



7007 Winchester Circle, Boulder, CO 80301

Ref. Code:  
Email:  
Issued:  
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4E6E-MNW2  
cquick@djusd.net  
Thursday, August 20, 2020  
Monday, October 19, 2020

Please upload your proof of tax exemption and purchase order at <https://quotes.smartmusic.com/find>. You will need your email address and Reference Code listed below.  
cquick@djusd.net  
4E6E-MNW2

**Bill To:**  
Your billing information is required to proceed with your order.

**Ship To:**  
Davis School District  
526 B st  
Davis, CA, US 95616

If you're paying with a credit card, call 866-240-4041 (US) or 952-937-9611 (INT) and have your reference code handy. Tax will be applied to the final price, if applicable.

Qty	Item	Description	Unit Price	Total
11	Full Access Educator Subscription	A Full Access Educator subscription for SmartMusic Web	\$40.00	\$440.00
1800	Standard Student Subscription	A Standard Student subscription for SmartMusic Web	\$10.00	\$18,000.00

**Sales Contact:**  
866-240-4041  
[sales@makemusic.com](mailto:sales@makemusic.com)

<b>Subtotal (USD):</b>	<b>\$18,440.00</b>
<b>Tax (USD):</b>	<b>\$0.00</b>
<b>Amount Due (USD):</b>	<b>\$18,440.00</b>

**EXHIBIT "E"**

**GENERAL OFFER OF PRIVACY TERMS**

**1. Offer of Terms**

Provider offers the same privacy protections found in this DPA between it and \_\_\_\_\_ and which is dated 8.26.2020 \_\_\_\_\_ to any other LEA ("Subscribing LEA") who accepts this General Offer through its signature below. This General Offer shall extend only to privacy protections and Provider's signature shall not necessarily bind Provider to other terms, such as price, term, or schedule of services, or to any other provision not addressed in this DPA. The Provider and the other LEA may also agree to change the data provided by LEA to the Provider in Exhibit "B" to suit the unique needs of the LEA. The Provider may withdraw the General Offer in the event of: (1) a material change in the applicable privacy statutes; (2) a material change in the services and products subject listed in the Originating Service Agreement; or three (3) years after the date of Provider's signature to this Form. Provider shall notify CETPA in the event of any withdrawal so that this information may be transmitted to the Alliance's users.

Provider: MakeMusic, Inc.

BY:   
Printed Name: Johann Gouws

Date: 8.26.2020  
Title/Position: SVP, Global Customer Team

**2. Subscribing LEA**

A Subscribing LEA, by signing a separate Service Agreement with Provider, and by its signature below, accepts the General Offer of Privacy Terms. The Subscribing LEA and the Provider shall therefore be bound by the same terms of this DPA.

Subscribing LEA: Davis Joint Unified School District

BY: \_\_\_\_\_  
Printed Name: Amari Watkins

Date: \_\_\_\_\_  
Title/Position: Associate Superintendent of Business Services

**TO ACCEPT THE GENERAL OFFER, THE SUBSCRIBING LEA MUST DELIVER THIS SIGNED EXHIBIT TO THE PERSON AND EMAIL ADDRESS LISTED BELOW**

Name:   
Title: SVP, Global Customer Team

Email Address: sales@makemusic.com

AMENDMENT  
TO THE  
MakeMusic  
AND  
DAVIS JOINT UNIFIED SCHOOL DISTRICT  
(Venue and Data Privacy Law)

This Contract Amendment executed by MakeMusic,  
hereinafter referred to as "Vendor", and Davis Joint Unified School District, hereinafter referred to as "District", which document shall amend the Agreement between the Vendor and District as follows:

1. The Agreement shall be governed by and construed in accordance with the laws of the State of California and all disputes arising out or relating to the Service Agreement shall be heard in Superior Court in Yolo County, California.
2. The parties agree to adopt the California Student Data Privacy Agreement ("CSDPA"), the contents of which are incorporated herein by reference. In the event there is a conflict between the CSDPA and the Service Agreement, the CSDPA shall apply and take precedence.

Subject to the terms and conditions set forth in this Amendment, the above referenced Service Agreement between the parties is hereby ratified and confirmed.

MakeMusic

By:  \_\_\_\_\_

Name: Brian Gruber

Title: Senior Manager, Sales

Date: 9/29/2020

DAVIS JOINT UNIFIED SCHOOL DISTRICT By: \_\_\_\_\_

Name: Amari Watkins

Title: Associate Superintendent of Business Services

Date: \_\_\_\_\_

# SmartMusic® Terms of Service

Last Updated on: April 7th, 2020.

**THESE SMARTMUSIC® TERMS OF SERVICE ARE LEGALLY BINDING. IF YOU ACCESS OR USE THE SMARTMUSIC SERVICES IN ANY MANNER, YOU AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS POLICY. IF YOU DO NOT AGREE TO BE BOUND, YOU MAY NOT USE THE SMARTMUSIC SERVICES.**

This SmartMusic® End User License & Subscriber Agreement (the "Agreement") is a binding agreement between you and MakeMusic, Inc. ("MakeMusic," "we," or "us") and governs the terms of use of the SmartMusic® music education Services and all related features/Services thereof (the "SmartMusic Services" or "Services"). This Agreement becomes effective when you acknowledge your acceptance of the terms during registration, or when you otherwise access or use any part of the SmartMusic Services. Your access to and use of the SmartMusic Services are subject to this Agreement and all applicable laws, and MakeMusic reserves the right to terminate your access to the SmartMusic Services if you violate this Agreement.

1. **Background & Purpose of this Agreement.** MakeMusic provides the SmartMusic Services to end users, who include individuals, schools, students, educators and others ("you" or "user"). This Agreement sets forth the restrictions and permissible uses of the SmartMusic Services by you. MakeMusic is providing you with access to the SmartMusic Services only if you agree with the terms and conditions of this Agreement. If you do not agree to this Agreement, or any of its terms and conditions, then you may not use the SmartMusic Services.
2. **Revisions.** From time to time, MakeMusic may change the terms of this Agreement. If we make a material change to this Agreement, we will post a notice on the login or homepage of the SmartMusic Services. Changes will also appear in this document, which you can access at any time via [www.makemusic.com/terms-conditions](http://www.makemusic.com/terms-conditions). Please review the posted terms on a regular basis as your use of the SmartMusic Services will be governed by the then-current Agreement.
3. **Service(s) Provided.** Subject to and conditioned on your compliance with the terms and conditions of this Agreement, during the Term, MakeMusic will use commercially reasonable efforts to provide you and any of your authorized users with access to the SmartMusic Services.
  1. Account Requirements. An account must be created and verified by us in order to access the SmartMusic Services. You agree to provide accurate information and to update your account as necessary to keep it accurate. We will use any personal information we collect from you in accordance with our Privacy Policy, available at [www.makemusic.com/privacy](http://www.makemusic.com/privacy).
  2. Account Responsibilities. You are responsible for all activities on and usage of your account and all associated user accounts under your platform/educational institution. You may not allow more users to access paid content and/or features within the SmartMusic Services than have been paid for during the subscription period. You agree that you will not allow others to access and use your account. You agree to notify us immediately of any unauthorized use of your account.

3. Computer Requirements. You will be responsible for your own Internet connection and information technology infrastructure (including computers, software, hardware, databases, electronic systems and networks) that are necessary to access and use the SmartMusic Services.
4. Credentials. You are solely responsible for your user credentials of your SmartMusic Services account and any other authorized users on your account, including keeping such credentials, such as username, password, and other account information, confidential.

#### 4. Ownership Rights & Confidentiality.

1. MakeMusic Ownership Rights. MakeMusic and, as applicable, its licensors, own any and all right, title and interest in and to the SmartMusic Services, including any related intellectual property rights. With the exception of User Content or Third-Party Content, MakeMusic owns all right to, title to and interest in any output or materials created through the SmartMusic Services. You hereby assign to MakeMusic any and all right, title and interest you may have in such output or materials created through the SmartMusic Services. MakeMusic reserves all rights that are not expressly granted herein. The SmartMusic Services are considered confidential and proprietary to MakeMusic, and are provided only to authorized licensees/users. You may not use the SmartMusic Services or the contents of the SmartMusic Services in any manner or for any purpose that would constitute infringement of MakeMusic's, its licensors', or other users' intellectual property rights.
2. User Ownership Rights. For the purposes of this Agreement, User Content shall include any and all recordings of your performances, original compositions, or other user-originated works or content uploaded or created through the use of the Services. You shall own any and all right, title and interest in and to User Content.
3. Third-Party Content. The Service may make available works or content owned by a third party ("Third-Party Content").

#### 5. License Grant.

1. MakeMusic License Grant. MakeMusic grants you a non-exclusive, revocable, limited license to access and use the SmartMusic Services solely for the purposes identified in your account registration and/or subscription purchase and/or renewal process. You may access and use content or material from the SmartMusic library solely with the intention of using the SmartMusic Services for its intended music education purposes. If you would like broader rights than those granted in your subscription, contact MakeMusic for further permissions, if applicable. Except as otherwise provided herein, you may not use, reproduce, distribute, modify, adapt, publish, translate, create derivative works from, redistribute, or publicly access, use, or display any aspect of the SmartMusic Services for any other purpose or in any other public forum without the written consent of MakeMusic or the respective owner, including public forums such as other websites, web services, or print publications.
2. User License Grant. By uploading or creating User Content through the SmartMusic Services, you hereby grant to MakeMusic a perpetual, royalty-free, world-wide, irrevocable, non-exclusive, and sublicensable license to any right or license you may have to store, use, publish, reproduce, and access such User Content, for the purpose of providing you the Services.

6. **Content.** The SmartMusic subscription library is available through the SmartMusic Services is the property of MakeMusic or its licensors and is protected by copyright and other intellectual property laws. Content licenses may change or be terminated and if this occurs, MakeMusic reserves the right to modify and/or remove content from the SmartMusic Services at any time without notice to its users. CONTENT AVAILABLE TO YOU THROUGH THE SMARTMUSIC SERVICES MAY BE USED ONLY FOR YOUR PERSONAL, NON-COMMERCIAL OR EDUCATIONAL USE. YOU MAY NOT SELL OR DISTRIBUTE ANY CONTENT OR PROPERTY OBTAINED THROUGH SMARTMUSIC OR YOUR USE OF THE SERVICES OR IPAD APPLICATION.
7. **Prohibited Activities.** Except as otherwise expressly permitted under this Agreement, you shall not, either directly or indirectly:
- Copy the SmartMusic Services application or content, in whole or in part;
  - Modify, correct, adapt, translate, enhance or otherwise prepare derivative works or improvements of the SmartMusic Services;
  - Rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the SmartMusic Services to any person or entity, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service;
  - Reverse engineer, disassemble, decompile, decode or adapt the SmartMusic Services web applications, or otherwise attempt to derive or gain access to the source code of the SmartMusic Services, in whole or in part;
  - Access or attempt to access the SmartMusic Services by any means other than the interface provided or authorized by MakeMusic;
  - Bypass or breach any security device or feature used for or contained in the SmartMusic Services;
  - Remove, alter, or obscure any warranties, disclaimers, intellectual property notices or other symbols, notices, marks or serial numbers on or relating to the SmartMusic Services;
  - Use the SmartMusic Services in any manner or for any purpose that infringes, misappropriates or otherwise violates any intellectual property right or other right of any person or entity, or that violates any applicable law;
  - Use the SmartMusic Services for purposes of: (i) benchmarking or competitive analysis of the SmartMusic Services; (ii) developing, using or providing a competing software product or service; or (iii) any other purpose that is to MakeMusic's detriment or commercial disadvantage;
  - Violate applicable law through the use of the SmartMusic Services;
  - Use or submit any offensive content including, without limitation, obscene language, obscene references, obscene images, threatening or harassing messages, discriminatory actions, messages, or images, and defamatory statements.
  - Submit or post any false, misleading, or fraudulent statements or content.
  - Engage in activity that is unauthorized advertisements or promotions, including unauthorized solicitation of other users.

- Collect personal information of other users of the SmartMusic Services without that user's consent.
- Engage in activity that compromises the SmartMusic Services (such activity may include, without limitation, hacking, IP attacks, worms, viruses, spamming, phishing, cancel bots, Trojan horses, mail bombing or crashing, or introducing malware);
- Engage in any activity designed to impede the use of the SmartMusic Services by other users, including overloading and flooding.
- Access the SmartMusic Services by means of automated process, spiders, bots, or similar device;
- Use any data mining or similar data gathering and extraction methods in connection with the SmartMusic Services; or
- Use the SmartMusic Services in any manner that is not expressly permitted by this Agreement.

**8. User Contributions.** The SmartMusic Services may contain interactive features that allow users to post, submit, publish, display, or transmit to other users or other persons (hereinafter, a "post") User Content on or through the SmartMusic Services.

All User Content published or shared using the SmartMusic Services must comply with the Content Standards set forth in Section 9 in this Agreement. MakeMusic reserves the right to remove or delete any and all User Content that does not comply with the Content Standards or this Agreement.

All User Content you provide through the SmartMusic Services will be considered non-confidential and, except for any copyright you own in an original composition, non-proprietary.

By providing or creating content through the SmartMusic Services, you represent and warrant that:

- You own or control all rights in and to such content and have the right to grant the license granted above to MakeMusic and its affiliates and service providers, and each of their and our respective licensees, successors, and assigns.
- Any and all User Content does not infringe any third-party intellectual property right, including copyright.
- All such content does and will comply with this Agreement.

You understand and acknowledge that you are responsible for any content you provide, create, submit or contribute to the SmartMusic Services, and you, not MakeMusic, have full responsibility for such content, including its legality, reliability, accuracy, and appropriateness.

MakeMusic is not responsible or liable to any third party for the content or accuracy of any content you provide or create through the SmartMusic Services.

You agree to indemnify, defend, and hold harmless MakeMusic from and against any loss, damage, or expense, including court costs and attorneys' fees, arising out of or in connection with any User



Content or unauthorized use of any Third-Party Content.

**9. Content Standards.** These content standards apply to any and all User Content that you provide or create through the SmartMusic Services. Such User Content must in its entirety comply with all applicable federal, state, local, and international laws and regulations. Without limiting the foregoing, such User Content must not:

- Contain any material that is defamatory, obscene, indecent, abusive, offensive, threatening, harassing, violent, hateful, inflammatory, discriminatory, 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 right, 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 this Agreement and our Privacy Policy, available at [www.makemusic.com/privacy](http://www.makemusic.com/privacy).
- 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; or
- Give the impression that they emanate from or are endorsed by MakeMusic or any other person or entity, if this is not the case.

**10. Trial Access.** If you access or use any version of the SmartMusic Services designated by MakeMusic as "trial", "evaluation", "not for resale", or other similar designation ("Evaluation Versions"), you may use the Evaluation Version only during the evaluation period and only for evaluation purposes. You may not use any materials, features or data provided in or through the Evaluation Version for anything other than non-commercial purposes.

**11. SMARTMUSIC GRADEBOOK™.** Educator subscribers/users of the SmartMusic Services may use the GRADEBOOK Service. GRADEBOOK may be used in accordance with the documentation.

**12. Subscriptions - Free, Basic, Standard and Premium Content Access:** Creating a Free SmartMusic account gives you access to the limited catalog of Free SmartMusic content which can be played, performed, assigned, and graded. To access the full catalog of SmartMusic content, you must purchase teacher subscriptions and/or student subscriptions.



1. Fees and Payments. The fees for your subscription(s) will be billed to you via your authorized credit card or via an invoice. You agree to pay or have paid all fees and charges, including any applicable taxes incurred in connection with your account for the SmartMusic Services subscriptions you select, at the rates in effect when you purchased. MakeMusic may change the fees and charges then in effect, or add new fees or charges, by giving you notice in advance. You are solely responsible for any fees or charges incurred to access the SmartMusic Services through an Internet access provider, mobile service provider, or other third-party service.
2. Subscription Terms. A subscription allows the user to use the SmartMusic Services only after the user has been authenticated by MakeMusic. Term length and renewal depends on the type of subscription, user, or MakeMusic-specified attributes. For ease of comprehension, the below subscriptions have been defined as either paid for by an educational institution or paid for by an adult.

### **Subscriptions paid for by an educational institution:**

1. "SmartMusic Premium Subscriptions" consist of student Premium subscription(s) which grants student access to Premium content through class assignments and full catalog access outside of class assignments. Premium subscriptions can be purchased by educators or school officials who are using the SmartMusic Services for the purpose of teaching students as part of an educational platform. Educators may choose a term end date during the purchase process.
2. "SmartMusic Standard Subscriptions" consist of student Standard subscription(s) which grants student access to Premium content through class assignments; MakeMusic's Free and "Essentials" content may be explored by students outside of class assignments. Standard subscriptions must be purchased by educators or school officials who are using the SmartMusic Services for the purpose of teaching students as part of an educational platform. Educators may choose a term end date during the purchase process.
3. "SmartMusic Free Teacher Subscriptions" consist of Free Teacher subscription(s) which allows teachers to create classes, enroll students, access the free music catalog and assign free music catalog content appropriate to their class(es). Free Teacher subscriptions can be activated by individuals who are or are not associated with an educational institution owning a SmartMusic platform. Free Teacher subscriptions do not have an end date.
4. "SmartMusic Teacher Subscriptions" consist of Teacher subscription(s) which allows teachers to create classes, enroll students, access the entire music catalog, assign music catalog content appropriate to their class' subscription level (see 3.a and 3.b above), access the Sight Reading Builder, access Compose, import music xml content, access the Content Manager, access Practice Analytics and create Student-Funded classes. "Teacher Subscriptions" must be purchased by educators who are using the SmartMusic Services for the purpose of teaching students.

### **Subscriptions paid for by an adult:**

1. "SmartMusic Performer Subscriptions" grants the subscription holder access to the full music catalog. Performer subscriptions can be purchased by adults not associated with an

educational institution owning a SmartMusic platform and who wish to have full SmartMusic content catalog access at the individual account level outside or within an educational platform. Individuals may choose a term end date during the purchase process.

2. "SmartMusic Free Teacher Subscriptions" consist of Free Teacher subscription(s) which allows teachers to create classes, enroll students, access the free music catalog and assign free music catalog content appropriate to their class(es). Free Teacher subscriptions can be activated by individuals who are or are not associated with an educational institution owning a SmartMusic platform. Free Teacher subscriptions do not have an end date.
3. "SmartMusic Teacher Subscriptions" consist of Teacher subscription(s) which allows teachers to create classes, enroll students, access the entire music catalog, assign music catalog content appropriate to their class' subscription level (see 3.a and 3.b above), access the Sight Reading Builder, access Compose, import music xml content, access the Content Manager, access Practice Analysis and create Student-Funded classes. Teacher subscriptions can be purchased by adults not associated with an educational institution owning a SmartMusic platform and who wish to have the aforementioned SmartMusic access at the individual account level outside or within an educational platform. "Teacher Subscriptions" must be purchased by educators who are using the SmartMusic Services for the purpose of teaching students. Individuals may choose a term end date during the purchase process.

3. Termination of Access. MakeMusic may discontinue or change your access at any time, and you may terminate your slot or subscription at any time. If you wish to terminate your slot or subscription, please contact MakeMusic via one of the methods listed at the bottom of this document. If you terminate your slot or subscription prior to the end of its term, you will not receive a refund for any reason. Your slot or subscription may terminate without notice if you breach the applicable use limitations for any of the access types described above or any other term of this Agreement.

1. Suspension. Payment terms are by default, due within thirty (30) days of initial order, unless specifically negotiated prior to sale. If payment is not timely received, MakeMusic may terminate or suspend Services until payment is made.
2. Account Name. MakeMusic may refuse to grant you an account name that impersonates someone else, is protected by trademark or other proprietary right law, or is vulgar or otherwise offensive, as determined by MakeMusic.

13. **Noninfringement.** You agree that you will not use the SmartMusic Services to infringe the copyrights or other intellectual property rights of others in any way. Without limiting the foregoing, you agree not to reproduce, retransmit, distribute, disseminate, sell, publish, broadcast, or circulate the content received or generated through the SmartMusic Services to anyone, including (without limitation) to others in the same company or organization, without the express prior written consent of the copyright holder(s) and MakeMusic; provided, however, that subject to the Limitation of Liability and Indemnification sections below, you may distribute copies of your recorded performances along with SmartMusic accompaniments to your teachers, your family members or friends, but only for (1) noncommercial and (2) educational or evaluation purposes, and provided that you include all copyright and other proprietary rights notices with any portion of the content in the same form in which the notices appear in the SmartMusic Services, original source attribution, and the phrase "Used with

permission from MakeMusic, Inc." ANY OTHER DISTRIBUTION IS PROHIBITED. UNDER NO CIRCUMSTANCES MAY RECORDED PERFORMANCES OF SMARTMUSIC ACCOMPANIMENTS WITHOUT A SOLOIST PERFORMING BE MADE FOR THE PURPOSE OF USING SMARTMUSIC WITHOUT A SUBSCRIPTION. To request consent for other matters, please contact MakeMusic via one of the methods listed at the end of this document.

**14. Copyright Owners. Important - Copyright Infringement Notice.** MakeMusic respects the intellectual property of others. MakeMusic reserves the right, in appropriate circumstances and at its discretion, to terminate the accounts of users who infringe the intellectual property rights of others. If you believe that your work has been copied in a way that constitutes copyright infringement, please contact the licensing manager, providing the information requested below. If we find that there is infringement upon your property, we will remove the material in question immediately.

1. an electronic or physical signature of the person authorized to act on behalf of the copyright owner;
2. a description of the copyrighted work that you claim has been infringed;
3. a description of where the material that you claim is infringing is located on our website;
4. your address, telephone number, or email address so we can contact you;
5. a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and
6. a statement by you, made under penalty of perjury, that the information in your notice to us is accurate and you are the copyright owner or authorized to act on the copyright owner's behalf.

MakeMusic's agent for notice of claims of copyright infringement on the SmartMusic Services can be reached as follows:

**By Email:**

[licensing@makemusic.com](mailto:licensing@makemusic.com)

**By mail:**

Licensing manager  
MakeMusic, Inc.  
7007 Winchester Circle, #140  
Boulder, Colorado 80301  
USA

**15. Use & Disclosure of Data.** MakeMusic and its agents may collect, maintain, process, use and disclose various types of data through the SmartMusic Services. You hereby grant MakeMusic permission, at its option and whenever you are using the SmartMusic Services, to access, review, analyze, gather, and otherwise use and disclose any information relating to your use of the SmartMusic Services (herein, "Data Collection"). MakeMusic will have the perpetual right to collect, extract, compile, synthesize, and analyze the information collected through the Data Collection, and may use it for any lawful business purpose without a duty of accounting to you; provided that any such information is used only in a form that is de-identified and aggregated with the information of other users. The MakeMusic Privacy

Policy governs our use of Personal Information included in the Data Collection. It is your responsibility to read the MakeMusic Privacy Policy and understand how we collect and use information about Districts, Schools, Educators, and Students. You can view our Privacy Statement here:

<http://www.makemusic.com/privacy>.

16. **Children's Online Privacy and Protection.** We care about protecting the online privacy of children. To view our complete policy, see the MakeMusic Privacy Policy at <http://www.makemusic.com/privacy>. We will collect certain information about children under the legally required age, ONLY for the purpose of providing our users the opportunity to participate in educational services through the SmartMusic Services and in accordance with applicable law.

The SmartMusic Services do not allow students who report themselves as under the legally required age in the applicable jurisdiction to create an account without consent from a parent/legal guardian or as otherwise allowed by law. It is a violation of this Agreement for children to create an account by misrepresenting their age. If a student under the legally required age creates an account by misrepresenting her/his age and MakeMusic becomes aware of the violation, we will lock the student's account and send a notification to the parent, legal guardian, or educator identified by the student to inform them of the unauthorized account and to provide them the opportunity to bring the account in compliance through provision of legally recognized consent. If such student's account is not brought into compliance within a reasonable amount of time, we will delete the account and the student's information.

1. Users in the United States.

1. **Verifiable Consent.** In the United States, the legally required age is 13. MakeMusic does not knowingly collect any information from children under 13 unless the use by such children is the result of the child participating in educational services made available to the child through a contracting school or school system and the required legal consent is provided to MakeMusic.
2. **Educational Uses.** Schools that contract with MakeMusic to provide the SmartMusic Services for legitimate educational purposes will comply with the obligations in Section 20 below. Schools should consider making these same notices available to parents.

2. Users in Canada.

1. **Verifiable Consent.** In Canada, the legally required age is 18. MakeMusic does not knowingly collect any information from children under 18 unless the use by such children is the result of the child participating in educational services made available to the child through a contracting school or school system and the required legal consent is provided to MakeMusic.
2. **Educational Uses.** Schools that contract with MakeMusic to provide the SmartMusic Services for legitimate educational purposes will comply with the obligations in Section 20 below. Schools should consider making these same notices available to parents.

3. Users in Europe.

1. **Verifiable Consent.** In Europe, we consider the legally required age to be [16]. MakeMusic does not knowingly collect any information from children under [16] without obtaining the consent

of such child's parent or guardian.

2. **Educational Uses.** Schools that contract with MakeMusic to provide the SmartMusic Services for legitimate educational purposes will comply with the obligations in Section 20 below. Schools should consider making these same notices available to parents.

4. **IF YOU ARE A SCHOOL, EDUCATOR OR OTHER PERSON/ENTITY WORKING WITH AN INDIVIDUAL UNDER THE LEGALLY REQUIRED AGE THROUGH THE SMARTMUSIC SERVICES, IT IS YOUR RESPONSIBILITY TO OBTAIN AND DOCUMENT VERIFIABLE CONSENT FROM A PARENT OR LEGAL GUARDIAN BEFORE ANY CHILD UNDER THE LEGALLY MANDATED AGE MAY USE THE SMARTMUSIC SERVICES OR, AS ALLOWED BY APPLICABLE LAW, PROVIDE CONSENT ON THE PARENT'S BEHALF. YOU REPRESENT AND WARRANT THAT YOU (1) HAVE OBTAINED AND DOCUMENTED VERIFIABLE CONSENT FROM THE STUDENT'S PARENT OR LEGAL GUARDIAN OR (2) HAVE THE AUTHORITY TO PROVIDE CONSENT ON THE PARENT OR LEGAL GUARDIAN'S BEHALF UNDER APPLICABLE LAW IF YOU EITHER PROVIDE A CLASS CODE TO A STUDENT UNDER THE LEGALLY REQUIRED AGE OR CREATE AN ACCOUNT FOR A STUDENT UNDER THE LEGALLY REQUIRED AGE, WHETHER MANUALLY THROUGH THE SMARTMUSIC WEBSITE OR THROUGH IMPORTING A SPREADSHEET OF BULK STUDENT DATA OR BY ANY OTHER MEANS.**

5. Providing or Withdrawing Consent. MakeMusic allows parents and legal guardians (or schools, if applicable) to request a description of the types of information collected, to review information submitted by their children, to request the removal of any information, and to prevent further use or online collection of their children's information. Details on these procedures can be found in our Privacy Policy at <http://www.makemusic.com/privacy>.

#### 17. **Obligations of Educational Institutions Providing SmartMusic to Students or Requiring use of SmartMusic for educational purposes.**

1. It is the responsibility of the school or teacher working with a student under the legally required age to obtain and/or provide MakeMusic the legally required consent to collect and use such student's data to allow MakeMusic to provide the SmartMusic Services. While it is the responsibility of the school or educator to obtain verifiable consent for its students who are under the legally required age, MakeMusic may send a notification to the parent or guardian identified during the enrollment process, if provided, to inform the parent/guardian of the enrollment and to provide the parent/guardian with information regarding their right to cancel the enrollment and to access and manage the enrollment information.
2. Each school or teacher utilizing the SmartMusic Services must create and maintain a roster or accurate listing of the students who are actively participating in the SmartMusic Services in each class. You represent and warrant that you will add and remove students as applicable to maintain a current list of the participating students for your organization on a regular basis, but not less than once per term (i.e., quarter, trimester, or semester) of each class that utilizes the SmartMusic Services.
3. Schools that Act as the Parent's Agent. In the United States, and only in certain situations, schools may act as the parent's agent for the collection of data for educational purposes. U.S.-based Schools that contract with MakeMusic to provide the SmartMusic Services for legitimate

educational purposes are providing consent to the limited collection and use of personal information of users under the legally required age as allowed under COPPA. In addition to the rights of the child's parents and guardians, the school may also request to review and/or delete a student's personal information. Schools should consult their compliance officers on the necessary notices, if any, to provide parents due to the Schools' provision of this necessary consent for the student's use of the SmartMusic Services on behalf of the parents.

4. By using the SmartMusic Services for educational purposes, each educational institution and representative thereof represents and warrants that they will comply with any applicable laws related to the collection and use of data, whether educational or personal data, related to its students.

**18. Customer Representations.** In addition to the other representations and warranties provided herein, you expressly represent and warrant that: (a) you will adhere to the terms of this Agreement and any other terms provided by MakeMusic when you access the SmartMusic Services; and (b) you will maintain the confidentiality of the SmartMusic Services.

**19. Termination.**

1. This Agreement will terminate automatically without notice from MakeMusic if you fail to comply with any of the terms or limitations of this Agreement. Upon termination, MakeMusic may require that you cease all use and access to the SmartMusic Services.
2. To have your or your child's account and associated data deleted, you must provide MakeMusic with a written request of account deletion to [team@makemusic.com](mailto:team@makemusic.com). By agreeing to these terms, you agree to allow MakeMusic to maintain your or your child's SmartMusic account before, during and/or after subscription terms and/or during or after an affiliation with an educational institution in accordance with our Privacy Policy.

**20. Mobile Software from the Apple App Store.** THIS PARAGRAPH APPLIES ONLY IF YOU DOWNLOAD THE SMARTMUSIC SERVICES APPLICATION THROUGH THE APPLE APP STORE. MakeMusic provides this Agreement and this Agreement will apply to your use of the SmartMusic Services. You acknowledge and agree that this Agreement is solely between you and MakeMusic, not Apple, and that Apple has no responsibility for the SmartMusic Services or content thereof. You acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the SmartMusic Services. You and MakeMusic acknowledge that Apple is not responsible for addressing any claims by you or any third party relating to the SmartMusic Services or your possession and/or use of the SmartMusic Services, including, but not limited to: (i) product liability claims; (ii) any claim that the SmartMusic Services fail to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation. You and MakeMusic acknowledge that, in the event of any third party claim that the SmartMusic Services or your possession and use of the SmartMusic Services infringes that third party's intellectual property rights, MakeMusic, 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. You and MakeMusic acknowledge and agree that Apple, and Apple's subsidiaries, are third party beneficiaries of the Agreement, and that, upon your acceptance of the terms of this Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce this Agreement against you as a third-party beneficiary thereof.



21. **DISCLAIMER OF WARRANTIES.** TO THE MAXIMUM EXTENT ALLOWED BY LAW, MAKEMUSIC MAKES NO WARRANTIES REGARDING THE SMARTMUSIC SERVICES, DOCUMENTATION MATERIALS, OR MEDIA AND CONTENT PROVIDED THROUGH THE SMARTMUSIC SERVICES, EITHER EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ALL WARRANTIES, INCLUDING (WITHOUT LIMITATION) WARRANTIES RELATING TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND SECURITY. THE SMARTMUSIC SERVICES AND RELATED MATERIALS, INCLUDING ANY MEDIA AND CONTENT PROVIDED THROUGH THE SMARTMUSIC SERVICES, ARE PROVIDED SOLELY ON AN "AS IS" BASIS, WITHOUT WARRANTY OF ANY KIND. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SOFTWARE AND ANY ACCOMPANYING DOCUMENTATION MATERIALS IS WITH YOU. YOU ASSUME ALL RESPONSIBILITY FOR SELECTION OF THE SOFTWARE, FEATURES AND ACCOMPANYING DOCUMENTATION MATERIALS TO ACHIEVE YOUR INTENDED RESULTS, AND FOR THE USE AND RESULTS OF THE SMARTMUSIC SERVICES. NO ORAL OR WRITTEN INFORMATION OR ADVICE PROVIDED BY MAKEMUSIC, ITS DEALERS, DISTRIBUTORS, AGENTS, OR EMPLOYEES SHALL CREATE ANY OTHER WARRANTY, AND YOU MAY NOT RELY ON SUCH INFORMATION OR ADVICE.

BY PROVIDING THE SMARTMUSIC SERVICES, MAKEMUSIC DOES NOT IN ANY WAY PROMISE THAT THE SMARTMUSIC SERVICES WILL REMAIN AVAILABLE TO YOU. MAKEMUSIC IS ENTITLED TO TERMINATE ALL OR PART OF ANY OF THE SMARTMUSIC SERVICES AT ANY TIME, IN ITS SOLE DISCRETION WITHOUT NOTICE TO YOU.

22. **EXCLUSION OF CONSEQUENTIAL DAMAGES.** NEITHER MAKEMUSIC NOR ANYONE ELSE INVOLVED IN THE CREATION, PRODUCTION, LICENSING, OR DELIVERY OF THE SMARTMUSIC SERVICES AND DOCUMENTATION MATERIALS SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES (INCLUDING DAMAGES FOR LOST PROFITS OR THE LIKE) RESULTING FROM THE ACCESS, PAYMENT, USE OR INABILITY TO USE THE SMARTMUSIC SERVICES, EVEN IF MAKEMUSIC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. MAKEMUSIC SHALL NOT BE LIABLE FOR CHANGES TO ANY FINALE FAMILY NOTATION FILES THAT MAY OCCUR UPON CONVERSION TO THE SOFTWARE.

23. **CAP ON LIABILITY.** YOU AGREE THAT THE LIABILITY OF MAKEMUSIC, ITS AFFILIATES, AGENTS, AND LICENSORS, IF ANY, ARISING OUT OF ANY KIND OF LEGAL CLAIM (WHETHER IN CONTRACT, TORT, OR OTHERWISE) IN ANY WAY CONNECTED WITH THE SMARTMUSIC SERVICES OR THE CONTENT IN THE SMARTMUSIC SERVICES SHALL NOT EXCEED THE AMOUNT YOU PAID TO MAKEMUSIC FOR THE USE OF THE SMARTMUSIC SERVICES IN THE 12 MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM.

24. **Indemnification.** You agree to indemnify, defend and hold harmless MakeMusic and its subsidiaries, affiliates, officers, directors, employees, agents, successors and assigns ("Indemnitees") from and against any and all claims, demands, actions, liability, losses, fines, penalties, and expenses (including attorneys' fees) that are related to your acts through the use of the SmartMusic Services. Such acts may include, without limitation: (i) your User Content uploaded or created through the SmartMusic Services; (ii) providing content to or communicating with MakeMusic or its affiliates; (iii) unauthorized use of material obtained through the SmartMusic Services; (iv) engaging in a prohibited activity; or (v) any other action that breaches this Agreement, or any representation, warranty, covenant or obligation hereunder.



25. **Third-Party Links.** The SmartMusic Services may contain links to third-party websites. Such third-party websites are maintained by persons or organizations over which MakeMusic exercises no control. Your use of these third-party websites is governed by the terms of use and privacy policy of such websites. MakeMusic expressly disclaims any responsibility for the content or results from your use of such third-party websites.
26. **Entire Agreement.** This Agreement, as well as any subscription terms provided to you at the time of enrollment, make up the complete and exclusive agreement between you and MakeMusic relating to the SmartMusic Services.
27. **Governing Law.** This Agreement, your rights and obligations, and all actions contemplated by this Agreement shall be governed by the laws of the United States of America and the State of Colorado, as if the Agreement was a contract wholly entered into and wholly performed within the State of Colorado. Any disputes arising out of this Agreement shall be venued in the state or federal courts sitting in the State of Colorado.
28. **Assignment.** This Agreement is personal to you. You may not assign your rights or obligations to anyone.
29. **Severability.** If any provision in this Agreement is invalid or unenforceable under applicable law, the remaining provisions will continue in full force and effect.
30. **Electronic Marketing.** By clicking to agree to the SmartMusic &reg; Terms of Service, you expressly agree and consent to receiving all notices from MakeMusic relating to your personal information, your account or any license or relationship that you have with MakeMusic via electronic mail via the address you have provided to MakeMusic as your email address. You have the right to revoke consent to receive such notices via electronic mail, but until such consent is revoked, your consent to receive notices via electronic mail will remain in full force and effect.
31. **Restriction on Users.** You represent and warrant that (i) you are 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) you are not listed on any U.S. Government list of prohibited or restricted parties.
32. **Contact Us / Notices.** If you have questions or comments about this Agreement, please contact MakeMusic directly:  
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- Visit us on-line at <http://www.makemusic.com/contact-us/>
  - Call us Toll Free (for the U.S.A.): 1-800-843-2066
  - Send us a letter addressed by First Class Postage Prepaid U.S. Mail or overnight courier to the following address:
    - Customer Success  
MakeMusic, Inc.  
7007 Winchester Circle, Suite 140  
Boulder, CO 80301  
USA

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