

# CUE AUDIO, INC

## TERMS OF USE

Last Modified: November 1, 2021

These Terms of Use are entered into by and between you (either as an individual or on behalf of the legal entity you represent) and CUE Audio, Inc. (“CUE”). The following terms and conditions, together with any documents or other terms and conditions or agreements expressly incorporated by reference (collectively, the “Terms of Use”), constitute a legally binding agreement between you, or any company you represent (collectively, “You,” “you,” or “User”), and CUE. The Terms of Use govern all User access to and use of the [www.cueaudio.com](http://www.cueaudio.com) website and any other website operated by CUE (collectively, the “Website”), any CUE mobile or desktop apps (the “Apps”), and any content, functionality, technology solutions, applications, software and services offered on or through the Website or Apps (the “Services”), whether as a guest or a registered user. For purposes of the Terms of Use, the Website, Apps and Services are collectively referred to as the “CUE Platform”.

### **1. Acceptance of the Terms of Use and Service.**

Please read the Terms of Use carefully before you start to use the CUE Platform. **By using the CUE Platform in any way (including by viewing or browsing the Website, using the Apps, subscribing to Services, or by clicking to accept or agree to the Terms of Use when this option is made available to you, you accept and agree to be bound and abide by these Terms of Use and the CUE Privacy Policy, found at [www.cueaudio.com/privacy](http://www.cueaudio.com/privacy) and incorporated herein by reference.** If you do not want to agree to these Terms of Use or the Privacy Policy, you must not access or use the CUE Platform.

This CUE Platform is offered and available to users who are 13 years of age or older. By using the CUE Platform, you represent and warrant that you are at least 13 years of age. If you do not meet this requirement, you must not access or use the CUE Platform.

### **2. Changes to the Terms of Use.**

CUE may revise and update the Terms of Use from time to time in its sole discretion. All changes are effective immediately when CUE posts them and apply to all access to and use of the CUE Platform thereafter. However, any changes to the dispute resolution provisions set forth in the Governing Law and Jurisdiction section will not apply to any disputes for which the parties have actual notice on or prior to the date the change is posted on the CUE Platform.

Your continued use of the CUE Platform following the posting of revised Terms of Use means that you accept and agree to the changes. You are expected to check this page frequently, so you are aware of any changes, as they are binding on you.

### **3. Accessing the CUE Platform and Account Security.**

CUE reserves the right to withdraw or amend the CUE Platform, and any Services or material provided on the CUE Platform, in CUE’s sole discretion without notice. CUE will not be liable if for any reason all or any part of the CUE Platform is unavailable at any time or for any period. From time to time, CUE may restrict access to some parts of the CUE Platform, or the entire CUE Platform, to users, including registered users.

You are responsible for:

- Making all arrangements necessary for you to have access to the CUE Platform.
- Ensuring that all persons who access the CUE Platform through your internet connection are aware of the Terms of Use and comply with them.

To access the CUE Platform or some of the resources it offers, you may be asked to provide certain registration details or other information. It is a condition of your use of the CUE Platform that all the information you provide on the CUE Platform is correct, current and complete. You agree that all information you provide to register with the CUE Platform, post on the CUE Platform, or

otherwise, including but not limited to through the use of any interactive features on the CUE Platform, is governed by the CUE Privacy Policy, and you consent to all actions CUE takes with respect to your information consistent with the Privacy Policy.

If you choose, or are provided with, a user name, password or any other piece of information as part of CUE security procedures, you must treat such information as confidential, and you must not disclose it to any other person or entity. You also acknowledge that your account is personal to you and agree not to provide any other person with access to the CUE Platform or portions of it using your user name, password or other security information. You will be responsible for all activities that occur under that password. You agree to notify CUE immediately of any unauthorized access to or use of your user name or password or any other breach of security. You also agree to ensure that you exit from your account at the end of each session. You should use particular caution when accessing your account from a public or shared computer so that others are not able to view or record your password or other personal information.

You also represent and warrant that: (i) you will not select or utilize a user name (including an email address used as a user name) of another person with intent to impersonate that person; (ii) you will not select or utilize a user name in which another person has rights, if you do not have that person's authorization to use such name; and (iii) you will not select or utilize a user name that CUE in its sole discretion deems offensive.

CUE has the right to disable any user name, password or other identifier, whether chosen by you or provided by CUE, at any time in its sole discretion for any or no reason, including if, in CUE's opinion, you have violated any provision of the Terms of Use.

#### **4. Intellectual Property Rights.**

The CUE Platform and its entire contents, features and functionality (including but not limited to all information, software, text, displays, images, video and audio, and the design, selection and arrangement thereof), are owned by CUE, its licensors or other providers of such material, and are protected by United States and international copyright, trademark, patent, trade secret and other intellectual property or proprietary rights laws.

The Terms of Use permit you to use the CUE Platform, including all Services, solely for your personal, non-commercial use only. If you wish to make commercial use of the CUE Platform, or any of the materials accessed through the CUE Platform, or wish to make materials public in any way, you must enter into a Services or other license agreement with CUE or otherwise obtain prior express written consent from CUE. Without limiting the generality of the foregoing, the following are types of uses that CUE expressly defines as falling outside of "non-commercial use": the sale or rental of (1) any part of the CUE Platform, including the Services and any communications received via the Services; (2) any derivative works based at least in part on the CUE Platform and Services; and (3) any collective work that includes any part of the CUE Platform, including the Services and any communications received via the Services. You must not reproduce, distribute, modify, create derivative works of, publicly display, publicly perform, republish, download, store or transmit any of the material on the CUE Platform, except as follows:

- Your computer may temporarily store copies of such materials in RAM incidental to your accessing and viewing those materials.
- You may store files that are automatically cached by your Web browser for display enhancement purposes.
- You may print or download one copy of a reasonable number of pages of the Website for your own personal, non-commercial use, or for legitimate business purposes relating to your role as a potential or current supplier or customer of CUE, and not for further reproduction, publication or distribution.

- As for any App, you may download a single copy to your computer or mobile device solely for your own use, subject to the Terms of Use, license or other services agreement for such App.

You must not:

- Modify copies of any materials from the CUE Platform, including the Services.
- Use any illustrations, photographs, video or audio sequences or any graphics separately from the accompanying text.
- Delete or alter any copyright, trademark or other proprietary rights notices from copies of materials from the CUE Platform.

Except as otherwise agreed to between you and CUE, you must not access or use for any commercial purposes any part of the CUE Platform or any Services or materials available through the CUE Platform.

If you wish to make any use of material on the CUE Platform other than that set out in this section, please address your request to: [legal@cueaudio.com](mailto:legal@cueaudio.com).

If you print, copy, modify, download or otherwise use or provide any other person with access to any part of the CUE Platform in breach of the Terms of Use, your right to use the CUE Platform will cease immediately and you must, at CUE's option, return or destroy any copies of the materials you have made. No right, title or interest in or to the CUE Platform or any content on the CUE Platform or provided by the Services is transferred to you, and all rights not expressly granted are reserved by CUE. Any use of the CUE Platform not expressly permitted by the Terms of Use is a breach of the Terms of Use and may violate copyright, trademark and other laws.

## **5. Trademarks.**

The CUE name, CUE logos, and all related names, logos, product and service names, designs and slogans, are trademarks of CUE or its affiliates or licensors. You must not use such marks without the prior written permission of CUE. All other names, logos, product and service names, designs and slogans on the CUE Platform are the trademarks of their respective owners.

## **6. Prohibited Uses.**

You may use the CUE Platform, including the Services, only for lawful purposes and in accordance with the Terms of Use. You agree not to use the CUE Platform:

- In any way that violates any applicable federal, state, local or international law or regulation (including, without limitation, any laws regarding the export of data or software to and from the US or other countries).
- For the purpose of exploiting, harming or attempting to exploit or harm minors in any way by exposing them to inappropriate content, asking for personally identifiable information or otherwise.
- To send, knowingly receive, upload, download, use or re-use any material which does not comply with the Content Standards set out in these Terms of Use.
- To transmit, or procure the sending of, any advertising or promotional material, including any "junk mail", "chain letter" or "spam" or any other similar solicitation.
- To impersonate or attempt to impersonate CUE, a CUE employee, another user or any other person or entity (including, without limitation, by using e-mail addresses or screen names associated with any of the foregoing).
- To engage in any other conduct that restricts or inhibits anyone's use or enjoyment of the CUE Platform, or which, as determined by CUE, may harm CUE or users of the CUE Platform or expose them to liability.

Additionally, you agree not to:

- Use the CUE Platform in any manner that could disable, overburden, damage, or impair the site or interfere with any other party's use of the CUE Platform, including their ability to engage in real time activities through the CUE Platform.
- Use any robot, spider or other automatic device, process or means to access the CUE Platform for any purpose, including monitoring or copying any of the material on the CUE Platform.
- Use any manual process to monitor or copy any of the material on the CUE Platform or for any other unauthorized purpose without CUE's prior written consent.
- Use any device, software or routine that interferes with the proper working of the CUE Platform.
- Introduce any viruses, trojan horses, worms, logic bombs or other material which is malicious or technologically harmful.
- Attempt to gain unauthorized access to, interfere with, damage or disrupt any parts of the CUE Platform, the server on which the CUE Platform is stored, or any server, computer or database connected to the CUE Platform.
- Attack the CUE Platform via a denial-of-service attack or a distributed denial-of-service attack.
- Copy, modify or create derivative works of any portion of the CUE Platform, except as expressly permitted by the Terms of Use; Modify, translate, adapt, or otherwise create updates, upgrades, bug fixes, patches, other error corrections, and/or new features ("Updates") or derivative works, whether or not patentable, of the CUE Platform.
- Reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the CUE Platform or any part thereof.
- Remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from the CUE Platform, or any copy thereof.
- Rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the CUE Platform, or any features or functionality of the CUE Platform, to any third party for any reason, including by making the CUE Platform available on a network where it is capable of being accessed by more than one device at any time.
- Remove, disable, circumvent, or otherwise create or implement any workaround to any copy protection, rights management, or security features in or protecting the CUE Platform.
- Access or use any portion of the CUE Platform for purposes of competitive analysis, the development, provision or use of a competing software, service or product or any other purpose that is to the CUE's detriment or commercial disadvantage.
- Otherwise access or use the CUE Platform beyond the scope of the authorization granted under the Terms of Use.
- Otherwise attempt to interfere with the proper working of the CUE Platform.

## **7. User Content.**

The CUE Platform may allow Users to post, submit, publish, display or transmit to other users or other persons content or materials, including images, sound recordings, videos and other images, text and content (collectively, "User Content") on or through the CUE Platform.

All User Content must comply with the Content Standards set out in the Terms of Use.

Except as otherwise agreed, any User Content you post to the CUE Platform will be considered non-confidential and non-proprietary. By providing any User Content on the CUE Platform, you grant CUE and its affiliates and service providers, and each of their and CUE's respective licensees,

successors and assigns the right to use, reproduce, modify, perform, display, distribute and otherwise disclose to third parties any such material for any purpose.

You represent and warrant that:

- You own or control all rights in and to the User Content and have the right to grant the license granted above to CUE and CUE's affiliates and service providers and each of their and CUE's respective licensees, successors and assigns, and otherwise use the User Content relating to your use of the CUE Platform.
- All of your User Content is truthful, accurate, appropriate and complies with applicable law.
- All of your User Content does and will comply with the Terms of Use.

You understand and acknowledge that you are responsible for any User Content you submit or contribute, and you, not CUE, has full responsibility for such content, including its legality, reliability, accuracy and appropriateness.

CUE is not responsible, or liable to any third party, for the content, accuracy and use of any User Content posted by you or any other user of the CUE Platform.

#### **8. Monitoring and Enforcement; Termination.**

CUE has the right to:

- Remove or refuse to post any User Content for any or no reason in its sole discretion. CUE may add, change, discontinue, remove, edit or suspend such User Content at any time for any reason without notice to you, without your permission, and without liability.
- Take any action with respect to any User Content that CUE deems necessary or appropriate in CUE's sole discretion, including if CUE believes that such User Content violates the Terms of Use, including the Content Standards, infringes any intellectual property right or other right of any person or entity, threatens the personal safety of users of the CUE Platform or the public or could create liability for CUE.
- Disclose your identity or other information about you to any third party who claims that material posted by you violates their rights, including their intellectual property rights or their right to privacy.
- Take appropriate legal action, including without limitation, referral to law enforcement, for any illegal or unauthorized use of the CUE Platform.
- Terminate or suspend your access to all or part of the CUE Platform for any or no reason, including without limitation, any violation of these Terms of Use.

Without limiting the foregoing, CUE has the right to fully cooperate with any law enforcement authorities or court order requesting or directing CUE to disclose the identity or other information of anyone posting any materials on or through the CUE Platform. YOU WAIVE AND HOLD HARMLESS CUE AND ITS AFFILIATES, LICENSEES AND SERVICE PROVIDERS FROM ANY CLAIMS RESULTING FROM ANY ACTION TAKEN BY ANY OF THE FOREGOING PARTIES DURING OR AS A RESULT OF ITS INVESTIGATIONS AND FROM ANY ACTIONS TAKEN AS A CONSEQUENCE OF INVESTIGATIONS BY EITHER SUCH PARTIES OR LAW ENFORCEMENT AUTHORITIES.

However, CUE cannot and does not undertake to review all material before it is posted on the CUE Platform and cannot ensure prompt removal of objectionable material after it has been posted. Accordingly, CUE assumes no liability for any action or inaction regarding transmissions, communications or content provided by any user or third party. CUE has no liability or responsibility to anyone for performance or nonperformance of the activities described in this section.

## **9. Content Standards.**

These content standards (“the “Content Standards”) apply to any and all User Content. User Content must in its entirety comply with all applicable federal, state, local and international laws and regulations. Without limiting the foregoing, User Content must not:

- Contain any material which is defamatory, obscene, indecent, abusive, offensive, harassing, violent, hateful, inflammatory or otherwise objectionable.
- Promote sexually explicit or pornographic material, violence, or discrimination based on race, sex, religion, nationality, disability, sexual orientation or age.
- Infringe any patent, trademark, trade secret, copyright or other intellectual property or other rights of any other person.
- Violate the legal rights (including the rights of publicity and privacy) of others or contain any material that could give rise to any civil or criminal liability under applicable laws or regulations or that otherwise may be in conflict with these Terms of Use and CUE’s Privacy Policy.
- Be likely to deceive any person.
- Promote any illegal activity, or advocate, promote or assist any unlawful act.
- Cause annoyance, inconvenience or needless anxiety or be likely to upset, embarrass, alarm or annoy any other person.
- Impersonate any person or misrepresent your identity or affiliation with any person or organization.
- Involve commercial activities or sales, such as contests, sweepstakes and other sales promotions, barter or advertising.
- Give the impression that they emanate from or are endorsed by CUE or any other person or entity, if this is not the case.

## **10. Copyright Infringement.**

If you believe that any User Content of other users violate your copyright, please see CUE’s Copyright Policy set forth below for instructions on sending CUE a notice of copyright infringement. It is the policy of CUE to terminate the user accounts of repeat infringers.

## **11. Reliance on Information Posted.**

The information presented on or through the CUE Platform is made available solely for general information purposes. CUE does not warrant the accuracy, completeness or usefulness of this information. Any reliance you place on such information is strictly at your own risk. CUE disclaims all liability and responsibility arising from any reliance placed on such materials by you or any other visitor to the CUE Platform, or by anyone who may be informed of any of its contents.

The CUE Platform may include content provided by third parties, including materials provided by other users, bloggers and third-party licensors, syndicators, aggregators and/or reporting services. All statements and/or opinions expressed in these materials, and all articles and responses to questions and other content, other than the content provided by CUE, are solely the opinions and the responsibility of the person or entity providing those materials. These materials do not necessarily reflect the opinion of CUE. CUE is not responsible, or liable to you or any third party, for the content or accuracy of any materials provided by any third parties.

## **12. Changes to the CUE Platform.**

CUE may update the CUE Platform from time to time, but its content is not necessarily complete or up-to-date. Any of the material on the CUE Platform may be out of date at any given time, and CUE is under no obligation to update such material. CUE may also modify or delete in their entirety certain features and functionality. You agree that CUE has no obligation to provide any updates or

to continue to provide or enable any particular features or functionality. Based on your device settings, when your device is connected to the internet either:

(a) the CUE Platform will automatically download and install all available CUE Platform updates; or

(b) you may receive notice of or be prompted to download and install available CUE Platform updates.

Users shall promptly download and install all CUE Platform updates and acknowledge and agree that the CUE Platform or portions thereof may not properly operate should you fail to do so. You further agree that all updates will be deemed part of the CUE Platform and be subject to all terms and conditions of the Terms of Use.

### **13. Information About You and Your Visits to and Use of the CUE Platform.**

All information CUE collects via the CUE Platform, including the Services, is subject to CUE's Privacy Policy. By using the CUE Platform, you consent to all actions taken by CUE with respect to your information in compliance with the Privacy Policy.

### **14. Services Agreement and Other Terms and Conditions.**

To the extent you enter into a services agreement with CUE, the services will be governed by the terms of that services agreement and CUE's Terms of Service. Additional terms and conditions may also apply to specific portions, services or features of the CUE Platform. All such additional terms and conditions are hereby incorporated by this reference into these Terms of Use.

### **15. Linking to the CUE Platform and Social Media Features.**

You may link to CUE's homepage at [www.cueaudio.com](http://www.cueaudio.com), provided you do so in a way that is fair and legal and does not damage CUE's reputation or take advantage of it, but you must not establish a link in such a way as to suggest any form of association, approval or endorsement on CUE's part without CUE's express written consent.

The CUE Platform may provide certain social media features that enable you to:

- Link from your own or certain third-party websites to certain content on the CUE Platform.
- Send e-mails or other communications with certain content, or links to certain content, on the CUE Platform.
- Cause limited portions of content on the CUE Platform to be displayed or appear to be displayed on your own or certain third-party websites.

You may use these features solely as they are provided by CUE, and solely with respect to the content they are displayed with and otherwise in accordance with any additional terms and conditions CUE provides with respect to such features. Subject to the foregoing, you must not:

- Establish a link from any website that is not owned by you.
- Cause the CUE Platform or portions of it to be displayed, or appear to be displayed by, for example, framing, deep linking or in-line linking, on any other site.
- Link to any part of the Website other than the homepage.
- Otherwise take any action with respect to the materials on the CUE Platform that is inconsistent with any other provision of the Terms of Use.

The website from which you are linking, or on which you make certain content accessible, must comply in all respects with the Content Standards set out in these Terms of Use.

You agree to cooperate with CUE in causing any unauthorized framing or linking immediately to cease. CUE reserves the right to withdraw linking permission without notice.

CUE may disable all or any social media features and any links at any time without notice in CUE's discretion.

**16. Links from the CUE Platform.**

If the CUE Platform contains links to other sites and resources provided by third parties, these links are provided for your convenience only. This includes links contained in advertisements, including banner advertisements and sponsored links. CUE has no control over the contents of those sites or resources and accepts no responsibility for them or for any loss or damage that may arise from your use of them. If you decide to access any of the third-party websites linked to the CUE Platform, you do so entirely at your own risk and subject to the terms and conditions of use for such websites.

**17. Geographic Restrictions.**

The owner of the CUE Platform, CUE, is based in the United States. CUE makes no claims that the CUE Platform or any of its content is accessible or appropriate outside of the United States. Access to the CUE Platform may not be legal by certain persons or in certain countries. If you access the CUE Platform from outside the United States, you do so on your own initiative and are responsible for compliance with local laws. If you are visiting the CUE Platform or using the Services from another country other than the country in which our servers are located, your communications with us may result in the transfer of information (including your registration or personal information) across international boundaries. By visiting the CUE Platform, or using the Services, and/or communicating electronically with CUE, you consent to such transfers. If you access the CUE Platform from outside the United States, you do so on your own initiative and are responsible for compliance with local laws.

**18. DISCLAIMER OF WARRANTIES.**

YOU UNDERSTAND THAT CUE AND ITS LICENSORS CANNOT AND DO NOT GUARANTEE OR WARRANT THAT FILES AVAILABLE FOR DOWNLOADING FROM THE INTERNET OR THE CUE PLATFORM, INCLUDING THE SERVICES AND APPS, WILL BE FREE OF VIRUSES OR OTHER DESTRUCTIVE CODE. YOU ARE RESPONSIBLE FOR IMPLEMENTING SUFFICIENT PROCEDURES AND CHECKPOINTS TO SATISFY YOUR PARTICULAR REQUIREMENTS FOR ANTI-VIRUS PROTECTION AND ACCURACY OF DATA INPUT AND OUTPUT, AND FOR MAINTAINING A MEANS EXTERNAL TO CUE PLATFORM FOR ANY RECONSTRUCTION OF ANY LOST DATA. CUE WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY A DISTRIBUTED DENIAL-OF-SERVICE ATTACK, VIRUSES OR OTHER TECHNOLOGICALLY HARMFUL MATERIAL THAT MAY INFECT YOUR COMPUTER EQUIPMENT, COMPUTER PROGRAMS, DATA OR OTHER PROPRIETARY MATERIAL DUE TO YOUR USE OF THE CUE PLATFORM OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE CUE PLATFORM OR TO YOUR DOWNLOADING OF ANY MATERIAL POSTED ON IT, OR ON ANY WEBSITE LINKED TO IT.

YOUR USE OF THE CUE PLATFORM, INCLUDING ITS CONTENT AND ANY SERVICES, APPS, OR OTHER ITEMS OBTAINED THROUGH THE CUE PLATFORM, IS AT YOUR OWN RISK. THE CUE PLATFORM, INCLUDING ITS CONTENT, ANY APPS, AND ANY SERVICES, OR ITEMS OBTAINED THROUGH THE CUE PLATFORM, ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. NEITHER CUE NOR ANY PERSON ASSOCIATED WITH CUE MAKES ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE COMPLETENESS, SECURITY, RELIABILITY, QUALITY, ACCURACY, TIMELINESS OR AVAILABILITY OF THE CUE PLATFORM. WITHOUT LIMITING THE FOREGOING, NEITHER CUE NOR ANYONE ASSOCIATED WITH CUE REPRESENTS OR WARRANTS THAT THE CUE PLATFORM, ITS CONTENT, APPS OR ANY SERVICES, OR OTHER ITEMS OBTAINED THROUGH THE CUE PLATFORM WILL BE ACCURATE, RELIABLE, ERROR-FREE OR UNINTERRUPTED, THAT DEFECTS WILL BE CORRECTED, THAT



CUE'S WEBSITE OR THE SERVER THAT MAKES IT AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR THAT THE CUE PLATFORM OR ANY SERVICES, APPS, OR OTHER ITEMS OBTAINED THROUGH THE CUE PLATFORM WILL OTHERWISE MEET YOUR NEEDS OR EXPECTATIONS.

CUE HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR PARTICULAR PURPOSE.

THE FOREGOING DOES NOT AFFECT ANY WARRANTIES WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

YOU ACKNOWLEDGE AND AGREE THAT ANY TRANSMISSION TO AND FROM THE CUE PLATFORM IS NOT CONFIDENTIAL AND YOUR COMMUNICATIONS OR USER CONTENT MAY BE READ OR INTERCEPTED BY OTHERS. YOU FURTHER ACKNOWLEDGE AND AGREE THAT BY SUBMITTING COMMUNICATIONS OR USER CONTENT TO CUE AND BY POSTING INFORMATION ON THE CUE PLATFORM, NO CONFIDENTIAL, FIDUCIARY, CONTRACTUALLY IMPLIED OR OTHER RELATIONSHIP IS CREATED BETWEEN YOU AND CUE OTHER THAN PURSUANT TO THESE TERMS OF USE. YOU FURTHER ACKNOWLEDGE AND AGREE THAT YOU WILL NOT HOLD OR SEEK TO HOLD CUE OR ANY THIRD-PARTY PROVIDER RESPONSIBLE FOR THE CONTENT PROVIDED BY ANY USER.

**19. Limitation on Liability.**

EXCEPT AS OTHERWISE PROVIDED, IN NO EVENT WILL CUE, ITS AFFILIATES OR THEIR LICENSORS, SERVICE PROVIDERS, EMPLOYEES, AGENTS, OFFICERS OR DIRECTORS BE LIABLE FOR DAMAGES OF ANY KIND, UNDER ANY LEGAL THEORY, ARISING OUT OF OR IN CONNECTION WITH YOUR USE, OR INABILITY TO USE, THE CUE PLATFORM, ANY WEBSITES LINKED TO IT, ANY CONTENT OR SERVICES OR APPS AVAILABLE THROUGH THE CUE PLATFORM, OR SUCH OTHER WEBSITES OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE CUE PLATFORM OR SUCH OTHER WEBSITES, INCLUDING ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY, PAIN AND SUFFERING, EMOTIONAL DISTRESS, LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR ANTICIPATED SAVINGS, LOSS OF USE, LOSS OF GOODWILL, LOSS OF DATA, AND WHETHER CAUSED BY TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT OR OTHERWISE, EVEN IF FORESEEABLE.

IF YOU ARE DISSATISFIED WITH THE CUE PLATFORM, YOU DO NOT AGREE WITH ANY PART OF THE TERMS OF USE, OR HAVE ANY OTHER DISPUTE OR CLAIM WITH OR AGAINST CUE, ANY THIRD-PARTY PROVIDER OR ANY USER OF THE CUE PLATFORM, WITH RESPECT TO THESE TERMS OF USE, OR THE CUE PLATFORM, THEN YOUR SOLE AND EXCLUSIVE REMEDY AGAINST CUE IS TO DISCONTINUE USING THE CUE PLATFORM. IN ALL EVENTS, CUE'S TOTAL LIABILITY TO YOU OR ANY THIRD PARTY IN ANY CIRCUMSTANCE ARISING OUT OF OR IN CONNECTION WITH THE CUE PLATFORM, ANY SERVICES, OR THE APPS, IS LIMITED TO THE AMOUNT OF FEES YOU PAY TO CUE IN THE THREE (3) MONTHS PRIOR TO THE ACTION GIVING RISE TO LIABILITY.

THE FOREGOING DOES NOT AFFECT ANY LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

## **20. Indemnification.**

You agree to defend, indemnify and hold harmless CUE, its affiliates, licensors and service providers, and its and their respective officers, directors, employees, contractors, agents, licensors, suppliers, successors and assigns from and against any claims, liabilities, damages, judgments, awards, losses, costs, expenses or fees (including reasonable attorneys' fees) arising out of or relating to your violation of these Terms of Use or your use of the CUE Platform, including, but not limited to, your User Content, any use of the CUE Platform's content, Services, other than as expressly authorized in these Terms of Use or your use of any information obtained from the CUE Platform.

## **21. Governing Law and Jurisdiction.**

All matters relating to the CUE Platform and the Terms of Use and any dispute or claim arising therefrom or related thereto (in each case, including non-contractual disputes or claims), shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction).

Any legal suit, action or proceeding arising out of, or related to, these Terms of Use or the CUE Platform, including the Apps and Services obtained through the CUE Platform, shall be instituted exclusively in the federal courts of the United States or the courts of the State of Texas in each case located in the City and County of Dallas, although CUE retains the right to bring any suit, action or proceeding against you for breach of these Terms of Use in your state or country of residence or any other relevant location. You waive any and all objections to the exercise of jurisdiction over you by such courts and to venue in such courts.

## **22. Arbitration.**

(a) **Scope, Governing Rules.** Any controversy or claim arising out of or relating to the Terms of Use, or the breach thereof, shall be determined by final and binding arbitration administered by the American Arbitration Association (“AAA”) under its Commercial Arbitration Rules and Mediation Procedures (“Commercial Rules”).

(b) **Authority of Tribunal, Judicial Review.** The award rendered by the arbitrator shall be final and non-appealable and binding on the parties and may be entered and enforced in any court having jurisdiction.

(c) **Selection of Tribunal.** There shall be one arbitrator agreed to by the parties within twenty (20) days of receipt by respondent of the request for arbitration or in default thereof appointed by the AAA in accordance with its Commercial Rules.

(d) **Seat of Arbitration.** The seat or place of arbitration shall be Dallas, Texas, USA, and the Parties waive any objection to arbitration taking place in Dallas.

## **23. Limitation on Time to File Claims.**

**ANY CAUSE OF ACTION OR CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING TO THESE TERMS OF USE OR THE CUE PLATFORM MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES, OTHERWISE, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED.**

## **24. Waiver and Severability.**

No waiver by CUE of any term or condition set forth in the Terms of Use shall be deemed a further or continuing waiver of such term or condition or a waiver of any other term or condition, and any failure of CUE to assert a right or provision under the Terms of Use shall not constitute a waiver of such right or provision.

If any provision of the Terms of Use is held by a court or other tribunal of competent jurisdiction to be invalid, illegal or unenforceable for any reason, such provision shall be eliminated or limited

to the minimum extent such that the remaining provisions of the Terms of Use will continue in full force and effect.

**25. Entire Agreement.**

The Terms of Use, Privacy Policy, any other service agreements between You and CUE (including the Terms of Service), and any other documents referenced in the Terms of Use, constitute the sole and entire agreement between you and CUE with respect to the CUE Platform, and supersede all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to the CUE Platform.

**26. Your Comments and Concerns.**

The CUE Platform is operated by CUE Audio, Inc.

All notices of copyright infringement claims should be sent to the copyright agent designated in CUE's Copyright Policy as set forth below in the manner and by the means set forth therein.

All other feedback, comments, requests for technical support and other communications relating to the CUE Platform should be directed to: [support@cueaudio.com](mailto:support@cueaudio.com).

## Copyright Policy

### REPORTING CLAIMS OF COPYRIGHT INFRINGEMENT

CUE takes claims of copyright infringement seriously. CUE will respond to notices of alleged copyright infringement that comply with applicable law. If you believe any materials accessible on or from the CUE Platform infringe your copyright, you may request removal of those materials (or access to them) from the CUE Platform by submitting written notification to CUE's copyright agent designated below. In accordance with the Online Copyright Infringement Liability Limitation Act of the Digital Millennium Copyright Act (17 U.S.C. § 512) ("DMCA"), the written notice (the "DMCA Notice") must include substantially the following:

- Your physical or electronic signature.
- Identification of the copyrighted work you believe to have been infringed or, if the claim involves multiple works on the CUE Platform, a representative list of such works.
- Identification of the material you believe to be infringing in a sufficiently precise manner to allow CUE to locate that material.
- Adequate information by which CUE can contact you (including your name, postal address, telephone number, and, if available, email address).
- A statement that you have a good faith belief that use of the copyrighted material is not authorized by the copyright owner, its agent, or the law.
- A statement that the information in the written notice is accurate.
- A statement, under penalty of perjury, that you are authorized to act on behalf of the copyright owner.

CUE's designated copyright agent to receive DMCA Notices is:

NAME: DMCA Agent  
CUE Audio, Inc.  
ADDRESS: PO Box 2770, Albany, TX 76430  
EMAIL: [dmca@cueaudio.com](mailto:dmca@cueaudio.com)

If you fail to comply with all of the requirements of Section 512(c)(3) of the DMCA, your DMCA Notice may not be effective.

Please be aware that if you knowingly materially misrepresent that material or activity on the Website is infringing your copyright, you may be held liable for damages (including costs and attorneys' fees) under Section 512(f) of the DMCA.

### COUNTER-NOTIFICATION PROCEDURES

If you believe that material you posted on the CUE Platform was removed or access to it was disabled by mistake or misidentification, you may file a counter-notification with CUE (a "Counter-Notice") by submitting written notification to CUE's copyright agent designated above. Pursuant to the DMCA, the Counter-Notice must include substantially the following:

- Your physical or electronic signature.
- An identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access disabled.
- Adequate information by which CUE can contact you (including your name, postal address, telephone number, and, if available, email address).

- A statement under penalty of perjury by you that you have a good faith belief that the material identified above was removed or disabled as a result of a mistake or misidentification of the material to be removed or disabled.
- A statement that you will consent to the jurisdiction of the Federal District Court for the judicial district in which your address is located (or if you reside outside the United States for any judicial district in which the Website may be found) and that you will accept service from the person (or an agent of that person) who provided the Website with the complaint at issue.

The DMCA allows CUE to restore the removed content if the party filing the original DMCA Notice does not file a court action against you within ten business days of receiving the copy of your Counter-Notice.

Please be aware that if you knowingly materially misrepresent that material or activity on the Website was removed or disabled by mistake or misidentification, you may be held liable for damages (including costs and attorneys' fees) under Section 512(f) of the DMCA.

### **REPEAT INFRINGERS**

It is CUE's policy in appropriate circumstances to disable and/or terminate the accounts of users who are repeat infringers.