, your use of the Services will be charged at the then-current price. If you don't agree to these price changes, you must stop using the Services and cancel your subscription by sending an email to [info@muzology.com](mailto:info@muzology.com). If you cancel, your access and use of the paid-portion of the Services ends at the end of your current subscription period, and no refunds for previously-paid Services will be issued. **If you do not cancel in accordance with these Terms, your subscription for the Services will automatically renew at the then-current price and for the same subscription period, and Muzology will charge your on-file payment card or method on the first day of the renewal of the subscription period.**

6.2 Payment. If Fees are due, you will provide Muzology with current, complete, accurate and authorized payment method information. You authorize Muzology to charge your provided payment method for the Services you have selected and for any other paid features that you select. Muzology may bill your payment card: (a) in advance; (b) at the time of purchase; (c) shortly after purchase; or (d) if you have elected a subscription service, on a recurring basis. To the extent Muzology has not received your payment, in order to bring your account up to date, Muzology may bill you simultaneously for both past due and current Fees. If you do not cancel your subscription, we may automatically renew your subscription to the Services and charge you for any renewal term. You understand that failure to pay any applicable charges or fees may result in the suspension or cancellation of your access and use of the Services.

## **7. Cancellation of Account**

You may stop using the Services at any time and in your sole discretion, with no need for justification and with no additional charge. Contact us at [info@muzology.com](mailto:info@muzology.com) and request to delete your account and/or disable your subscription. In the event of cancellation, you agree that the you are responsible for all amounts due and payable before the date of cancellation or to the greatest extent permitted by law. Note that the termination or cancellation of an account or a subscription does not delete User Content and you may need to contact us directly to request editing, deletion, or removal of such information. If your account is terminated, your rights to use the portions of the Services requiring an account will cease immediately.

## 8. Trials

Unless we notify you otherwise, if you're participating in any trial period offer, you must cancel the trial Services by the end of the trial period to avoid incurring new charges (as applicable). If you do not cancel your Services and Muzology has notified you that the Services will convert to a paid subscription at the end of the trial period, as applicable, you authorize Muzology to charge your payment method for the Services.

## 9. Trademarks

Muzology® and our logos, our product or service names, our slogans and the look and feel of the Services are trademarks of Muzology and may not be copied, imitated or used, in whole or in part, without our prior written permission. All other trademarks, registered trademarks, product names and company names or logos mentioned on the Services are the property of their respective owners. Reference to any products, services, processes or other information by trade name, trademark, manufacturer, supplier or otherwise does not constitute or imply endorsement, sponsorship or recommendation by us.

## 10. Disclaimers

**Your use of our Services is at your sole risk. Except as otherwise provided in a writing by us, our Services and any content therein are provided “as is” and “as available” without warranties of any kind, either express or implied, including implied warranties of merchantability, fitness for a particular purpose, title, and non-infringement. In addition, Muzology does not represent or warrant that our Services are accurate, complete, reliable, current or error-free. While Muzology attempts to make your use of our Services and any content therein safe, we cannot and do not represent or warrant that our Services or servers are free of viruses or other harmful components. You assume the entire risk as to the quality and performance of the Services.**

## 11. Indemnification

To the fullest extent permitted by applicable law, you will indemnify, defend and hold harmless Muzology and our officers, directors, agents, partners and employees (individually and collectively, the “**Muzology Parties**”) from and against any losses, liabilities, claims, demands, damages, expenses or costs (“**Claims**”) arising out of or related to (a) your User Content or Feedback or (b) your violation of these Terms. You agree to promptly notify Muzology Parties of any third-party Claims, cooperate with Muzology Parties in defending such Claims and pay all fees, costs and expenses associated with defending such Claims (including reasonable attorneys' fees). You also agree that the Muzology Parties will have control of the defense or settlement, at Muzology's sole option, of any third-party Claims.

## **12. Limitation of Liability**

**12.1 To the fullest extent permitted by applicable law, Muzology and the other Muzology Parties will not be liable to you under any theory of liability—whether based in contract, tort, negligence, warranty, or otherwise—for any indirect, consequential, incidental, or special damages or lost profits, even if Muzology or the other Muzology Parties have been advised of the possibility of such damages.**

**12.2 The total liability of Muzology and the other Muzology Parties for any claim arising out of or relating to these Terms or our Services, regardless of the form of the action, is limited to the greater of \$100 or the amount paid by you to use our Services in the 12 months preceding the first event giving rise to any claim.**

**12.3 The limitations set forth in this Section 12 will not limit or exclude liability for personal injury, death or property damage caused by the Services or for the gross negligence, fraud or intentional, willful, malicious or reckless misconduct of Muzology or the other Muzology Parties. Additionally, some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above limitations or exclusions may not apply to you.**

## **13. Release**

To the fullest extent permitted by applicable law, you release Muzology and the other Muzology Parties from responsibility, liability, claims, demands and/or damages (actual and consequential) of every kind and nature, known and unknown (including claims of negligence), arising out of or related to disputes between users and the acts or omissions of third parties. If you are a consumer who resides in California, you hereby waive your rights under California Civil Code § 1542, which provides: “A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

## **14. Transfer and Processing of Data**

For us to provide our Services, you agree that we may process, transfer and store information about you in the United States and other countries, where you may not have the same rights and protections as you do under local law.

## **15. Dispute Resolution and Binding Arbitration**

**Please read the following section carefully because it requires you to arbitrate certain disputes and claims with Muzology and limits the way you can seek relief from us, unless you opt out of arbitration by following the instructions set forth below. No class or representative actions or arbitrations are allowed under this arbitration provision. In**



**addition, arbitration precludes you from suing in court or having a jury trial.**

**15.1 No Representative Actions.** You and Muzology agree that any dispute arising out of or related to these Terms or our Services is personal to you and Muzology and that any dispute will be resolved solely through individual action, and will not be brought as a class arbitration, class action or any other type of representative proceeding.

15.2 Arbitration of Disputes. Except for small claims disputes in which you or Muzology seeks to bring an individual action in small claims court located in the county of your billing address or disputes in which you or Muzology seeks injunctive or other equitable relief for the alleged infringement or misappropriation of intellectual property, you and Muzology waive your rights to a jury trial and to have any other dispute arising out of or related to these Terms or the Services, including claims related to privacy and data security, (collectively, “**Disputes**”) resolved in court. Instead, for any Dispute that you have against Muzology you agree to first contact Muzology and attempt to resolve the claim informally by sending a written notice of your claim (“**Notice**”) to Muzology by email at [info@muzology.com](mailto:info@muzology.com) or by certified mail addressed to Muzology, LLC, Attn: CEO, 1109 17th Ave S., Nashville, Tennessee 37212. The Notice must (a) include your name, residence address, email address, and telephone number; (b) describe the nature and basis of the Dispute; and (c) set forth the specific relief sought. Our notice to you will be similar in form to that described above. If you and Muzology cannot reach an agreement to resolve the Dispute within 30 days after such Notice is received, then either party may submit the Dispute to binding arbitration administered by JAMS or, under the limited circumstances set forth above, in court. All Disputes submitted to JAMS will be resolved through confidential, binding arbitration before one arbitrator. Arbitration proceedings will be held in Nashville, Tennessee unless you are a consumer, in which case you may elect to hold the arbitration in your county of residence. For purposes of this Section 15, a “consumer” means a person using the Services for personal, family or household purposes. You and Muzology agree that Disputes will be held in accordance with the JAMS Streamlined Arbitration Rules and Procedures (“**JAMS Rules**”). The most recent version of the JAMS Rules are available on the JAMS [website](#) and are hereby incorporated by reference. You either acknowledge and agree that you have read and understand the JAMS Rules or waive your opportunity to read the JAMS Rules and waive any claim that the JAMS Rules are unfair or should not apply for any reason.

15.3 You and Muzology agree that these Terms affect interstate commerce and that the enforceability of this Section 15 will be substantively and procedurally governed by the Federal Arbitration Act, 9 U.S.C. § 1, et seq. (the “**FAA**”), to the maximum extent permitted by applicable law. As limited by the FAA, these Terms and the JAMS Rules, the arbitrator will have exclusive authority to make all procedural and substantive decisions regarding any Dispute and to grant any remedy that would otherwise be available in court, including the power to determine the question of arbitrability. The arbitrator may conduct only an individual

arbitration and may not consolidate more than one individual's claims, preside over any type of class or representative proceeding or preside over any proceeding involving more than one individual.

15.4 The arbitration will allow for the discovery or exchange of non-privileged information relevant to the Dispute. The arbitrator, Muzology, and you will maintain the confidentiality of any arbitration proceedings, judgments and awards, including information gathered, prepared and presented for purposes of the arbitration or related to the Dispute(s) therein. The arbitrator will have the authority to make appropriate rulings to safeguard confidentiality, unless the law provides to the contrary. The duty of confidentiality does not apply to the extent that disclosure is necessary to prepare for or conduct the arbitration hearing on the merits, in connection with a court application for a preliminary remedy or in connection with a judicial challenge to an arbitration award or its enforcement, or to the extent that disclosure is otherwise required by law or judicial decision.

15.5 You and Muzology agree that for any arbitration you initiate, you will pay the filing fee (up to a maximum of \$250 if you are a consumer), and Muzology will pay the remaining JAMS fees and costs. For any arbitration initiated by Muzology, Muzology will pay all JAMS fees and costs. You and Muzology agree that the state or federal courts of the State of Tennessee and the United States sitting in Davidson County, Tennessee have exclusive jurisdiction over any appeals and the enforcement of an arbitration award.

**15.6 Any Dispute must be filed within one year after the relevant claim arose; otherwise, the Dispute is permanently barred, which means that you and Muzology will not have the right to assert the claim.**

15.7 You have the right to opt out of binding arbitration within 30 days of the date you first accepted the terms of this Section 15 by sending Muzology written notice to [info@muzology.com](mailto:info@muzology.com). In order to be effective, the opt-out notice must include your full name and address and clearly indicate your intent to opt out of binding arbitration. By opting out of binding arbitration, you are agreeing to resolve Disputes in accordance with Section 16.

15.8 If any portion of this Section 15 is found to be unenforceable or unlawful for any reason, (a) the unenforceable or unlawful provision shall be severed from these Terms; (b) severance of the unenforceable or unlawful provision shall have no impact whatsoever on the remainder of this Section 15 or the parties' ability to compel arbitration of any remaining claims on an individual basis pursuant to this Section 15; and (c) to the extent that any claims must therefore proceed on a class, collective, consolidated, or representative basis, such claims must be litigated in a civil court of competent jurisdiction and not in arbitration, and the parties agree that litigation of those claims shall be stayed pending the outcome of any individual claims in arbitration. Further, if any part of this Section 15 is found to prohibit an individual claim seeking public injunctive relief, that

provision will have no effect to the extent such relief is allowed to be sought out of arbitration, and the remainder of this Section 15 will be enforceable.

## **16. Governing Law; Venue**

Any dispute arising from these Terms and your use of the Services will be governed by and construed and enforced in accordance with the laws of Tennessee, except to the extent preempted by U.S. federal law, without regard to conflict of law rules or principles (whether of Tennessee or any other jurisdiction) that would cause the application of the laws of any other jurisdiction. Any dispute between the parties that is not subject to arbitration or cannot be heard in small claims court will be resolved in the state or federal courts of Tennessee and the United States, respectively, sitting in Nashville, Tennessee.

## **17. Miscellaneous**

17.1 **Modifying and Terminating Services.** We reserve the right to modify our Services or to suspend or stop providing all or portions of our Services at any time. You also have the right to stop using our Services at any time. We are not responsible for any loss or harm related to your inability to access or use our Services. If we discontinue providing all or portions of the Services, we will refund any pre-paid subscription price, pro-rated to the amount of time remaining on your subscription (as applicable) and, where reasonably possible, give you advance notice.

17.2 **Severability.** If any provision or part of a provision of these Terms is unlawful, void or unenforceable, that provision or part of the provision is deemed severable from these Terms and does not affect the validity and enforceability of any remaining provisions.

17.3 **Amendments.** We may make changes to these Terms from time to time. If we make changes, we will provide you with notice of such changes, such as by sending an email, providing a notice through our Services or updating the date at the top of these Terms. Unless we say otherwise in our notice, the amended Terms will be effective immediately, and your continued use of our Services after we provide such notice will confirm your acceptance of the changes. If you do not agree to the amended Terms, you must stop using our Services.

17.4 **Other.** The failure of Muzology to exercise or enforce any right or provision of these Terms will not operate as a waiver of such right or provision. These Terms reflect the entire agreement between the parties relating to the subject matter hereof and supersede all prior agreements, representations, statements and understandings of the parties. The section titles in these Terms are for convenience only and have no legal or contractual effect. Use of the word "including" will be interpreted to mean "including without limitation." Except as otherwise provided herein, these Terms are intended solely for the benefit of the parties and are not intended to confer third-party beneficiary rights upon any other person or entity. You agree that communications and transactions between us may be conducted electronically.