

Subscription Services Agreement

Effective: 01/01/2014 | Last updated: 9/15/2021

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THIS SERVICE.

BY USING THE SERVICE, CLICKING AGREE OR OTHER FORM OF ASSENT, YOU ARE AGREEING TO BE BOUND BY THIS AGREEMENT. IF YOU ARE AGREEING TO THIS AGREEMENT ON BEHALF OF OR FOR THE BENEFIT OF YOUR EMPLOYER OR A THIRD PARTY, THEN YOU REPRESENT AND WARRANT THAT YOU HAVE THE NECESSARY AUTHORITY TO AGREE TO THIS AGREEMENT ON THEIR BEHALF.

This agreement is between Cloud Cover Media, Inc., a California corporation (**CCM**), and the customer agreeing to these terms (**Customer**).

1. **SOFTWARE SERVICE AND HARDWARE DEVICE.** This agreement provides Customer access to and usage of an Internet based software service and a hardware device, if applicable, both to be used in the US and Canada only, as further specified on an order (**Service** and **Device**, respectively).

2. USE OF SERVICE.

- a. **Customer Owned Data.** All data uploaded by Customer remains the property of Customer, as between CCM and Customer (**Customer Data**). Customer grants CCM the right to use the Customer Data solely for purposes of performing under this agreement. During the term of this agreement, CCM will provide Customer Data upon request.
- b. **Access and Usage.** CCM grants to Customer, and its affiliates, subsidiaries, and franchisees, a non-exclusive, non-transferable, non-sublicensable license to use, access, stream, download, and publicly perform the Service (including, for the avoidance of doubt, the music and other content accessible through the Service, subject to the territory restrictions set forth below) during the term of this agreement and according to the terms and conditions of this agreement including, without limitation, the grant of authority in the following sentence (**License**). CCM represents, warrants, and covenants that it has the authority to grant this License from the appropriate US and Canadian Performing Rights Organizations (**PRO**), i.e., ASCAP, BMI, GMR, SOCAN, Re:Sound, and any other third-party with a copyright interest in the music and other content accessible through the Service as distributed in the United States and Canada, including SoundExchange according to CCM's Business Establishment Service (BES) license with the US Copyright Office. For the avoidance of doubt, Customer is and shall be responsible for securing (and paying for) any and all licenses for musical composition and/or sound recording (sometimes called "neighboring") rights, including any such rights as may be associated with or known as performance, communication to the public, reproduction and/or mechanical rights, and any other rights, if applicable, to exploit the music contained in the Service for distribution in any territories other than the United States and Canada. Customer may allow its contractors to access the Service in compliance with the terms of this agreement, which access must be for the sole benefit of Customer. Customer is responsible for the compliance with this agreement by its contractors.
- c. **Customer Responsibilities.** Customer (i) must keep its passwords secure and confidential; (ii) is solely responsible for Customer Data and all activity in its account in the Service; (iii) must use commercially reasonable efforts to prevent unauthorized access to its account, and notify CCM promptly of any such unauthorized access; (iv) must allow CCM to use the processor, bandwidth, and storage hardware on the Device to facilitate the Service; (v) must allow CCM to share aggregate stream data and account and location address information with PRO licensing agencies and SoundExchange as required for reporting; (vi) must allow CCM and its business partners to share aggregate song and promotional message data with corporate

brands and music publishers; and (vii) may use the Service only in accordance with the Service's user guide and applicable law.

- d. **CCM Onboarding, Training, and Support.** CCM will provide onboarding, training, and customer support for the Service under the terms of CCM's Customer Support Policy (**Support**) which is located at <https://cloudmusic.ca/billing/knowledgebase/23/CloudMusic-Customer-Support-Policy.html>
- e. **Security.** CCM uses appropriate physical, technical and administrative procedures to safeguard the Service. CCM uses 256-bit Transport Layer Security (TLS) encryption when collecting or transferring sensitive data such as credit card information.
- f. **Additional Services.** CCM may provide voice-over studio production services, and other services as may be further specified in an order.
- g. **14-Day Trial Version.** If Customer has registered for a trial use of the Service, Customer may access the Service for a 14-day time period (unless extended by CCM in writing). All Customer Data will be deleted after the trial period, unless Customer converts its account to a paid Service.
- h. **Device Purchase Terms.**
 - **Purchase.** Customer may purchase a Device or multiple Devices from CCM under an order solely for use with the Service. Title to the Device (other than the firmware) passes to Customer upon delivery and payment. CCM may increase fees for Devices upon 10 days prior notification to Customer.
 - **Delivery.** Unless agreed otherwise under an order, Customer bears all freight, shipping and handling costs for the delivery of the Device.

3. **NO SERVICE WARRANTY. THE SERVICE IS PROVIDED 'AS IS' WITHOUT WARRANTY.**

4. **DEVICE WARRANTY.** CCM warrants that the Device will be free from material defects in material and workmanship for a period of 12 months from the ship date (**Warranty Period**). This warranty is valid only in the United States and Canada. Customer's sole remedy and CCM's sole liability for a breach of this Device warranty is to repair or replace the Device with a new or factory-recertified Device. No more than three (3) replacements of the Device are allowed. Customer must notify CCM of the breach of warranty within 5 days of the expiration of the Warranty Period, and CCM requires materially defective Devices to be returned to CCM for warranty replacement. THIS WARRANTY DOES NOT APPLY IF THE DEVICE (A) IS USED WITH PRODUCTS THAT ARE NOT COMPATIBLE WITH THIS DEVICE; (B) IS USED WITH AN UNINTERRUPTED POWER SUPPLY (UPS) UNIT OR PLUGGED DIRECTLY INTO A WALL OUTLET WITHOUT SURGE PROTECTION; (C) IS USED FOR ANY UNAPPROVED COMMERCIAL PURPOSE, INCLUDING BUT NOT LIMITED TO STRIP CLUBS, KARAOKE, LIVE MUSIC, AND BY DISC JOCKEYS; (D) IS MODIFIED OR TAMPERED WITH; (E) IS LOADED WITH OR CONFIGURED WITH ANYTHING OTHER THAN THE NATIVE FIRMWARE, CCM SOFTWARE, AND ROYALTY FREE MUSIC; (F) IS DAMAGED BY ACTS OF GOD, MISUSE, ABUSE, NEGLIGENCE, ACCIDENT, WEAR AND TEAR, UNREASONABLE USE, OR BY CAUSES UNRELATED TO DEFECTIVE MATERIALS OR WORKMANSHIP; OR (G) HAS HAD THE SERIAL NUMBER ALTERED, DEFACED OR REMOVED.

5. **WARRANTY DISCLAIMER.** CCM DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE AND FITNESS FOR A PARTICULAR PURPOSE. WHILE CCM TAKES REASONABLE PHYSICAL, TECHNICAL AND

ADMINISTRATIVE MEASURES TO SECURE THE SERVICE, CCM DOES NOT GUARANTEE THAT THE SERVICE CANNOT BE COMPROMISED. CUSTOMER UNDERSTANDS THAT THE SERVICE MAY NOT BE ERROR FREE, AND USE MAY BE INTERRUPTED.

6. **PAYMENT.** Customer must pay all fees as specified on the order, but if not specified then monthly in advance. Customer is responsible for the payment of all sales, use, withholding, VAT and other similar taxes. This agreement contemplates one or more orders for the Service, which orders are governed by the terms of this agreement. If Customer accesses the Service through Sonos, CCM will include the Sonos specific license fee as part of the CCM fee as a pass through to Customer.

7. MUTUAL CONFIDENTIALITY.

a. **Definition of Confidential Information.** Confidential Information means all non-public information disclosed by a party (**Discloser**) to the other party (**Recipient**), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (**Confidential Information**). CCM's Confidential Information includes without limitation the Service, its user interface design and layout, and pricing information, and the Software and Documentation (defined below).

b. **Protection of Confidential Information.** The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Discloser for any purpose outside the scope of this agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees and contractors who need such access for purposes consistent with this agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this agreement.

c. **Exclusions.** Confidential Information *excludes* information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser, (ii) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser, (iii) is received from a third party without breach of any obligation owed to Discloser, or (iv) was independently developed by the Recipient without use or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law or court order, but will provide Discloser with advance notice to seek a protective order.

8. CCM PROPERTY.

a. **Reservation of Rights.** The software, workflow processes, user interface, designs, firmware and Software and Documentation, and other technologies provided by CCM as part of the Service are the proprietary property of CCM and its licensors, and all right, title and interest in and to such items, including all associated intellectual property rights, remain only with CCM. Customer may not remove or modify any proprietary marking or restrictive legends in the Service, firmware or Software and Documentation. CCM reserves all rights unless expressly granted in this agreement.

b. **Restrictions.** Customer *may not* (i) sell, resell, rent, lease, distribute, copy, "rip," record, or rebroadcast the Service, Software and Documentation or firmware or any of their content, or use the Service, Software and Documentation or firmware it in a service provider capacity, or make the Service available over a network (other than CCM's network); (ii) use the Service to store or transmit infringing, unsolicited marketing emails, libelous, or otherwise objectionable, unlawful or tortious material, or to store or transmit material in violation

of third-party rights; (iii) interfere with or disrupt the integrity or performance of the Service; (iv) attempt to gain unauthorized access to or circumvent restrictions in the Service or its related systems or networks; (v) reverse engineer the Service, firmware or the Software and Documentation; (vi) access the Service or use the firmware or Software and Documentation to build a competitive service or product, or copy any feature, function or graphic for competitive purposes; (vii) submit audio messages containing music which has not been licensed directly from a PRO licensing organization; (viii) transfer copies of cached or stored content from the Service from one Device to another, except for amplifiers or in-store speakers; (ix) artificially increase play count; or (x) use “crawling” or other automated means to collect information from the Service or CCM.

- c. **Software and Documentation.** All software provided by CCM as part of the Service, and the Service documentation, sample data, marketing materials, training material and other material provided through the Service or by CCM (**Software and Documentation**) are licensed to Customer as follows: CCM grants Customer a non-exclusive, non-transferable license during the term of this agreement, to use and copy such Software in accordance with the Documentation, solely in connection with the Service.
- d. **Mobile Software.** Some Software licensed above may include mobile software to access the Service via a mobile device (**Mobile Software**). To use the Mobile Software, Customer must have a mobile device that is compatible with the Mobile Software, and have an active subscription to the Service. The Mobile Software is only designed to operate on supported mobile operating systems and devices. Customer may use mobile data in connection with the Mobile Software and may incur additional charges from Customer’s wireless provider for these services. Customer agrees that it is solely responsible for any such charges. Customer acknowledges that CCM may from time to time issue upgraded versions of the Mobile Software, and may automatically electronically upgrade the version of the Mobile Software that Customer is using on its mobile device. Customer consents to such automatic upgrading on its mobile device.
- e. **Mobile Software from Apple App Store.** The following applies to any Mobile Software Customer acquires from the Apple App Store (**App Store Software**): Customer agrees that this agreement is solely between Customer and CCM, not Apple, and that Apple has no responsibility for the App Store Software or content thereof. Customer’s use of the App Store Software must comply with the App Store Terms of Service. Customer acknowledges that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the App Store Software. In the event of any failure of the App Store Software to conform to any applicable warranty, Customer may notify Apple, and Apple will refund the purchase price for the App Store Software to Customer. To the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the App Store Software, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be solely governed by this agreement and any law applicable to CCM as provider of the App Store Software. Customer acknowledges that Apple is not responsible for addressing any claims by Customer or any third party relating to the App Store Software or Customer’s possession and/or use of the App Store Software, including, but not limited to: (i) product liability claims; (ii) any claim that the App Store Software fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation; and all such claims are governed solely by this agreement and any law applicable to CCM as provider of the App Store Software. Customer represents and warrants that (i) he/she/it is not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country; and (ii) he/she/it is not listed on any U.S. Government list of prohibited or restricted parties. Customer must comply with applicable third-party terms of use when using the Software (e.g., the Software is a VoIP application, then the end user must not be in violation of their wireless data service agreement when using the software). Customer acknowledges that, in the event of any third-party claim that the App Store Software or Customer’s possession and use of that App Store Software infringes that

third party's intellectual property rights, CCM, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim to the extent required by this agreement. Customer and CCM acknowledge and agree that Apple, and Apple's subsidiaries, are third-party beneficiaries of this agreement as relates to Customer's license of the App Store Software, and that, upon Customer's acceptance of the terms and conditions of this agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce this agreement as relates to Customer's license of the App Store Software against Customer as a third-party beneficiary thereof.

- f. **Anonymized Data.** During and after the term of this agreement, CCM may use and owns all anonymized data within the Service for purposes of enhancing the Service, aggregated statistical analysis, technical support and other business purposes.

9. TERM AND TERMINATION.

- a. **Term.** This agreement continues until all orders have expired or are terminated for material breach under Section 9(b).
- b. **Term of Orders.** Unless otherwise stated in an order, (i) orders and all subscriptions under them will automatically renew for additional monthly (or annual if the order has an annual term) periods unless a party notifies the other of non-renewal 30 or more days before the renewal date, and (ii) an automatically renewing order will remain unchanged from the prior term except for any pricing increase of which CCM has notified Customer 10 or more days before the renewal date.
- c. **Mutual Termination for Material Breach.** If either party is in material breach of this agreement, the other party may terminate this agreement at the end of a written 30-day notice/cure period, if the breach has not been cured.
- d. **Return of Customer Data.**
- *Within 60-days after termination*, upon request CCM will make the Service available for Customer to export Customer Data as provided in Section 2(a).
 - *After such 60-day period*, CCM has no obligation to maintain the Customer Data and may destroy it.
- e. **Return CCM Property Upon Termination.** Upon termination of this agreement for any reason, Customer must pay CCM for any unpaid amounts, and destroy or return all property of CCM. Upon CCM's request, Customer will confirm in writing its compliance with this destruction or return requirement. Additionally, in the event that Customer has financed the purchase of the Device, and this agreement is terminated by either party prior to Customer's full payment to CCM for the Device, Customer must pay all fees owed on the Device to CCM upon such termination. No refund or credits are provided for any Device fees upon termination.
- f. **Suspension for Violations of Law.** CCM may temporarily suspend the Service or remove the applicable Customer Data, or both, if it in good faith believes that, as part of using the Service, Customer has breached this agreement or violated a law. CCM will attempt to contact Customer in advance.
- g. **Suspension for Non-Payment.** CCM may temporarily suspend the Service if Customer is more than five (5) days late on any payment due pursuant to an order.

10. LIABILITY LIMIT.

- A. **EXCLUSION OF INDIRECT DAMAGES.** CCM is not liable for any indirect, special, incidental or consequential damages arising out of or related to this agreement (including, without limitation, costs of delay; loss of or unauthorized access to data or information; and lost profits, revenue or anticipated cost savings), even if it knows of the possibility of such damage or loss or if the damage or loss is foreseeable.
- b. **TOTAL LIMIT ON LIABILITY.** CCM's total liability arising out of or related to this agreement (whether in contract, tort or otherwise) does not exceed the amount paid by Customer within the 3-month period prior to the event that gave rise to the liability.

11. INDEMNITY.

- a. **Defense of Third-Party Claims.** CCM will defend or settle any third party claim against Customer to the extent that such claim alleges that CCM technology used to provide the Service violates a copyright, patent, trademark or other intellectual property right, (as limited by Section 2(b) above as it relates to copyright rights associated with distribution of the Service outside of the United States and Canada) if Customer, promptly notifies CCM of the claim in writing, cooperates with CCM in the defense, and allows CCM to solely control the defense or settlement of the claim. **Costs.** CCM will pay infringement claim defense costs it incurs in defending Customer, and CCM negotiated settlement amounts, and court awarded damages. **Process.** If such a claim appears likely, then CCM may modify the Service, procure the necessary rights, or replace it with the functional equivalent. If CCM determines that none of these are reasonably available, then CCM may terminate the Service and refund any prepaid and unused fees. **Exclusions.** CCM has no obligation for any claim arising from: CCM's compliance with Customer's specifications; a combination of the Service with other technology or aspects where the infringement would not occur but for the combination; use of Customer Data; or technology or aspects not provided by CCM. THIS SECTION CONTAINS CUSTOMER'S EXCLUSIVE REMEDIES AND CCM'S SOLE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS.
- b. **By Customer.** If a third-party claims against CCM that any part of the Customer Data infringes or violates a law or that party's patent, copyright or other right, Customer will defend CCM against that claim at Customer's expense and pay all costs, damages, and attorney's fees, that a court finally awards or that are included in a settlement approved by Customer, provided that CCM: promptly notifies Customer in writing of the claim; and allows Customer to control, and cooperates with Customer in, the defense and any related settlement.

12. GOVERNING LAW AND FORUM. This agreement is governed by the laws of the State of California (without regard to conflicts of law principles) for any dispute between the parties or relating in any way to the subject matter of this agreement. Any suit or legal proceeding must be exclusively brought in the federal or state courts for Los Angeles County, California, and Customer submits to this personal jurisdiction and venue. Nothing in this agreement prevents either party from seeking injunctive relief in a court of competent jurisdiction. The prevailing party in any litigation is entitled to recover its attorneys' fees and costs from the other party.

13. OTHER TERMS.

- a. **Entire Agreement and Changes.** This agreement and the order constitute the entire agreement between the parties and supersede any prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. Customer is not relying on any representation concerning this subject matter, oral or written, not included in this agreement. No representation, promise or inducement not included in this

agreement is binding. No modification of this agreement is effective unless both parties sign it, or it is modified through an online process provided by CCM. No waiver is effective unless the party waiving the right signs a waiver in writing.

- b. **No Assignment.** Customer may not assign or transfer this agreement or an order to a third party, except that this agreement with all orders may be assigned, without the consent of CCM, as part of a merger, or sale of substantially all the assets, of Customer.
- c. **Independent Contractors.** The parties are independent contractors with respect to each other.
- d. **Enforceability and Force Majeure.** If any term of this agreement is invalid or unenforceable, the other terms remain in effect. Except for the payment of monies, neither party is liable for events beyond its reasonable control, including, without limitation force majeure events.
- e. **Money Damages Insufficient.** Any breach by a party of this agreement or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach.
- f. **No Additional Terms.** CCM rejects additional or conflicting terms of any Customer form-purchasing document.
- g. **Order of Precedence.** If there is an inconsistency between this agreement and an order, the order prevails.
- h. **Survival of Terms.** Any terms that by their nature survive termination of this agreement for a party to assert its rights and receive the protections of this agreement, will survive (including without limitation, the confidentiality terms). The UN Convention on Contracts for the International Sale of Goods does not apply.
- i. **Feedback.** If Customer provides feedback or suggestions about the Service, then CCM (and those it allows to use its technology) may use such information without obligation to Customer.
- j. **Third Party Advertisements and Promotional Materials.** CCM or its third-party business partners may present advertisements or promotions via the Service. Customer's dealings with, or participation in any such third-party promotions are solely between Customer and such third party; and Customer's participation in such promotions is subject to the terms and conditions associated with that advertisement or promotion. CCM has no obligations or responsibilities with respect to such third-party promotions.
- k. **Third Party Websites and Services.** The Service may present links to third-party Websites or third-party services not owned or operated by CCM. CCM has no obligations or responsibilities with respect to these third-party Websites (or any content on the Websites), or these third-party services.

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