

CD BABY ARTIST AGREEMENT

Last Updated: 9 August, 2023

Welcome to the CD Baby Artist Agreement (together with any and all applicable Addenda the “Agreement”), between you and CD Baby (a division of Audio and Video Labs, Inc., along with our licensees, partners and affiliates collectively referred to in this Agreement as “us,” “we,” and “CD Baby”). This Agreement contains the general terms and conditions under which CD Baby offers the “Services” (as defined below). If you choose to utilize the Digital Download and Distribution Service (as defined below) or the Consignment Service (as defined below) or the Publishing Service (as defined below) or the Social Video Monetization (SVM) Service (as defined below) or the MLC Service (as defined below) or the SoundExchange Service or the Sync Distribution Service (as defined below) or any combination of such services, the [Digital Distribution Addendum](#) and/or the [Consignment Services Addendum](#) and/or the [Publishing Administration Addendum](#) and/or the [Social Video Monetization \(SVM\) Addendum](#) and/or the [Mechanical Licensing Collective \(MLC\) Addendum](#) and/or the [SoundExchange Addendum](#) and/or the [Sync Distribution Addendum](#) (each an “Addendum” and collectively the “Addenda”) will apply as applicable. Use of the Services, including through the submission of sound recordings (and the musical works embodied therein) for distribution by CD Baby (whether by upload to the CD Baby website (the “Website”) or through the submission of physical embodiments of your sound recordings (and the musical works embodied therein) (e.g., as CDs or DVDs) to CD Baby, constitutes your agreement to and acceptance of this Agreement and any applicable Addendum.

THIS AGREEMENT, WHEN ACCEPTED BY YOU AFTER CLICK “I AGREE,” WILL CREATE A BINDING AND LEGALLY ENFORCEABLE CONTRACT BETWEEN YOU AND US, WHETHER YOU ARE ACTING IN YOUR INDIVIDUAL CAPACITY OR AS THE AUTHORIZED REPRESENTATIVE FOR AN ARTIST, BAND, GROUP OR CORPORATION, IN WHICH CASE “YOU” SHALL REFER TO THE ARTIST, BAND, GROUP OR CORPORATION ON WHOSE BEHALF YOU ARE ACTING AND AUTHORIZED TO ACT. THEREFORE, PLEASE READ THIS AGREEMENT CAREFULLY AND CONSULT WITH YOUR OWN BUSINESS AND LEGAL ADVISORS BEFORE CLICKING “I AGREE.” THE “EFFECTIVE DATE” OF THIS AGREEMENT IS THE DATE ON WHICH YOU CLICK THE “I AGREE” BUTTON BELOW.

We reserve the right to add, delete and/or modify any of the terms and conditions contained in this Agreement pursuant to the provisions of Section 9 below. Notwithstanding the preceding sentence, no modifications to this Agreement will apply to any dispute between you and CD Baby that arose prior to the date of such modification. In the event of substantive changes to the terms of this Agreement, we will notify you primarily by changing the date at the top of this Agreement and secondarily with a notice on your account dashboard that will appear for a period of 30 days after the update.

YOU ARE RESPONSIBLE FOR MAINTAINING A VALID EMAIL ADDRESS ON FILE WITH CD BABY FOR SO LONG AS YOU AVAIL YOURSELF OF ANY SERVICES.

1. TERMS OF SERVICE:

This Agreement is incorporated into and subject to the [Terms of Service](#) (“TOS”). All initially-capitalized terms not defined in this Agreement are defined in the TOS.

2. AUTHORIZATION:

You hereby appoint us as your authorized representative for the sale and other distribution of “Your Content” (as defined below). Accordingly, you hereby grant to us and our “Licensees” (as defined below) the nonexclusive right, during the “Term” (as defined below) and throughout the “Authorized Territory” (as defined below), to:

- (a) Reproduce and create derivative works of Your Content (including any Physical Product) by creating video files that embody Your Content and elements thereof and authorizing our Licensees to do the same (hereinafter referred to as “Art Tracks”), converting Your Content into Digital Masters, including full-length versions of sound recordings (“Clips”) that can be used for promotional purposes as authorized herein and, if necessary, reproducing Your Content in new Physical Product;
- (b) Publicly perform, publicly display, communicate to the public, synchronize, and otherwise make available Your Content, and Clips, by means of digital audio transmissions (on an interactive or noninteractive basis) through the Website, a Licensee website or platform, or via a CD Baby Widget you or any person authorized by you may place on any website, to identify the availability of Your Content for license, sale, or distribution and to promote Your Content, on a through-to-the-listener basis, without the payment of any fees or royalties to
 - (i) the songwriters, composers, or music publishers owning any rights in and to Your Content;
 - (ii) any performing artist(s) (including nonfeatured vocalists and musicians) on Your Content;
 - (iii) any other person involved in the creation of or owning any portion of Your Content, including, but not limited to a record label, and
 - (iv) any agents for any of the foregoing, including, without limitation, performing rights organizations (“PROs”) and unions or guilds, whether U.S.-based (such as ASCAP, BMI, SESAC, SoundExchange, AFTRA and AFM) or foreign (e.g., PRS for Music, PPL, CMRRA, CSI, GEMA, etc.);
- (c) Distribute Your Content in accordance with any applicable Addendum;
- (d) Place or embed Your Content in magazines, websites, CD Baby advertisements, and any and all other media, whether now known or hereafter developed, but specifically excluding television and movies, to promote the CD Baby Service;
- (e) Use and distribute Copyright Management Information as embodied in a Digital Master of Your Content;
- (f) Use Your Content and metadata as may be reasonably necessary or desirable for us to exercise our rights under this Agreement;

- (g) Reproduce, distribute, and publicly perform and communicate to the public Your Content (including Clips) as part of a downloaded program that may include multiple sound recordings and other content, commonly known as a “podcast;” and
- (h) Authorize our Licensees to perform any one or more of the activities specified above or in an applicable Addendum.

3. TERM:

The term of this Agreement will commence on the Effective Date and will continue, unless and until terminated by either you or us, upon twenty-four (24) hours written notice (the “Term”), which notice, if sent by

- (a) CD Baby, may be sent to you at the last email address you provided to CD Baby and
- (b) you to CD Baby, must be sent only to the following e mail address: notice@cdbaby.com with the following information:
 - (i) your username;
 - (ii) the e mail address associated with your Account;
 - (iii) all album titles for which you are requesting termination; and
 - (iv) which Services you are terminating (e.g., Physical Distribution, Digital Distribution, and/or Sync Distribution). Any termination notice provided by you pursuant to this section shall be permanent and irreversible.
- (c) Notwithstanding anything to the contrary herein, CD Baby may at any time in its sole discretion, with or without notice to you:
 - (i) suspend or limit your access to or your use of the Services and/or
 - (ii) suspend or limit your access to your Account (as defined in Section 11(a)).

4. PAYMENTS TO YOU:

- (a) Pricing the Sale of Your Content. Except as otherwise set forth in an Addendum, you will have the discretion to set the pricing for the sale of Your Content on the Website. Notwithstanding the foregoing, CD Baby and its distributors and partners may set pricing differently for third-party websites than for the Website, including, by way of example and not limitation, to cover additional costs or to provide discounts for promotions. CD Baby reserves the sole and exclusive right to set the pricing for any digital audio transmissions of Your Content, whether on an interactive or noninteractive basis, provided that Your Content will be priced the same as all other content on the Service licensed by CD Baby for interactive or noninteractive digital audio transmissions. You will also be subject to additional set up fees and charges as more fully explained on the Website, including, but not limited to, fees for CD Baby’s administering mechanical royalties for the reproduction and distribution of musical works (as applicable), as such fees and charges may be updated by CD Baby from time to time, and you are responsible for reviewing those fees and charges.

Your acceptance of this Agreement is an acceptance of the CD Baby fees and charges, which are available here: <https://cdbaby.com/cd-baby-cost/>.

- (b) **Licensee Records.** CD Baby, may, but need not, audit the books and records of Licensees and may accept any representations made in a Licensee accounting statement delivered to CD Baby as true and complete. CD Baby shall have no liability to you for failure to audit or investigate any accountings rendered to it by any Licensees.
- (c) **Offsets.** You hereby authorize CD Baby to offset against any amounts owed to you pursuant to this Agreement any amounts that you may owe to CD Baby, whether under an indemnification provision or for costs, expenses, taxes, and deductions authorized in this Agreement.
- (d) **Recordkeeping; Audits.** We will maintain books and records which report the sale or other licensed uses of Your Content. You may, but not more than once a year, at your own expense, engage a Certified Public Accountant ("CPA") to examine those books and records directly related to the sale or other licensed uses of Your Content, as provided in this Section 4(d), only. You may have your CPA make those examinations only for the purpose of verifying the accuracy of the statements sent to you. All such examinations will be in accordance with generally accepted accounting principles ("GAAP") procedures and regulations. **Your CPA may make such an examination for a particular statement only once, and only within one (1) year after the date we send you that statement.** Your CPA may make such an examination only during our usual business hours, and only at the place where such books and records are maintained in the ordinary course of business. You must provide us with thirty **(30)-days written notice** prior to commencing an audit and must identify the name, address, telephone number, and email address of the CPA conducting the audit on your behalf. You may not engage the CPA on a contingent fee basis (i.e., your CPA must be paid on a flat fee or time-based basis). We may postpone the commencement of your CPA's examination by notice given to you not later than five (5) days before the commencement date specified in your notice. In the event of any postponement initiated by us, the running of the time within which the examination may be made will be suspended during the postponement. If your CPA's examination has not been completed within three (3) months from the time commenced, then we may require you to terminate the audit upon seven (7) days' notice, which notice may be given at any time. We will not be required to permit the CPA to continue any examination after the end of that seven (7) day period. Your CPA will not be entitled to examine any other records that do not specifically report sales or other licensed uses of Your Content for which CD Baby has actually received payment. Your CPA may act only under an acceptable confidentiality agreement, which provides that any information derived from such audit or examination on your behalf will not be knowingly released, divulged, published, or shared with any other person, firm, or corporation, other than to you or to a judicial or administrative body in connection with any proceeding relating to this Agreement. Your CPA may not share the results of the examination conducted on your behalf with any third party without our express written permission.
- (e) **Objections to Accountings.** If you have any objections to a CD Baby accounting statement made available to you, you agree that you shall give us specific notice of that

objection, including a copy of your CPA's analysis of the accounting statement, and your reasons for it within eighteen (18) months after the date we send or make that statement available to you. Each statement shall become conclusively binding on you at the end of that eighteen (18) month period, and you will no longer have any right to make any other objections to it notwithstanding any audit rights you may otherwise have under any applicable law or regulation. Any payments determined to be owed you following an audit shall be paid within forty-five (45) days of the delivery of your CPA's audit report, unless objected to in writing by CD Baby, in which case any payments due shall be postponed pending the resolution of the audit dispute. A late fee of one-half percent (0.5%) shall be due for underpaid royalties. Unless otherwise prohibited by law, you will not have the right to sue us in connection with any statement, or to sue us for unpaid royalties for the period a statement covers, unless you commence the suit within that eighteen (18)-month period. If you commence suit on any controversy or claim concerning statements rendered to you under this Agreement in a court of competent jurisdiction, the scope of the proceeding will be limited to a determination of the amount of royalties due for the accounting periods concerned, and the court shall have no authority to consider any other issues or award any relief except recovery of any royalties found owing, plus interest at the rate of one-half percent (0.5%) per month. Your recovery of any such royalties plus interest shall be the sole remedy available to you by reason of any claim related to our statements.

- (f) Affiliation with Other Performing Rights Organizations for Royalties. Nothing contained in this Agreement shall prohibit you from affiliating with any PRO for the receipt of royalty payments for the public performance or communication to the public of your sound recordings or musical works made by a third party, excluding only public performances or communications to the public of sound recordings or musical works made by CD Baby pursuant to the Authorizations set forth in Section 2 of this Agreement.
- (g) Tax Information. CD Baby will use reasonable efforts to collect sales and federal, state, local or foreign withholding or other taxes owed on the sale of Your Content ("Tax"), and to remit such Tax on your behalf to relevant government authorities. Notwithstanding the above, in all events, you acknowledge and agree that
 - (i) CD Baby's payment of any sums to you hereunder, including any royalties for your Content licensed pursuant to this Agreement, is conditioned upon your fulfillment of all obligations described hereunder and CD Baby's receipt of your completed U.S. Federal Tax form W-9 or, as applicable, the appropriate form W-8,
 - (ii) CD Baby shall be entitled to withhold from any amounts payable to you under this Agreement any Tax, charges and governmental fees which CD Baby is required to withhold,
 - (iii) you are ultimately responsible for tracking and paying any Tax, charges and governmental fees owed in connection with the sale or distribution of Your Content pursuant to this Agreement, including without limitation any tariffs, value-added taxes or governmental fees, and you hereby indemnify CD Baby for any Tax, charges and governmental fees that may be owed in addition to those amounts collected and remitted on your behalf by CD Baby. You will be responsible for any costs,

expenses and liabilities we may pay or incur as a result of any incorrect, inaccurate or misrepresented tax or financial information provided by you.

- (h) Payment Terms. CD Baby will use commercially reasonable efforts to make a payment to you for amounts generated, actually received, and posted to your account pursuant to the rights granted in this Artist Agreement and any applicable Addenda no later than 15 business days after your Threshold Amount (also known as Pay Point) has been met. The current schedule of fees and payment options can be found in our Help Center at <https://support.cdbaby.com/hc/en-us/articles/211074743> and are incorporated into the terms of this Agreement. Payments pursuant to this Agreement and any applicable Addenda constitute full and complete consideration for the licenses and authorizations granted, and representations, warranties, undertakings, and covenants made by you under this Agreement and such Addenda. Although CD Baby reserves the right to take any actions available to it in any dispute with a Licensee, nothing in this Agreement or any applicable Addenda obligates CD Baby to collect any amounts due it by a Licensee or initiate any cause of action against a Licensee for nonpayment of any CD Baby Artist Royalties. All accountings rendered and payments made by CD Baby to you shall be binding upon you and not subject to any objection for any reason unless specific objection in writing, stating the basis thereof is given to CD Baby within one (1) year from the date rendered. Statements and payments shall be sent in accordance with the relevant instructions in your Account. No generalized objection (such as, but not limited to, a generalized claim of over-reporting of deductions or underreporting of income or any similar generalization) shall be deemed a valid objection.

5. YOUR OBLIGATIONS:

- (a) You, or a licensee acting on your behalf (e.g., a company such as Easy Song), will be responsible for obtaining and paying for any and all clearances or licenses required in the Authorized Territory (or any portion thereof) for the use of any musical works embodied in Your Content. Without limiting the generality of the foregoing, you (either directly or through a third party acting on your behalf) shall be responsible for and shall pay
 - (i) any royalties and other sums due to artists (featured and nonfeatured), authors, coauthors, copyright owners and co-owners, producers, engineers, and any other record royalty participants from sales or other uses of Your Content,
 - (ii) all mechanical royalties or other sums payable to music publishers and/or authors or coauthors of musical compositions embodied in Your Content from sales or other uses of Your Content [Please see the information at <https://support.cdbaby.com> with regard to publishing issues.],
 - (iii) all payments that may be required under any collective bargaining agreements applicable to you or any third party (e.g., to unions or guilds such as AFM or AFTRA), and
 - (iv) any other royalties, fees and/or sums payable with respect to Your Content or other materials provided by you to us. You agree that the amount payable to you is

inclusive of any so-called “artist royalties” that might otherwise be required to be paid for sales or exploitations pursuant to the applicable laws of any jurisdiction and for any public performances, public displays or communications to the public of the sound recordings and musical works constituting Your Content.

- (b) Parental Advisory Labeling. You will be responsible for complying with the Recording Industry Association of America’s (“RIAA”) Parental Advisory Logo (“PAL”) Standards, as applicable, for so long as you use the Services. Information about the RIAA PAL Program is available here: <http://www.riaa.com/resources-learning/parental-advisory-label/>

6. RIGHT TO WITHDRAW MATERIAL; TERMINATION OF AUTHORIZATIONS TO LICENSEES

You have the right, at any time during the Term, to withdraw the authorizations set forth in Section 2 above and the applicable Addenda, for the sale or other uses of all or any portion of Your Content, upon written notice to us (a “Withdrawal Notice”) or to terminate this Agreement pursuant to Section 3 of this Agreement (a “Termination Notice”). Upon receipt of a Withdrawal Notice with respect to any of Your Content or a Termination Notice with respect to all of Your Content, we will promptly remove those elements of Your Content covered by such Withdrawal Notice or Termination Notice, as the case may be, from the Website (and in no event more than five (5) business days following receipt of a Withdrawal Notice or Termination Notice), and shall, within five (5) business days following our receipt of a Withdrawal Notice or Termination Notice, advise our Licensees via a “Takedown Notice” that they are no longer authorized to sell or offer for any other use those elements of Your Content covered by such Takedown Notice. Your submission of a Withdrawal Notice or Termination Notice shall not in any way limit the authorizations granted to us or any Licensees prior to the implementation of your Withdrawal Notice or Termination Notice, and will not limit in any way the rights of end users who have acquired Your Content.

CD Baby is not responsible for, and has no liability for, any delays of our Licensees in removing Your Content from any websites or services owned or operated by such Licensees. You shall remain solely responsible for enforcing the removal of Your Content from our Licensees’ websites and services in the event such Licensees fail to remove Your Content following receipt of a Takedown Notice or following the termination of any rights granted to such Licensees by CD Baby; provided, however, that CD Baby may, in its sole and absolute discretion, continue to assist you to effectuate the removal of Your Content from Licensees’ websites and services. CD Baby may, but need not, provide you with notice in the event CD Baby terminates or allows to expire any authorizations previously granted to a Licensee for the distribution of Your Content. Nothing in this Agreement shall limit any remedies you may have at law or in equity against any Licensee that is using Your Content in violation of the terms of any license granted to such Licensee by you or CD Baby.

7. NAMES AND LIKENESSES; PROMOTIONAL USE AND OPPORTUNITIES:

- (a) Name and Likeness of Artists and Songwriters. You hereby grant to CD Baby during the Term the right to use and to authorize our Licensees to use the names and approved likenesses of, and biographical material concerning, any artists, bands, producers and/or songwriters, as well as track and/or album name, and all artwork related to your sound recordings or audiovisual works, in any marketing materials for the sale, promotion, and advertising of Your Content, which is offered for sale or other use under the terms of this

Agreement (e.g., an artist or band name and likeness may be used in an informational fashion, such as by textual displays or other informational passages, to identify and represent authorship, production credits, and performances of the applicable artist or band in connection with the exploitation of Your Content).

- (b) Promotion. You hereby grant to us and our Licensees the right to market, promote, and advertise Your Content as available for purchase or license, in any and all media, whether now known or hereafter developed, as we and they determine in our and their discretion.
- (c) Customer Information. CD Baby may, from time to time, provide you with information relating to customers that purchase Your Content, subject to our privacy policy and the preferences of our customers. You may only use, and disclose this information to a third party, for your internal record keeping purposes. You may not disclose any of this information to a third party or use it for any other purpose. In all events, you will comply with the terms of CD Baby's privacy policy in connection with the customer data provided under this Agreement.

8. OWNERSHIP:

Subject to our rights hereunder or under any prior agreement between you and us, as between you and us, all right, title, and interest in and to (a) Your Content, (b) the Digital Masters, (c) the Clips, (d) the Physical Product (if applicable), (e) all copyrights and equivalent rights embodied therein, and (f) all materials furnished by you, will be yours.

9. MODIFICATION, TERMINATION AND EFFECT OF TERMINATION:

- (a) Modification of Agreement. **We reserve the right to change, modify, add to, or remove all or part of this Agreement**, in our sole discretion, at any time and from time to time. You authorize us to communicate with you via any reasonable manner we may choose in our sole discretion. In the event of substantive changes to the terms of this Agreement, we will notify you by changing the date at the top of this Agreement and through notice on your Account dashboard. The most recent date of this Agreement shall be identified on the first page hereof. **If any modification is unacceptable to you, your only recourse is to discontinue use of the Services by sending us a Termination Notice.** Your continued use of the Services after any modification will constitute your binding acceptance of the changes.
- (b) Consequences of Termination. The expiration or termination of the Agreement will not relieve either you or us from our respective obligations incurred prior to the effective date of your termination of the Agreement. In addition, provisions of this Agreement intended to survive the termination of this Agreement shall survive termination, including, but not limited to, the Indemnification, Disclaimers, Limitation of Liability; Basis of the Bargain, and General Provisions.

10. MONITORING OF YOUR CONTENT; REMOVAL OF CONTENT FROM WEBSITE:

- (a) Monitoring. CD Baby does not control Your Content and does not have any obligation to monitor Your Content for any purpose. CD Baby may choose, in its sole discretion, to monitor, review or otherwise access some or all of Your Content, but by doing so CD Baby

assumes no responsibility for Your Content, no obligation to modify or remove any inappropriate elements of Your Content, or to monitor, review or otherwise access any other artist's content or artwork.

- (b) Right of Removal. CD Baby reserves the right, in its sole and absolute discretion, to remove any of Your Content from the Services. Reasons for removal include, but are not limited to content which:
 - (i) is patently offensive, pornographic or defamatory,
 - (ii) is the subject of a dispute between you or us and a third party,
 - (iii) is content to which you cannot document your rights to CD Baby's satisfaction therein upon CD Baby's request,
 - (iv) violates the intellectual property rights or other protected interests of a third party,
 - (v) is the subject of a takedown notice by a party claiming to own the rights therein, or
 - (vi) is subject to legitimate complaints from licensees, partners and affiliates. CD Baby may also remove Your Content from the Services if CD Baby has, in its reasonable business judgment, reason to suspect that your Content or Account has been subjected to and/or involved in fraudulent activities or for any other reason in CD Baby's sole and absolute judgment is necessary to protect the business interests of CD Baby and any of its affiliates, partners or Licensees CD Baby may also remove Your Content from the Services if you are abusive or rude or provide false or intentionally misleading information to any CD Baby employees or agents.
- CD Baby reserves the right to suspend the payment of any funds payable to you hereunder and to block your ability to otherwise withdraw funds from your Account until satisfactory resolution and/or explanation of the suspect activities is obtained. To the extent that any fraudulent activities are determined to be caused by your or your affiliates' actions or omissions, any costs incurred by CD Baby (including legal fees and costs) in connection therewith may, in addition to its other remedies, be deducted by CD Baby from any monies otherwise payable to you hereunder. Certain of CD Baby's Licensees may also have policies related to fraud and suspected fraudulent activities and you agree that such policies shall be binding upon you hereunder. CD Baby shall have no liability to you for the removal of any of Your Content from the Services or any Licensee website or service. Notwithstanding the preceding sentence, CD Baby may, in its sole discretion, provide you a refund for any fees previously paid by you for making Your Content available via the Services or through Licensees. The removal of any of Your Content shall not relieve CD Baby of the obligation to pay you any royalties that may have accrued prior to the removal of Your Content, except that CD Baby will not be obligated to pay you any royalties that CD Baby deems, in its reasonable business judgment, to have been accrued through the fraudulent or abusive exploitation of Your Content.

- (c) No Termination Due to Removal. This Agreement shall not be terminated automatically by CD Baby's removal of Your Content from the Website or Licensee's websites or services. In order for you to terminate this Agreement following the removal of any of Your Content, you must send CD Baby a Termination Notice.

11. ACCOUNT INFORMATION; DISCLOSURES:

- (a) Your Account Information. In order to access some features of the Website, including your account information and periodic statements, you will have to create an online account ("Account"). You hereby represent and warrant that the information you provide to CD Baby upon registration will be true, accurate, current, and complete. You also hereby represent and warrant that you will ensure that your Account information, including your email address, is kept accurate and up-to-date at all times during the Term of this Agreement.
- (b) Password. As a registered user of the Services you will have login information, including a username and password. Your Account is personal to you, and you may not share your Account information with, or allow access to your Account by, any third party, other than an agent authorized to act on your behalf. As you will be responsible for all activity that occurs under your Account, you should take care to preserve the confidentiality of your username and password, and any device that you use to access the Website. You agree to notify us immediately of any breach in secrecy of your login information. If you have any reason to believe that your Account information has been compromised or that your Account has been accessed by a third party not authorized by you, then you agree to immediately notify CD Baby by email to notice@cdbaby.com. You will be solely responsible for the losses incurred by CD Baby and others (including other users) due to any unauthorized use of your Account that takes place prior to notifying CD Baby that your Account has been compromised.
- (c) Disclosure of Information. You acknowledge, consent, and agree that CD Baby may access, preserve, and disclose your Account information and Your Content if required to do so by law or in a good faith belief that such access, preservation or disclosure is reasonably necessary to
 - (i) comply with legal process;
 - (ii) enforce this Agreement;
 - (iii) respond to a claim that any of Your Content violates the rights of third parties;
 - (iv) to respond to your requests for customer service; or
 - (v) to protect the rights, business interests, property or personal safety of CD Baby and its employees and users, and the public.

12. PROHIBITED USE OF THE WEBSITE AND LICENSEE WEBSITES AND SERVICES:

- (a) You agree not to use the Website, the Services, and any services provided by Licensees, for any unlawful purpose or in any way that might harm, damage, or disparage CD Baby, its

Licensees or any other party. Without limiting the preceding sentence and by way of example and not limitation, you agree that you will not, whether through the Website, our Licensees or Your Content, do or attempt any of the following:

- (b) Undertake, cause, permit or authorize the modification, creation of derivative works, translation, reverse engineering, decompiling, disassembling or hacking of any aspect of the Website or any other part thereof, except and solely to the extent permitted by this Agreement, the features of the Website or by law, or otherwise attempt to use or access any portion of the Website other than as intended;
- (c) Reproduce, duplicate, copy, sell, trade, resell, distribute or exploit, any portion of the Website, use of the Website, access to the Website or content obtained through the Website, as a result of your being granted permission to upload Your Content to the Website;
- (d) Remove, circumvent, disable, damage or otherwise interfere with any security-related features of the Website, features that prevent or restrict the use or copying of any part of the Website or features that enforce limitations on the use of the Website;
- (e) Threaten, harass, abuse, slander, defame or otherwise violate the legal rights (including, without limitation, rights of privacy and publicity) of third parties;
- (f) Publish, distribute or disseminate any inappropriate, profane, vulgar, defamatory, infringing, obscene, tortious, indecent, unlawful, offensive, immoral or otherwise objectionable material or information;
- (g) Create a false identity or impersonate another for the purpose of misleading others as to your identity, including, but not limited to, providing misleading information to any feedback system employed by CD Baby;
- (h) Transmit or upload any material that contains viruses, Trojan horses, worms, time bombs, cancelbots, or any other harmful, damaging or deleterious software programs;
- (i) Interfere with or disrupt the Website, networks or servers connected to the Website or violate the regulations, policies or procedures of such networks or servers;
- (j) Upload or otherwise transmit any information or content that infringes any patent, trademark, trade secret, copyright or other proprietary rights of any party, including by incorporating any such material in Your Content; or
- (k) Use the Website in any manner whatsoever that could lead to a violation of any federal, state or local laws, rules or regulations.

13. AVAILABILITY OF SERVICES:

CD Baby may make changes to or discontinue any aspects of the Services and any of the features, media, content, products, software or services available via the Website, at any time and without notice and without liability to you. The features, media, content, products, software or services available on and through the Website may be out of date, and CD Baby makes no commitment to update any aspect of the Website. CD Baby makes no representations and warranties with respect

to availability of the Website and may discontinue the Service at any time with or without notice. You are solely responsible for maintaining back-up copies of any elements of Your Content uploaded to the Website or otherwise delivered to CD Baby as Physical Product.

14. ADDITIONAL REPRESENTATIONS AND WARRANTIES:

- (a) Mutual Representations and Warranties. Each party represents and warrants to the other that it:
 - (i) is authorized to enter into this Agreement on the terms and conditions set forth herein.
 - (ii) will not act in any manner that conflicts or interferes with any existing commitment or obligation of the other party, and that no agreement previously entered into by the party will interfere with the performance of its obligations under this Agreement.
 - (iii) shall perform its obligations hereunder in full compliance with any applicable laws, rules, and regulations of any governmental authority having jurisdiction over such performance.
- (b) Representations and Warranties by You. You represent and warrant to CD Baby that:
 - (i) you have the full right, power, and authority to act on behalf of any and all owners of any right, title or interest in and to Your Content, including, but not limited to, all musical works embodied in Your Content, and that you are authorized to provide Your Content to us for the uses specified in this Agreement. For the avoidance of doubt, if you are acting on behalf of an artist, band, group or corporation, you hereby represent and warrant to CD Baby that you are fully authorized to enter into this Agreement on behalf of such artist, band, group or corporation and to grant all of the rights and assume and fulfill all of the obligations, covenants, and representations and warranties set forth in this Agreement.
 - (ii) you own or control all of the necessary rights in Your Content in order to make the grant of rights, licenses, and permissions herein, and that you have permission to use the name and likeness of each identifiable individual person whose name or likeness is contained or used within Your Content, and to use such individual's identifying or personal information (to the extent such information is used or contained in Your Content) as contemplated by this Agreement.
 - (iii) the use or other exploitation of Your Content, including, but not limited to, any musical works embodied in your sound recordings, by us and our Licensees as contemplated by this Agreement will not infringe or violate the rights of any third party, including, without limitation, any privacy rights, publicity rights, copyrights, contract rights, or any other intellectual property or proprietary rights.
 - (iv) to the extent you are the songwriter of any or all of the musical works embodied in Your Content, whether in whole or in part (e.g., as a cowriter), you have the full right, power, and authority to grant the rights set forth in this Agreement

notwithstanding the provisions of any agreement you may have entered into with any PRO, whether based in the United States or elsewhere, or any music publisher, and that you are solely responsible for taking all steps necessary to inform such PRO or music publisher of your grant of a royalty free license to us and our Licensees for the public performance and communication to the public of Your Content, including as Clips, and that no fees or payments of any kind whatsoever shall be due to any PRO or music publisher for the use of the musical works in Your Content when publicly performed, communicated or otherwise transmitted by CD Baby or its Licensees.

- (v) you have not assigned any of the rights in and to the sound recordings embodied in Your Content to any third party (e.g., a record label) that obtained exclusive rights in and to such sound recordings.

15. NO REPRESENTATIONS AND WARRANTIES WITH RESPECT TO SALES AND DISTRIBUTIONS:

CD Baby makes no guarantees regarding the minimum number of unit sales or uses of Your Content. In addition, we cannot guarantee that Licensees will perform under any agreement they enter into with CD Baby for the sale, distribution or licensed use of Your Content, including by paying the royalties they owe us for the distribution of Your Content. If a Licensee refuses to pay us for the use of Your Content, you agree that you will assume responsibility for collecting any payments that may be due from such noncompliant Licensees for any sale, distribution or licensed use of Your Content if such third party fails or refuses to pay such amounts to CD Baby upon CD Baby's request.

16. INDEMNIFICATION:

- (a) Indemnification. You hereby agree to indemnify, defend, and hold harmless CD Baby and Licensees and customers of Licensees exercising rights consistent with the grant of rights set forth in this Agreement and any applicable Addenda from and against any and all damages, claims, liabilities, costs, losses, and expenses (including, but not limited to, legal costs and attorneys' fees) (collectively, "Claims") arising out of any breach or alleged breach of any of the warranties, representations, covenants or agreements made by you in this Agreement and any applicable Addenda, including, but not limited to, any Claims made by
 - (i) a PRO or music publisher with respect to any public performances or communications to the public of any musical works embodied in Your Content,
 - (ii) any contributor to any sound recording included within Your Content, including claims from any unions, guilds, background musicians or vocalists, engineers, etc.,
 - (iii) any other party for any use or misuse of any other forms of intellectual property or proprietary rights in Your Content, including, but not limited to, trademark rights and invasions of the right of privacy or publicity, and any Claims arising out of or relating to

- (iv) any act, error or omission committed by you or any person or entity acting on your behalf or under your direction or control, and
- (v) Your Content and any use or exploitation thereof as contemplated under this Agreement or any applicable Addenda. You agree to reimburse us, on demand, for any payment made by us at any time with respect to any Claims to which the foregoing indemnity applies. Pending the resolution of any claim, demand, or action, we may, at our election, withhold payment of any monies otherwise payable to you hereunder in an amount which does not exceed your potential liability to us pursuant to this Section.
- (b) Indemnification Request. If we make an indemnification request to you under this Section, we may permit you to control the defense, disposition or settlement of the matter at your own expenses, provided that you shall not, without our prior written consent, enter into any settlement or agree to any disposition that requires any admission of liability by CD Baby or any Licensee or customer of a Licensee or imposes any conditions or obligations on CD Baby or a Licensee or customer of a Licensee (the “Indemnified Parties”) other than the payment of monies that are readily measurable for purposes of determining your monetary indemnification or reimbursement obligations to the Indemnified Parties. If the Indemnified Parties, in their reasonable and good faith judgment conclude that you are not capable of defending the interests of one or more of the Indemnified Parties against any Claims, then the Indemnified Parties, either individually or collectively, shall have the option to control the defense in any matter or litigation through counsel of their own choosing to defend against any such Claim for which you owe the Indemnified Parties an indemnification, and the costs of such counsel, as well as any court costs, shall be at your expense.

17. DISCLAIMERS:

- (a) THE WEBSITE AND ANY THIRD-PARTY CONTENT, SOFTWARE, SERVICES OR APPLICATIONS MADE AVAILABLE IN CONJUNCTION WITH OR THROUGH THE WEBSITE, ARE PROVIDED ON AN “AS IS,” “AS AVAILABLE,” “WITH ALL FAULTS” BASIS WITHOUT REPRESENTATIONS AND WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE.
- (b) TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, CD BABY AND ITS AFFILIATES, PARTNERS, LICENSORS AND SUPPLIERS HEREBY DISCLAIM ALL EXPRESS, IMPLIED AND STATUTORY WARRANTIES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM CD BABY OR THROUGH THE WEBSITE WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED HEREIN. CD BABY AND ITS AFFILIATES, PARTNERS, LICENSORS, AND SUPPLIERS DO NOT WARRANT THAT THE WEBSITE OR ANY PART THEREOF, OR ANY SERVICES PROVIDED BY CD BABY, WILL BE UNINTERRUPTED, OR FREE OF ERRORS, VIRUSES OR OTHER HARMFUL COMPONENTS AND DO NOT WARRANT THAT ANY OF THE FOREGOING WILL BE CORRECTED. YOU UNDERSTAND AND AGREE THAT YOU USE, ACCESS, DOWNLOAD, OR OTHERWISE OBTAIN INFORMATION, MATERIALS, OR DATA

THROUGH THE WEBSITE OR ANY ASSOCIATED WEBSITES OR APPLICATIONS, AND OFFER YOUR CONTENT VIA THE SERVICES, AT YOUR OWN DISCRETION AND RISK, AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY (INCLUDING YOUR COMPUTER SYSTEM, HANDSET, OR ANY OTHER DEVICE OR PERIPHERAL USED IN CONNECTION WITH THE WEBSITE) OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OR USE OF SUCH MATERIAL OR DATA.

18. **LIMITATION OF LIABILITY**; BASIS OF THE BARGAIN:

- (a) CD BABY SHALL NOT BE LIABLE TO YOU FOR **SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES** OF ANY NATURE, FOR ANY REASON, INCLUDING, WITHOUT LIMITATION, THE BREACH OF THIS AGREEMENT OR ANY TERMINATION OF THIS AGREEMENT, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE, EVEN IF WE HAVE BEEN WARNED OF THE POSSIBILITY OF SUCH DAMAGES. **CD BABY SHALL ALSO NOT BE LIABLE FOR ANY ROYALTIES, FEES, PAYMENTS OR DAMAGES ARISING OUT OF THE FAILURE OF ANY LICENSEE TO PAY CD BABY** OR YOU ANY ROYALTIES THAT ARE DUE FOR ANY USE OR MISUSE OF YOUR CONTENT, WHETHER PURSUANT TO AN EXISTING, EXPIRED OR TERMINATED AGREEMENT WITH CD BABY OR OTHERWISE. **CD BABY'S TOTAL LIABILITY TO YOU FOR ANY BREACH OF THIS AGREEMENT SHALL IN ALL INSTANCES BE LIMITED TO THE AMOUNT OF MONIES ACTUALLY PAID TO YOU** BY CD BABY FOR THE DISTRIBUTION OR LICENSING OF YOUR CONTENT DURING THE SIX (6)-MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF YOUR CLAIM AGAINST CD BABY.
- (b) APPLICABLE LAW MAY NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. IN SUCH CASES, YOU AGREE THAT BECAUSE SUCH DISCLAIMERS AND LIMITATIONS OF LIABILITY REFLECT A REASONABLE AND FAIR ALLOCATION OF RISK BETWEEN YOU AND CD BABY, AND ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN YOU AND CD BABY, CD BABY'S LIABILITY SHALL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW. YOU UNDERSTAND AND AGREE THAT CD BABY WOULD NOT BE ABLE TO OFFER ITS SERVICES TO YOU ON AN ECONOMICALLY FEASIBLE BASIS WITHOUT THESE LIMITATIONS AND WOULD NOT OFFER SUCH SERVICES ABSENT A LIMITATION OF LIABILITY.

19. DISPUTE RESOLUTION:

- (a) **Mandatory Arbitration**. Please read this carefully. It affects your rights. YOU AND CD BABY AND EACH OF OUR RESPECTIVE SUBSIDIARIES, AFFILIATES, PREDECESSORS IN INTEREST, SUCCESSORS, AND PERMITTED ASSIGNS AGREE TO ARBITRATION (EXCEPT FOR MATTERS THAT MAY BE TAKEN TO SMALL CLAIMS COURT), AS THE EXCLUSIVE FORM OF DISPUTE RESOLUTION EXCEPT AS PROVIDED FOR BELOW, FOR ALL DISPUTES AND CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR YOUR USE OF THE SERVICES. **Arbitration is more informal than a lawsuit in court**. Arbitration uses a neutral arbitrator instead of a judge or jury, allows for more limited discovery than in court, and is subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. Please visit www.adr.org for more information about arbitration.

- (b) Commencing Arbitration. A party who intends to seek arbitration must first send to the other, by certified mail, a written notice of intent to arbitrate (a “Notice”), or, in the absence of a mailing address provided by you to CD Baby, to you via any other method available to CD Baby, including via email. The Notice to CD Baby should be addressed to: [CD Baby / ATTN: Legal / 9600 NE Cascades Parkway Suite 180 / Portland, OR / 97220] (the “Arbitration Notice Address”). The Notice must (i) describe the nature and basis of the claim or dispute; and (ii) set forth the specific relief sought (the “Demand”). If you and CD Baby do not reach an agreement to resolve the claim within 30 days after the Notice is received, you or CD Baby may commence an arbitration proceeding as set forth below or file a claim in small claims court. THE ARBITRATION SHALL BE ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION (“AAA”) IN ACCORDANCE WITH ITS COMMERCIAL ARBITRATION RULES AND THE SUPPLEMENTARY PROCEDURES FOR CONSUMER RELATED DISPUTES (THE “Rules”), AS MODIFIED BY THIS AGREEMENT. The Rules and AAA forms are available online at www.adr.org or by calling the AAA at 1-800-778-7879, or by writing to the Notice Address. If you are required to pay a filing fee to commence an arbitration against CD Baby, then CD Baby will promptly reimburse you for your confirmed payment of the filing fee upon CD Baby receipt of Notice at the Arbitration Notice Address that you have commenced arbitration along with a receipt evidencing payment of the filing fee, unless your Demand is equal to or greater than US\$1,000, in which case you are solely responsible for the payment of the filing fee.
- (c) Arbitration Proceeding. The arbitration shall be conducted in the English language. A single independent and impartial arbitrator shall be appointed pursuant to the Rules, as modified herein. You and CD Baby agree to comply with the following rules, which are intended to streamline the dispute resolution process and reduce the costs and burdens on the parties:
 - (i) the arbitration shall be conducted by telephone, online and/or be solely based on written submissions, the specific manner to be chosen by the party initiating the arbitration;
 - (ii) the arbitration shall not require any personal appearance by the parties or witnesses unless otherwise mutually agreed in writing by the parties; and
 - (iii) judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.
- (d) **No Class Actions**. YOU AND CD BABY AGREE THAT YOU AND CD BABY MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. FURTHER, YOU AGREE THAT THE ARBITRATOR MAY NOT CONSOLIDATE PROCEEDINGS OF MORE THAN ONE PERSON’S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OR CLASS PROCEEDING, AND THAT IF THIS SPECIFIC PROVISIO IS FOUND TO BE UNENFORCEABLE, THEN THE ENTIRETY OF THIS MANDATORY ARBITRATION SECTION SHALL BE NULL AND VOID.

- (e) Decision of the Arbitrator. Barring extraordinary circumstances, the arbitrator shall issue his or her decision within 120 days from the date the arbitrator is appointed. The arbitrator may extend this time limit for an additional 30 days in the interests of justice. All arbitration proceedings shall be closed to the public and confidential and all records relating thereto shall be permanently sealed, except as necessary to obtain court confirmation of the arbitration award. The award of the arbitrator shall be in writing and shall include a statement setting forth the reasons for the disposition of any claim. The arbitrator shall apply the laws of the **State of Oregon** in conducting the arbitration. You acknowledge that this Agreement and your use of the Services and the Website evidences a transaction involving interstate commerce. The United States Federal Arbitration Act shall govern the interpretation, enforcement, and proceedings pursuant to the Mandatory Arbitration clause in this Agreement.
- (f) Applicable Law. This Agreement and your use of the Services and the Website shall be governed by the substantive laws of the State of Oregon without reference to its choice or conflicts of law principles. Only if the Mandatory Arbitration clause is deemed to be null and void, then all disputes arising between you and CD Baby under this Agreement shall be subject to the exclusive jurisdiction of the state and federal courts located in Multnomah County, Oregon, and you and CD Baby hereby submit to the personal jurisdiction and venue of these courts.
- (g) Equitable Relief. The foregoing provisions of this Dispute Resolution section do not apply to any claim in which CD Baby seeks equitable relief of any kind. You acknowledge that, in the event of a breach of this Agreement by CD Baby or any third party, the damage or harm, if any, caused to you will not entitle you to seek injunctive or other equitable relief against CD Baby, and your only remedy shall be for monetary damages, subject to the limitations of liability set forth in this Agreement.
- (h) **Claims. You and CD Baby agree that, notwithstanding any other rights the party may have under law or equity, any cause of action arising out of or related to this Agreement, the Services or the use of the Website, excluding a claim for indemnification, must commence within one year after the cause of action accrues. Otherwise, such cause of action is permanently barred.**
- (i) Improperly Filed Claims. All claims you bring against CD Baby must be resolved in accordance with this Dispute Resolution section. **All claims filed or brought contrary to this Dispute Resolution section shall be considered improperly filed. Should you file a claim contrary to this Dispute Resolution section, CD Baby may recover attorneys' fees and costs up to US\$5,000,** provided that CD Baby has notified you in writing of the improperly filed claim, and you have failed to promptly withdraw the claim.

20. GENERAL PROVISIONS:

- (a) Relationship of the Parties. The parties hereto agree and acknowledge that the relationship between them is that of independent contractors. This Agreement shall not be deemed to create an agency, partnership or joint venture between you and CD Baby, and CD

Baby shall not have a fiduciary obligation to you as a result of your entering into this Agreement.

- (b) **Entire Agreement.** This Agreement together with the TOS contains the entire understanding of the parties relating to the subject matter hereof. This Agreement (including all Addenda) supersedes all previous agreements or arrangements between you and CD Baby pertaining to the Services, provided that if you previously entered into a digital distribution or consignment agreement with us in the past, and elected any options specifying or limiting the scope of the distribution of Your Content, the limitations and authorizations with respect to the distribution of Your Content shall remain in place under this Agreement and the applicable Addendum. This Agreement cannot be changed or modified except as provided herein.
- (c) **Waiver; Severability.** A waiver by either party of any term or condition of this Agreement will not be deemed or construed as a waiver of such term or condition, or of any subsequent breach thereof. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable, such determination shall not affect any other provision hereof, and the unenforceable provision shall be replaced by an enforceable provision that most closely meets the commercial intent of the parties.
- (d) **Binding Effect.** This Agreement will be binding on the assigns, heirs, executors, affiliates, agents, personal representatives, administrators, and successors (whether through merger, operation of law, or otherwise) of each of the parties.
- (e) **Notice.** Any notice, approval, request, authorization, direction or other communication under this Agreement shall be given in writing and shall be deemed to have been delivered and given for all purposes on the delivery date if sent by electronic mail to the addresses provided to and by you upon registration with CD Baby, or as properly updated, or, in the absence of a valid electronic mail address, via any other method CD Baby may elect in its sole discretion, including, but not limited to, via posting on the Website.
- (f) **Rights Cumulative.** To the extent permitted by applicable law, the rights and remedies of the parties provided under this Agreement are cumulative and are in addition to any other rights and remedies of the parties at law or equity.
- (g) **Headings.** The titles and headings used in this Agreement are for convenience only and are not to be considered in construing or interpreting this Agreement.
- (h) **No Third Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their authorized successors and permitted assigns. Nothing herein, express or implied, is intended to or shall confer upon any person or entity, other than the parties hereto and their authorized successors and permitted assigns, any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
- (i) **Assignment.** CD Baby may assign its rights and obligations under this Agreement at any time to any party. You may not assign your rights and/or obligations under this Agreement without obtaining CD Baby's prior written consent.

- (j) **Prevailing Language.** The English language version of this Agreement controls in all respects and shall prevail in case of any errors, omissions, or inconsistencies with translated versions in other languages. All versions of this Agreement in any language other than English shall be for accommodation purposes only.

21. CERTAIN DEFINITIONS:

The following capitalized terms shall have the following meanings for purposes of this Agreement:

- (a) **“Authorized Territory”** means the universe, or more limited territories, to the extent so limited by you, during the CD Baby registration process.
- (b) **“CD Baby Widget”** means a
 - (i) software application available on the Website that you or someone authorized to act on your behalf may embed on third-party websites,
 - (ii) link, code, script or any other software or instruction that you or someone authorized to act on your behalf may embed or place on a third-party website, including, but not limited to, social media websites such as Facebook, that permits a user of such third-party website to access content hosted and/or streamed from servers owned or controlled by or on behalf of CD Baby, including Your Content, or
 - (iii) standalone software available for use on mobile devices, smartphones (e.g., iPhones, Android phones), tablet computers (e.g., iPads), set-top boxes, and other hardware now known or hereafter developed (collectively, “Hardware”), that facilitates or enables the public performance, communication to the public or other transmission of Your Content via the Internet or any other transmission medium through such third-party websites or on or through any Hardware. The CD Baby Widget may provide access to all of Your Content or give you the ability to control which of Your Content is available through third-party websites, as CD Baby may choose in its sole discretion.
- (c) **“Consignment Service”** means the service that enables you to market and have sold Physical Products via the Website and/or through CD Baby’s partners (e.g. distributors, retailers) on a consignment basis following your delivery of Your Content to CD Baby as Physical Product.
- (d) **“Copyright Management Information”** means the digital information conveying information regarding a Digital Master, including, by way of example and not limitation, the title of the applicable album, the name of the song, the ISRC code, the marketing label, and the record company name.
- (e) **“Digital Download and Distribution Service”** means the online services operated by CD Baby for the sale, distribution or licensing of Your Content and other content through the Website or through websites and services operated by or on behalf of Licensees.
- (f) **“Digital Master”** or **“Digital Masters”** means a copy or copies of Your Content in digital form, whether created by you or CD Baby.

- (g) “Digital Performance Rights” means the rights to perform a copyrighted work publicly by means of a digital audio transmission.
- (h) “Digital Performance Rights Administration Service” means the service that enables CD Baby to administer and manage your Digital Performance Rights and to collect on your behalf monies derived from the exploitation of the Digital Performance Rights in the sound recordings you have submitted to CD Baby.
- (i) “Licensee” means any third party licensee that we may authorize to carry out the marketing, distribution, licensing, and sale or other use of Your Content pursuant to the terms of this Agreement, including, by way of example and not limitation, Apple iTunes, MediaNet, Rhapsody, online streaming services (e.g., webcasters), and others that CD Baby may choose in its sole and absolute discretion.
- (j) “MLC Service” means collection of digital mechanical royalties through the Mechanical Licensing Collective (MLC) pursuant to the MLC Addendum.
- (k) “Physical Product” means Your Content as fixed in physical product such as CDs, DVDs, LPs, etc.
- (l) “Publishing Service” means music publishing administration service pursuant to the Publishing Administration Addendum.
- (m) “Service” means either, any combination, or all of the Digital Download and Distribution Service, the Consignment Service, the Publishing Service, the Social Video Monetization (SVM) Service, the MLC Service, the SoundExchange Service, and the Sync Distribution Service.
- (n) “Social Video Monetization (SVM) Service” involves generating revenues and authorizing third parties to derive or generate revenues from the sale or barter of advertising displayed or performed in conjunction with audiovisual works embodying the sound recordings, and the musical works embodied in such sound recordings, and any album related artwork, photos, liner notes, metadata and other material related to your sound recordings that you have provided to CD Baby and that you elect in your CD Baby account to make available pursuant to the SVM Addendum.
- (o) “SoundExchange Service” means the collection of digital performance rights administration services through SoundExchange pursuant to the SoundExchange Addendum.
- (p) “Sync Distribution Service” means the service that enables you to have Your Content made available for synchronization and other licensing pursuant to the Sync Distribution Addendum.
- (q) “Threshold Amount,” also known as “Pay Point,” means the dollar amount set by you initially upon your registration with CD Baby, or as subsequently modified by you, which amount shall in no event be less than US\$10. The default Threshold Amount is US\$25 and may be changed by you or CD Baby at any time so long as it equals or exceeds the minimum

threshold of US\$10. You understand and agree that CD Baby may update the Threshold Amount without notice to you if necessary to comply with banking minimums.

- (r) “Your Content” means sound recordings, video content (i.e., audiovisual works), and the musical works embodied in such sound recordings and video content, and any album related artwork, photos, liner notes, metadata and other material related to your sound recordings and video content that you have provided to CD Baby, either by digital upload to the Website or by delivery of Physical Product, either directly or via a third party acting on your behalf. Any such sound recordings and video content (and the musical works embodied therein), artwork, photos, liner notes, metadata, or other material provided by you to CD Baby, must be owned or controlled by you and/or have been cleared by you for all purposes and rights granted and authorized under this Agreement. For the avoidance of doubt, Your Content encompasses each sound recording and the musical work (i.e., the notes and lyrics) embodied in each sound recording.

TERMS OF SERVICE

Last updated: 8 March 2024

8. NOTICE.

All notices required or permitted to be given under these TOS will be in writing and delivered to the other party by any of the following methods: (i) U.S. mail, (ii) overnight courier, or (iii) electronic mail. If you give notice to CD Baby, you must use the following addresses: **CD Baby, 9600 NE Cascades Parkway Suite 180, Portland, OR 97220 or notice@cdbaby.com**. If CD Baby provides notice to you, CD Baby will use the contact information provided by you to CD Baby. All notices will be deemed received as follows: (i) if by delivery by U.S. mail, seven (7) business days after dispatch, (ii) if by overnight courier, on the date receipt is confirmed by such courier service, or (iii) if by electronic mail, 24 hours after the message was sent, if no “system error” or other notice of non-delivery is generated. If applicable law requires that a given communication be “in writing,” you agree that email communication will satisfy this requirement.