

EarbudsMusic.com Terms of Use

Last Modified: June 26, 2018

1. **Acceptance of the Terms of Use.**

These terms of use are entered into by and between you (“**you**”) and Earbuds Inc. (“**Earbuds**”, “**we**”, or “**us**”). The following terms and conditions (these “**Terms of Use**”), govern your access to and use of EarbudsMusic.com, including any content, functionality, and services offered on or through EarbudsMusic.com (the “**Site**”). These Terms of Use do not govern your use of the Earbuds mobile application (“**Application**”). The Application is governed by the Earbuds Mobile Application Terms of Service.

Please read the Terms of Use carefully before you start to use the Site. **By using the Site or by clicking to accept or agree to the Terms of Use when this option is made available to you, you accept and agree to be bound and abide by these Terms of Use and the Earbuds Privacy Policy (“Privacy Policy”), incorporated herein by reference.** If you do not want to agree to these Terms of Use or the Privacy Policy, you must not access or use the Site.

This Site is offered and available to users who are 13 years of age or older and reside in the United States or any of its territories or possessions. By using this Site, you represent and warrant that you are of legal age to form a binding contract with Earbuds and meet all of the foregoing eligibility requirements. If you do not meet all of these requirements, you must not access or use the Site.

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

We may revise and update these Terms of Use from time to time in our sole discretion. All changes are effective immediately when we post them, and apply to all access to and use of the Site thereafter. However, any changes to the dispute resolution provisions set out in Governing Law and Jurisdiction will not apply to any disputes for which the parties have actual notice on or before the date the change is posted on the Site.

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

3. **Accessing the Site.**

We reserve the right to withdraw or amend this Site, and any service or material we provide on the Site, in our sole discretion without notice. We will not be liable if for any reason all or any part of the Site is unavailable at any time or for any period. From time to time, we may restrict access to some parts of the Site, or the entire Site.

You are responsible for making all arrangements necessary for you to have access to the Site and ensuring that all persons who access the Site through your internet connection are aware of these Terms of Use and comply with them.

4. **Intellectual Property Rights.**

The Site and its entire contents, features, and functionality (including but not limited to all information, software, text, displays, images, video, and audio, and the design, selection, and arrangement thereof) are owned by Earbuds, its licensors, or other providers of such material and are protected by United States and international copyright, trademark, patent, trade secret, and other intellectual property or proprietary rights laws. You must not use Earbuds intellectual property without the prior written permission of Earbuds.

These Terms of Use permit you to use the Site for your personal, non-commercial use only. You must not reproduce, distribute, modify, create derivative works of, publicly display, publicly perform, republish, download, store, or transmit any of the material on our Site. You must not:

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

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

5. **Prohibited Uses.**

You may use the Site only for lawful purposes and in accordance with these Terms of Use. You agree not to use the Site:

- In any way that violates any applicable federal, state, local, or international law or regulation (including, without limitation, any laws regarding the export of data or software to and from the US or other countries).
- For the purpose of exploiting, harming, or attempting to exploit or harm minors in any way by exposing them to inappropriate content, asking for personally identifiable information, or otherwise.
- To transmit, or procure the sending of, any advertising or promotional material without our prior written consent, including any “junk mail”, “chain letter”, “spam”, or any other similar solicitation.
- To impersonate or attempt to impersonate Earbuds, a Earbuds employee, another user, or any other person or entity (including, without limitation, by using email addresses associated with any of the foregoing).
- To engage in any other conduct that restricts or inhibits anyone’s use or enjoyment of the Site, or which, as determined by us, may harm Earbuds or users of the Site or expose them to liability.
- For any commercial purposes.

Additionally, you agree not to:

- Use the Site in any manner that could disable, overburden, damage, or impair the site or interfere with any other party’s use of the Site, including their ability to engage in real time activities through the Site.
- Use any robot, spider, or other automatic device, process, or means to access the Site for any purpose, including monitoring or copying any of the material on the Site.
- Use any manual process to monitor or copy any of the material on the Site or for any other unauthorized purpose without our prior written consent.
- Use any device, software, or routine that interferes with the proper working of the Site.
- Introduce any viruses, Trojan horses, worms, logic bombs, or other material that is malicious or technologically harmful.
- Attempt to gain unauthorized access to, interfere with, damage, or disrupt any parts of the Site, the server on which the Site is stored, or any server, computer, or database connected to the Site.
- Attack the Site via a denial-of-service attack or a distributed denial-of-service attack.
- Otherwise attempt to interfere with the proper working of the Site.

6. **Changes to the Site.**

We may update the content on this Site from time to time, but its content is not necessarily complete or up-to-date. Any of the material on the Site may be out of date at any given time, and we are under no obligation to update such material.

7. **Information About You and Your Visits to the Site.**

All information we collect on this Site is subject to the Privacy Policy. By using the Site, you consent to all actions taken by us with respect to your information in compliance with the Privacy Policy.

8. **Links from the Site.**

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

9. **Geographic Restrictions.**

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

10. **Disclaimer of Warranties.**

You understand that we cannot and do not guarantee or warrant that files available for downloading from the internet or the Site will be free of viruses or other destructive code. You are responsible for implementing sufficient procedures and checkpoints to satisfy your particular requirements for anti-virus protection and accuracy of data input and output, and for maintaining a means external to our site for any reconstruction of any lost data. TO THE FULLEST EXTENT PROVIDED BY LAW, WE WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY A DISTRIBUTED DENIAL-OF-SERVICE ATTACK, VIRUSES, OR OTHER TECHNOLOGICALLY HARMFUL MATERIAL THAT MAY INFECT YOUR COMPUTER EQUIPMENT, COMPUTER PROGRAMS, DATA, OR OTHER PROPRIETARY MATERIAL DUE TO YOUR USE OF THE SITE OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE SITE OR TO YOUR DOWNLOADING OF ANY MATERIAL POSTED ON IT, OR ON ANY SITE LINKED TO IT.

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

YOUR NEEDS OR EXPECTATIONS.

TO THE FULLEST EXTENT PROVIDED BY LAW, EARBUDS HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR PARTICULAR PURPOSE.

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

11. Limitation on Liability.

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

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

12. Indemnification.

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

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

13. Governing Law.

These Terms of Use are governed by and construed in accordance with the internal laws of the State of Texas without giving effect to any choice or conflict of law provision or rule. Unless provided otherwise in connection with the Arbitration provisions of these Terms of Use agreement, any legal suit, action, or proceeding arising out of or related to these Terms of Use or the Site shall be instituted exclusively in the federal courts of the United States or the courts of the State of Texas in each case located in Dallas County. You waive any and all objections to the exercise of jurisdiction over you by such courts and to venue in such courts.

14. Dispute Resolution and Binding Arbitration.

Informal Resolution

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

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

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

BINDING ARBITRATION

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

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

15. Limitation of Time to File Claims.

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

16. Notice.

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

17. Waiver.

No failure to exercise, and no delay in exercising, on the part of either party, any right or any power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or power hereunder preclude further exercise of that or any other right hereunder.

18. Severability.

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

19. Entire Agreement.

These Terms of use and our Privacy Policy constitute the entire agreement between you and Earbuds with respect to the Site and supersede all prior or contemporaneous understandings and agreements, whether written or oral, with respect to the Site.

20. Your Comments and Concerns.

This Site is operated by Earbuds Inc., 401 Congress Ave. Suite 1170 Austin, Texas 78701.

All feedback, comments, requests for technical support, and other communications relating to the Site should be directed to support@EarbudsMusic.com.