

Earbuds Mobile Application Terms of Service

Effective Date: March 17, 2020

This Mobile Application Terms of Service (“**Agreement**”) is a binding agreement between you (“**End User**” or “**you**”) and Earbuds, Inc. (“**Earbuds**”, “**we**”, “**us**”, and “**our**”). This Agreement governs your use of the Earbuds mobile application on Android and iOS., (including all related documentation, the “**Application**”). The Application is licensed, not sold, to you. These Terms of Use do not govern your use of the Earbuds website located at EarbudsMusic.com (“**Site**”). The Site is governed by the EarbudsMusic.com Terms of Use.

BY CLICKING THE “AGREE” BUTTON, YOU (A) ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT; (B) REPRESENT THAT YOU ARE OF LEGAL AGE TO ENTER INTO A BINDING AGREEMENT; AND (C) ACCEPT THIS AGREEMENT AND AGREE THAT YOU ARE LEGALLY BOUND BY ITS TERMS. IF YOU DO NOT AGREE TO THESE TERMS, DO NOT USE THE APPLICATION AND DELETE IT FROM YOUR MOBILE DEVICE.

We may revise and update this Agreement from time to time in our sole discretion. Changes are effective immediately when we notify you by sending an email or posting them to the Application and apply to all access to and use of the Application thereafter. However, any changes to the dispute resolution provisions set out in the Governing Law section will not apply to any disputes for which the parties have actual notice on or before the date the change is posted on the Application.

Your continued use of the Application following the posting of revised Agreement means that you accept and agree to the changes. You are expected to check this Agreement from time to time so you are aware of any changes, as they are binding on you.

1. **License Grant.** Subject to the terms of this Agreement, Earbuds grants you a limited, non-exclusive, and nontransferable license to:

- (a) download, install, and use the Application for your personal, non-commercial use on a single mobile device] owned or otherwise controlled by you (“**Mobile Device**”) strictly in accordance with the Application’s documentation; and
- (b) access, stream, download, and use on such Mobile Device the Content and Services (as defined in [Section 7](#)) made available in or otherwise accessible through the Application, strictly in accordance with this Agreement.

2. **License Restrictions.** Licensee shall not:

- (a) copy the Application, except as expressly permitted by this license;
- (b) modify, translate, adapt, or otherwise create derivative works or improvements, whether or not patentable, of the Application;
- (c) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the Application or any part thereof;
- (d) remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from the Application, including any copy thereof;
- (e) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Application, or any features or functionality of the Application, to any third party for any reason;
- (f) remove, disable, circumvent, or otherwise create or implement any workaround to any copy protection, rights management, or security features in or protecting the Application;
- (g) use their account to impersonate any person, or misrepresent your identity or affiliation with any person or organization;

- (h) use the Application 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);
- (i) engage in any other conduct that restricts or inhibits anyone's use or enjoyment of the Application, or which, as determined by Fan Guru, may harm Fan Guru or users of the Application or expose them to liability;
- (j) use the Application in any manner that could disable, overburden, damage, or impair the Application, or interfere with any other party's use of the Application, including their ability to engage in real time activities through the Application;
- (k) use any robot, spider, or other automatic device, process, or means to access the Application for any purpose, including monitoring or copying any of the material on the Application;
- (l) use any device, software, or routine that interferes with the proper working of the Application;
- (m) introduce any viruses, Trojan horses, worms, logic bombs, or other material that is malicious or technologically harmful;
- (n) attempt to gain unauthorized access to, interfere with, damage, or disrupt any parts of the Application, the server on which any portion of the Application is stored, or any server, computer, or database connected to the Application;
- (o) attack the Application via a denial-of- service attack or a distributed denial-of- service attack; or
- (p) otherwise attempt to interfere with the proper working of the Application.

3. **Reservation of Rights.** You acknowledge and agree that the Application is provided under license, and not sold, to you. You do not acquire any ownership interest in the Application under this Agreement, or any other rights thereto other than to use the Application in accordance with the license granted, and subject to all terms, conditions, and restrictions, under this Agreement. Earbuds and its licensors and service providers reserve and shall retain their entire right, title, and interest in and to the Application, including all copyrights, trademarks, and other intellectual property rights therein or relating thereto, except as expressly granted to you in this Agreement.

4. **Payment, Fees, and Other Charges.** If you elect to access any paid component of the Services, you agree to pay all fees and charges associated with that paid component on a timely basis. Unless otherwise stated, all fees and charges are due and payable in advance, are non-refundable, and are exclusive of any applicable federal, state, or local taxes. All such fees and charges (including any taxes and late fees, as applicable) will be charged to the payment method you provided when you elected to access that paid component of the Services. You agree to maintain a valid payment method during the term of your use of such Services.

5. **Carrier Fees.** Use of the Services may involve transmission of data through your carrier or service provider's network. You are responsible for all carrier, text/SMS, data, or other related fees or charges you incur from your carrier or service provider in connection with or related to your use of the Services. Earbuds assumes no liability or responsibility for the payment of any charges you may incur.

6. **Collection and Use of Your Information.** You acknowledge that when you download, install, or use the Application, Earbuds may use automatic means (including, for example, cookies and web beacons) to collect information about your Mobile Device and about your use of the Application. You also may be required to provide certain information about yourself as a condition to downloading, installing, or using the Application or certain of its features or functionality, and the Application may provide you with opportunities to share information about yourself with others. All information we collect through or in connection with this Application is subject to the Earbuds Privacy Policy ("**Privacy Policy**"). By downloading, installing, using, and providing information to or through this Application, you consent to all actions taken by us with respect to your information in compliance with the Privacy Policy.

7. **Content and Services.** Earbuds enables End Users to synchronize music streams in real time to

create a social listening experience as available through the Application and through the Site; the Application and Site also make available products, certain features, functionality, and content accessible on or through the Application may be hosted on the Site (collectively, "**Content and Services**").

8. **Geographic Restrictions.** The Content and Services are based in the state of Texas in the United States and provided for access and use only by persons located in the United States. You acknowledge that you may not be able to access all or some of the Content and Services outside of the United States and that access thereto may not be legal by certain persons or in certain countries. If you access the Content and Services from outside the United States, you are responsible for compliance with local laws.

9. **Updates.** Earbuds may from time to time in its sole discretion develop and provide Application updates, which may include upgrades, bug fixes, patches, other error corrections, and/or new features (collectively, including related documentation, "**Updates**"). Updates may also modify or delete in their entirety certain features and functionality. You agree that Earbuds has no obligation to provide any Updates or to continue to provide or enable any particular features or functionality. Based on your Mobile Device settings, when your Mobile Device is connected to the internet either:

- (a) the Application will automatically download and install all available Updates; or
- (b) you may receive notice of or be prompted to download and install available Updates.

You shall promptly download and install all Updates and acknowledge and agree that the Application 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 Application and be subject to all terms and conditions of this Agreement.

10. **Third-Party Materials.** The Application may display, include, or make available third-party content (including data, information, applications, and other products, services, and/or materials) or provide links to third-party websites or services, including through third-party advertising ("**Third-Party Materials**"). You acknowledge and agree that Earbuds is not responsible for Third-Party Materials, including their accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality, or any other aspect thereof. Earbuds does not assume and will not have any liability or responsibility to you or any other person or entity for any Third-Party Materials. Third-Party Materials and links thereto are provided solely as a convenience to you, and you access and use them entirely at your own risk and subject to such third parties' terms and conditions.

11. **User Content and Copyright Policy.** The Services may contain areas in which you may post or upload user-generated content, comments, voice and/or sound recordings, video, photos, messages, other materials or items (collectively, "**User Content**"). You are solely responsible for your use of any User Content you submit.

By submitting any User Content, you agree that you will not upload, post or otherwise transmit any User Content that (a) violates or infringes in any way upon the rights of others, including any statements which may defame, harass, stalk or threaten others; (b) you know to be false, misleading or inaccurate; (c) contains blatant expressions of bigotry, racism, racially or ethnically offensive content, hate speech, abusiveness, vulgarity or profanity; (d) contains or advocates pornography or sexually explicit content, pedophilia, incest, bestiality, or that is otherwise obscene or lewd; (e) violates any law or advocates or provides instruction on dangerous, illegal, or predatory acts, or discusses illegal activities with the intent to commit them; (f) advocates violent behavior; (g) poses a reasonable threat to personal or public safety; (h) contains violent images of killing or physical abuse that appear to have been captured solely, or principally, for exploitative, prurient, or gratuitous purposes; (i) is protected by copyright, trademark, trade secret, right of publicity or other proprietary right without the express permission of the owner of such copyright, trademark, trade secret, right of publicity or other proprietary right; (j) contains any unsolicited or unauthorized advertising

or promotional materials with respect to products or services, "junk mail", "spam", "chain letters", "pyramid schemes", or any other form of solicitation; or (l) uses the name or likeness of an identifiable natural person without such person's consent.

Reporting Claims of Copyright Infringement. We take claims of copyright infringement seriously. We will respond to notices of alleged copyright infringement that comply with applicable law. If you believe any materials accessible on or from the Services infringe your copyright, you may request removal of those materials (or access to them) from the Services by submitting written notification to our 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 Services, a representative list of such works.
- Identification of the material you believe to be infringing in a sufficiently precise manner to allow us to locate that material.
- Adequate information by which we 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.

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 Services is infringing your copyright, you may be held liable for damages (including costs and attorneys' fees) under Section 512(f) of the DMCA.

Our designated copyright agent to receive DMCA Notices and Counter-Notices (as further defined below) may be contacted at support@EarbudsMusic.com.

Counter-Notification Procedures. If you believe that material you posted on the Services was removed or access to it was disabled by mistake or misidentification, you may file a counter-notification with us (a "**Counter-Notice**") by submitting written notification to our copyright agent designated below. 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 we 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 Services may be found) and that you will accept service from the person (or an agent of that person) who provided the Services with the complaint at issue.

The DMCA allows us 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 Services 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.

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

12. Intellectual Property Ownership; License Grant of User Content. Earbuds shall have the appropriate license to or shall own all right, title, and interest, including all related intellectual property rights, in and to the Earbuds technology, the Content and Services. You agree that Earbuds shall own all right, title, and interest to any suggestions, ideas, enhancement requests, feedback, recommendations, or other information provided by you to Earbuds relating to the Services. This Agreement is not a sale and does not convey to you any rights of ownership in or related to the Services, the Earbuds technology, or the intellectual property rights owned by Earbuds. The Earbuds name, the Earbuds logo, and the product names associated with the Services are trademarks of Earbuds or its licensors, and no right or license is granted to use them.

You retain ownership rights in your User Content. However, we do require you to grant certain rights to Earbuds and other users of the Services, as described below.

License to Earbuds. By providing User Content to the Service, you grant to Earbuds a worldwide, non-exclusive, royalty-free, sublicensable and transferable license to use that User Content (including to reproduce, distribute, prepare derivative works, display and perform it) in connection with the Service and Earbuds' (and its successors' and Affiliates') business, including for the purpose of promoting and redistributing part or all of the Service.

License to Other Users. You also grant each other user of the Service a worldwide, non-exclusive, royalty-free license to access your User Content through the Service, and to use that User Content, including to reproduce, distribute, prepare derivative works, display, and perform it, only as enabled by a feature of the Service. For clarity, this license does not grant any rights or permissions for a user to make use of your User Content independent of the Service.

Duration of License. The licenses granted by you continue for a commercially reasonable period of time after you remove or delete your User Content from the Service. You understand and agree, however, that Earbuds may retain, but not display, distribute, or perform, server copies of your videos that have been removed or deleted.

13. Term and Termination.

- (a) The term of Agreement commences when you acknowledge your acceptance and will continue in effect until terminated by you or Earbuds as set forth in this section.
- (b) You may terminate this Agreement by deleting the Application and all copies thereof from your Mobile Device.
- (c) Earbuds may terminate this Agreement at any time without notice if it ceases to support the Application, which Earbuds may do in its sole discretion. In addition, this Agreement will terminate immediately and automatically without any notice if you violate any of the terms and conditions of this Agreement.
- (d) Upon termination, all rights granted to you under this Agreement will also terminate; and you must cease all use of the Application and delete all copies of the Application from your Mobile Device and account.
- (e) Termination will not limit any of Earbuds' rights or remedies at law or in equity.

14. Disclaimer of Warranties. THE APPLICATION IS PROVIDED TO LICENSEE "AS IS" AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED

UNDER APPLICABLE LAW, EARBUDS, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATES AND ITS AND THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE APPLICATION, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, EARBUDS PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE APPLICATION WILL MEET YOUR REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE, OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS, OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS, OR BE ERROR-FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF OR LIMITATIONS ON IMPLIED WARRANTIES OR THE LIMITATIONS ON THE APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO SOME OR ALL OF THE ABOVE EXCLUSIONS AND LIMITATIONS MAY NOT APPLY TO YOU.

15. **Limitation of Liability.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL EARBUDS OR ITS AFFILIATES, OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS OR SERVICE PROVIDERS, HAVE ANY LIABILITY ARISING FROM OR RELATED TO YOUR USE OF OR INABILITY TO USE THE APPLICATION OR THE CONTENT AND SERVICES FOR:

- (a) PERSONAL INJURY, PROPERTY DAMAGE, LOST PROFITS, COST OF SUBSTITUTE GOODS OR SERVICES, LOSS OF DATA, LOSS OF GOODWILL, BUSINESS INTERRUPTION, COMPUTER FAILURE OR MALFUNCTION, OR ANY OTHER CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES.
- (b) DIRECT DAMAGES IN AMOUNTS THAT IN THE AGGREGATE EXCEED THE AMOUNT ACTUALLY PAID BY YOU FOR THE APPLICATION.

THE FOREGOING LIMITATIONS WILL APPLY WHETHER SUCH DAMAGES ARISE OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR EARBUDS WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW CERTAIN LIMITATIONS OF LIABILITY SO SOME OR ALL OF THE ABOVE LIMITATIONS OF LIABILITY MAY NOT APPLY TO YOU.

16. **Indemnification.**

You agree to indemnify, defend, and hold harmless Earbuds and its officers, directors, employees, agents, affiliates, successors, and assigns from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, arising from or relating to your use or misuse of the Application or your breach of this Agreement, including but not limited to the content you submit or make available through this Application.

Earbuds shall indemnify and hold you harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that the Services directly infringes a copyright, a U.S. patent issued as of the date that you acknowledge your acceptance of these terms, or a trademark of a third party; or (ii) a claim, which if true, would constitute a violation by Earbuds of its representations or warranties.

17. **Dispute Resolution and Binding Arbitration.**

Informal Resolution

It is Earbuds' goal that the Services meet your expectations and live up to our promises to you.

However, there may be instances when you feel that Earbuds has not fulfilled its obligations or you may have a different type of problem or dispute that needs special attention. In those instances, Earbuds is committed to working with you to reach a reasonable resolution that satisfies you; however, we can only do this if we know about and understand your issue. Therefore, for any problem or dispute that you may have with Earbuds, you acknowledge and agree that you will first give Earbuds an opportunity to resolve your problem or dispute. In order to initiate this dispute resolution process, you must first send us a written description of your problem or dispute within thirty (30) days of the Services being performed by sending an email to support@EarbudsMusic.com.

You then agree to negotiate with Earbuds in good faith about your problem or dispute. This should lead to resolution, but if for some reason your problem or dispute is not resolved satisfactorily within sixty (60) days after Earbuds' receipt of your written description of it, you agree to the further arbitration provisions below.

BINDING ARBITRATION

Arbitration Proceeding. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of these Agreement to arbitrate, shall be determined by arbitration in Dallas, Texas before three arbitrators. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules. Judgment on the Award may be entered in any court having jurisdiction. ANY ARBITRATION UNDER THESE TERMS SHALL TAKE PLACE ON AN INDIVIDUAL BASIS. CLASS ACTION AND CLASS ARBITRATIONS ARE NOT PERMITTED. YOU UNDERSTAND THAT BY AGREEING TO THESE TERMS, YOU WAIVE YOUR RIGHT TO PARTICIPATE IN CLASS ACTIONS. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

Exceptions to Arbitration. You and Earbuds agree that the following claims are not subject to the above provisions concerning negotiations and binding arbitration: (a) any claim seeking to enforce or protect, or concerning the validity of, any of Earbuds' intellectual property rights; (b) any claim related to, or arising from, allegations of theft, piracy, invasion of privacy or unauthorized use; and (c) any claim for equitable relief. In addition to the foregoing, either party may assert an individual action in small claims court for claims that are within the scope of such court's jurisdiction in lieu of arbitration.

18. **Assignment; Change in Control.** You may not assign this Agreement in whole or in part, for any reason. This Agreement will be binding upon and will inure to the benefit of the parties and their heirs, executors, administrators, successors, and assigns. Earbuds may assign this Agreement or delegate any of our rights or obligations hereunder, or any part thereof, to any third party, including our successor in interest, without requiring your written consent.

19. **Notice.** Earbuds may give notice by means of a general notice on the Services, electronic mail to your e-mail address on record in Earbuds' account information, or by written communication sent by first class mail or pre-paid post to your address on record in Earbuds' account information. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email). Except as otherwise provided in this Agreement, you may give notice to Earbuds (such notice shall be deemed given when received by Earbuds) at any time by any of the following: letter delivered by nationally recognized overnight delivery service or first-class postage prepaid mail to Earbuds at the following address: Earbuds Inc. 401 Congress Ave. Suite 1170 Austin, Texas 78701 or by email to support@EarbudsMusic.com.

20. **Severability.** If any provision of this Agreement is illegal or unenforceable under applicable law, the remainder of the provision will be amended to achieve as closely as possible the effect of the original term and all other provisions of this Agreement will continue in full force and effect.

21. **Governing Law.** This Agreement is governed by and construed in accordance with the internal laws of the State of Texas without giving effect to any choice or conflict of law provision or rule. Unless provided otherwise in connection with the Arbitration provisions in this Agreement, any legal suit, action, or proceeding arising out of or related to this Agreement or the Application 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 Dallas County. You waive any and all objections to the exercise of jurisdiction over you by such courts and to venue in such courts.

22. **Limitation of Time to File Claims.** ANY CAUSE OF ACTION OR CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE APPLICATION MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES OTHERWISE SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED.

23. **Entire Agreement.** This Agreement and our Privacy Policy constitute the entire agreement between you and Earbuds with respect to the Application and supersede all prior or contemporaneous understandings and agreements, whether written or oral, with respect to the Application.

24. **Waiver.** No failure to exercise, and no delay in exercising, on the part of either party, any right or any power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or power hereunder preclude further exercise of that or any other right hereunder. In the event of a conflict between this Agreement and any applicable purchase or other terms, the terms of this Agreement shall govern.