

KITS TERMS OF SERVICE

Last Revised January 30, 2023

Welcome to the Terms of Service (these “**Terms**”) for the website, www.kits.io (the “**Website**”), operated on behalf of Arpeggi, Inc. (“**Company**”, “**we**” or “**us**”). The Website and any content, tools, features and functionality offered on or through our Website are collectively referred to as the “**Services**”.

These Terms govern your access to and use of the Services. Please read these Terms carefully, as they include important information about your legal rights. By accessing and/or using the Services, you are agreeing to these Terms. If you do not understand or agree to these Terms, please do not use the Services.

For purposes of these Terms, “**you**” and “**your**” means you as the user of the Services. If you use the Services on behalf of a company or other entity then “**you**” includes you and that entity, and you represent and warrant that (a) you are an authorized representative of the entity with the authority to bind the entity to these Terms, and (b) you agree to these Terms on the entity's behalf.

Section 10 contains an arbitration clause and class action waiver. By agreeing to these Terms, you agree (a) to resolve all disputes with us related to the Services through binding individual arbitration, which means that you waive any right to have those disputes decided by a judge or jury, and (b) to waive your right to participate in class actions, class arbitrations, or representative actions in connection with your use of the Services. You have the right to opt-out of arbitration as explained in [Section 10](#).

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1. WHO MAY USE THE SERVICE

You must be eighteen (18) years of age or older to use the Services. By using the Services, you represent and warrant that you meet these requirements.

2. THE SERVICES

- 2.1 Kits. The Services may, now or in the future, allow you to mint and receive a non-fungible token (“NFT”) of a curated collection of sounds (each such collection, a “Kit”, and the NFT associated therewith, a “Kit NFT”), which sounds may include but are not limited to, one shot samples, stems, sequences of audio clips, and vocal tracks. The fee to mint and purchase each Kit NFT will be displayed on the applicable listing page of the Kit and Kit NFT on the Website. If you legally own a Kit NFT, (a) the sounds included within that Kit will be made available to you under specific license terms, which will be displayed on the listing page of the Kit and Kit NFT on the Website, and (b) you will have certain rights in the sounds contained in the associated Kit to compose songs in accordance with the license terms. The Services may also, now or in the future, allow you to upload such songs to the Website to share them with other users.
- 2.2 Kit NFT Drops. Kit NFTs will be made available for purchase and minting in NFT drops (each an “NFT Drop”). Each NFT Drop will make available a specific number of Kit NFTs that may be purchased and minted by users. During each NFT Drop, the Services will make available for purchase and minting either “Single Kit NFTs” or “Mystery Kit NFTs,” which, for clarity, are two different types of Kit NFTs. For Single Kit NFTs, their listing pages will display the specific Kit (including the sounds therein) that the Single Kit NFT owner would receive access to upon purchase. For Mystery Kit NFTs, their listing pages will not display the specific Kit the Mystery Kit NFT owner will receive access to upon purchase, and will instead display different potential Kits (“Potential Kits”), one of which will be randomly assigned as the Kit for such Mystery Kit NFT upon purchase. The Potential Kits for each NFT Drop of Mystery Kit NFTs may have some sounds that are the same across the Potential Kits, or sounds that are all completely different. However, each of these Potential Kits will have the same number of sounds and the listing page will display the probability of receiving each Potential Kit upon purchase and minting of a Mystery Kit NFT. The probability of receiving a specific Potential Kit is determined by the set number of such Potential Kits available to be associated with a Mystery Kit NFT, divided by the total number of Mystery Kit NFTs that are available to purchase and mint in the applicable NFT Drop. By purchasing a Mystery Kit NFT via the Services, you acknowledge that you are making such purchase without knowledge of the specific Potential Kit that you will receive access to upon purchase.
- 2.2 NFT Marketplace. The Services may, now or in the future, provide a peer-to-peer NFT marketplace, which provides you with the opportunity to browse, showcase, purchase, sell, and collect Kit NFTs (“NFT Marketplace”). We only facilitate transactions between buyers and sellers of Kit NFTs via the NFT Marketplace that are executed between users using smart contracts, and excluding Kit NFTs that we allow users to mint directly on the Website, we are not a party to any agreement between the buyer and seller of a Kit NFT on the NFT Marketplace. We reserve the right to be the final decision maker on any disputes arising from purchases via the NFT Marketplace, including in connection with any auctions or other purchase methods.
- 2.3 Third-Party Platforms and Marketplaces. You may be able to buy, sell, trade, and transact in Kit NFTs on secondary marketplaces via third-party platforms, such as OpenSea. We do not control the actions of such secondary marketplaces, and make no promises or guarantees of any kind regarding such third-party marketplaces. You also acknowledge and agree that we may implement a transaction fee on any secondary sale of Kit NFTs, and such transaction fees may be incorporated into the smart contracts for such NFTs or in our agreements with such marketplaces. We are not liable for any acts or omissions of third-party marketplaces, or for any damages you may suffer as a result of your transactions or interactions with them.

- 2.4 Storage. We store songs that you upload to the Services and the authorship information thereof with our third-party storage solution provider. You understand and acknowledge that we will not be responsible for any failure by our third-party storage provider to store your songs.
- 2.5 Wallets. All transactions for Kit NFTs initiated through our Services require you to use either third-party non-custodial digital wallets (“**Wallets**”), such as Metamask or a service that creates a Wallet for you (“**Wallet Service**”), such as Magic Link. By using our Website you agree that you are governed by the terms or service and privacy policies of those Wallets that you choose to use. We are not responsible for your use or access of any such Wallets or Wallet Services, and you use such Wallets and Wallet Services at your own risk.
- 2.6 Right to Remove. In the event that we have reason to believe that any content made available or uploaded to the Website may infringe a third party’s intellectual or proprietary rights (as determined in our sole discretion), we reserve the right to remove access to such content from the Services and/or replace such content, and to remove any functionality of any NFT associated with removed content from the Services (it being understood that to the extent such NFTs are minted on the public blockchain, we have no way to remove the actual data for such NFTs themselves from the blockchain, we can only remove their functionality with the Services) and we are not obligated to provide you with any recourse or recompense in connection with doing so. You acknowledge and agree that the Company accepts no responsibility or liability for the acts or omissions of users of the Services or for the originality or condition of any songs uploaded by users.

3. USER ACCOUNTS

- 3.2 Creating and Safeguarding your Account. To use certain portions of the Services, you need to create an account (“**Account**”). You can create an Account either by (a) logging into your Wallet, linking your Wallet address to the Website, and providing an email address that will be associated with your Wallet address, or (b) providing an email address that will be associated with your Wallet address through a Wallet Service. You agree to provide us with accurate, complete and updated information for your Account. You are solely responsible for any activity on your Account and for maintaining the confidentiality and security of your Account. We are not liable for any acts or omissions by you in connection with your Account. You must immediately notify us at support@arpeggi.io if you know or have any reason to suspect that your Account has been stolen, misappropriated or otherwise compromised, or in case of any actual or suspected unauthorized use of your Account.

4. ORDERS FOR PRODUCTS AND SERVICES

- 4.2 Offerings. The Services may permit you to receive certain physical or digital products or services through the Services (“**Offerings**”), including the Kit NFTs. The Company may, at any time, revise or change the availability, specifications, content, descriptions or features of any Offerings. While we attempt to be as accurate as we can in our descriptions for the Offerings, we do not warrant that Offering descriptions are accurate, complete, reliable, current, or error-free. For any paid Offerings, when you purchase an Offering, you agree to pay the price for such Offering as set forth in the applicable listing for the Offering, and all processing fees, network fees (including gas fees) and handling charges and all applicable taxes in connection with your purchase (the “**Full Purchase Amount**”). All fees and charges are payable in accordance with payment terms in effect at the time the fee or the charge becomes payable. You must pay for your purchase via the cryptocurrency or other payment currency designated by the Services. In certain cases, your transaction may not be successful due to an error with the blockchain or the Wallet. We accept no

responsibility or liability to you for any such failed transactions, or any transaction or gas fees that may be incurred by you in connection with such failed transactions. If an Offering itself is not as described on the Services, you may contact us by emailing support@arpeggi.io or at the U.S. mailing address listed in the “How to Contact Us” section of these Terms. The inclusion of any Offerings for purchase through the Services at a particular time does not imply or warrant that the Offerings will be available at any other time.

- 4.3 **Shipment.** All orders for physical Offerings (such as merchandise or other physical items) are shipped using one of our third-party couriers. Online tracking may be available at our courier’s website (for example, FedEx), though we make no warranties regarding its availability because it is not under our control. While deliveries may be scheduled for a specified arrival, we cannot guarantee delivery by any specific date or time.
- 4.4 **No Refunds.** There are no refunds available for any Offerings on the Website.
- 4.5 **No Delivery to Minors.** In furtherance of our policy of not collecting personal information from persons under the age of eighteen (18), users are not allowed to give the Company the personal information of any persons under the age of eighteen (18) for delivery or shipping purposes or any other reason.

5. LOCATION OF OUR PRIVACY POLICY

- 5.2 **Privacy Policy.** Our Privacy Policy describes how we handle the information you provide to us when you use the Services. For an explanation of our privacy practices, please visit our Privacy Policy located [here](#).

6. RIGHTS WE GRANT YOU

- 6.2 **License Grant.** Subject to your compliance with these Terms, the Company hereby grants to you, a personal, worldwide, royalty-free, non-assignable, non-sublicensable, non-transferrable, and non-exclusive license to use the software provided to you as part of the Services. This license has the sole purpose of enabling you to use and enjoy the benefit of the Services as provided by us, in the manner permitted by these Terms and subject to the use restrictions described below. For clarity, the foregoing license does not include any licensed rights in any sounds included in any Kit NFTs, and such license to such sounds is solely as set forth in the specific license applicable to such sounds as displayed on the Website. Your access and use of the Services may be interrupted from time to time for any of several reasons, including, without limitation, the malfunction of equipment, periodic updating, maintenance, or repair of the Services or other actions that Company, in its sole discretion, may elect to take.
- 6.3 **Restrictions On Your Use of the Services.** You may not do any of the following, unless applicable laws or regulations prohibit these restrictions or you have our written permission to do so:
 - (a) download, modify, copy, distribute, transmit, display, perform, reproduce, duplicate, publish, license, create derivative works from, or offer for sale any information contained on, or obtained from or through, the Services;
 - (b) use, reproduce or remove any copyright, trademark, service mark, trade name, slogan, logo, image, or other proprietary notation displayed on or through the Services;
 - (c) use automation software (bots), hacks, modifications (mods) or any other unauthorized third-party software designed to modify the Services;

- (d) access or use the Services in any manner that could disable, overburden, damage, disrupt or impair the Services or interfere with any other party's access to or use of the Services or use any device, software or routine that causes the same;
- (e) attempt to gain unauthorized access to, interfere with, damage or disrupt the Services, accounts registered to other users, or the computer systems or networks connected to the Services;
- (f) circumvent, remove, alter, deactivate, degrade or thwart any technological measure or content protections of the Services;
- (g) use any robot, spider, crawlers or other automatic device, process, software or queries that intercepts, “mines,” scrapes or otherwise accesses the Services to monitor, extract, copy or collect information or data from or through the Services, or engage in any manual process to do the same;
- (h) introduce any viruses, trojan horses, worms, logic bombs or other materials that are malicious or technologically harmful into our systems;
- (i) use the Services for illegal, harassing, unethical, or disruptive purposes;
- (j) Users are forbidden from engaging in sham transactions, wash trading, fraud, price pumping, price-fixing, trading an NFT at successively lower or higher prices for the purpose of creating or inducing a false, misleading or artificial appearance of activity in such NFT, sham bidding, creating fictitious accounts to bid on items, or any other type of market manipulation or anti-competitive conduct;
- (k) violate any applicable law or regulation in connection with your access to or use of the Services; or
- (l) access or use the Services in any way not expressly permitted by these Terms.

7. OWNERSHIP AND CONTENT

7.2 Ownership of the Services. The Services, including their “look and feel” (e.g., text, graphics, images, logos), proprietary content, information and other materials, are protected under copyright, trademark and other intellectual property laws. You agree that the Company and/or its licensors own all right, title and interest in and to the Services (including any and all intellectual property rights therein) and you agree not to take any action(s) inconsistent with such ownership interests. We and our licensors reserve all rights in connection with the Services and its content (other than Your Content), including, without limitation, the exclusive right to create derivative works.

7.3 Ownership of Trademarks. The Company’s name, trademarks, the Company’s logo and all related names, logos, product and service names, designs and slogans are trademarks of the Company or its affiliates or licensors. Other names, logos, product and service names, designs and slogans that appear on the Services are the property of their respective owners, who may or may not be affiliated with, connected to, or sponsored by us.

7.4 Ownership of Feedback. We welcome feedback, comments and suggestions for improvements to the Services (“**Feedback**”). You acknowledge and expressly agree that any contribution of Feedback does not and will not give or grant you any right, title or interest in the Services or in

any such Feedback. All Feedback becomes the sole and exclusive property of the Company, and the Company may use and disclose Feedback in any manner and for any purpose whatsoever without further notice or compensation to you and without retention by you of any proprietary or other right or claim. You hereby assign to the Company any and all right, title and interest (including, but not limited to, any patent, copyright, trade secret, trademark, show-how, know-how, moral rights and any and all other intellectual property right) that you may have in and to any and all Feedback.

- 7.5 Your Content License Grant. In connection with your use of the Services, you are able to post, upload, or submit content to be made available through the Services (“**Your Content**”). For clarity, Your Content includes any song that you submit to the Services. We need certain rights in Your Content to be able to provide the Services. By using the Services and uploading Your Content, you grant us a license to access, use, host, cache, store, reproduce, transmit, display, publish, distribute, perform and modify (for technical purposes, e.g., making sure content is viewable on smartphones as well as computers and other devices) Your Content but solely as required to be able to operate and provide the Services. You agree that these rights and licenses are royalty-free, transferable, sub-licensable, worldwide and irrevocable (for so long as Your Content is stored with us), and include a right for us to make Your Content available to, and pass these rights along to, others with whom we have contractual relationships related to the provision of the Services, solely for the purpose of providing such Services, and to otherwise permit access to or disclose Your Content to third parties if we determine such access is necessary to comply with our legal obligations. As part of the foregoing license grant you agree that the other users of the Services shall have the right to comment on and/or tag Your Content and/or to remix and sample, or to otherwise use, publish, display, modify or include a copy of Your Content, and to create their own content therefrom; except that the foregoing shall not apply to any of Your Content that you post privately for non-public display on the Services. **By posting, uploading, or submitting Your Content through the Services, you represent and warrant that (a) you have, or have obtained, all rights, licenses, consents, permissions, power and/or authority necessary to grant the rights granted herein for Your Content, (b) Your Content includes complete details of any third-party license or other restriction (including related copyrights) of which you are personally aware and which are associated with any part of Your Content, and (c) any songs you upload to the Services are your original creation. You agree that Your Content will not contain material subject to copyright or other proprietary rights, unless you have the necessary permissions or are otherwise legally entitled to post the material and to grant us the license described above. You will notify us of any facts or circumstances of which you become aware that would make the foregoing representations and warranties inaccurate in any respect or would call into question your grants of rights hereunder.**

7.6 Notice of Infringement – DMCA Policy

If you believe that any text, graphics, photos, audio, videos or other materials or works uploaded, downloaded or appearing on the Services have been copied in a way that constitutes copyright infringement, you may submit a notification to our copyright agent in accordance with 17 USC 512(c) of the Digital Millennium Copyright Act (the “**DMCA**”), by providing the following information in writing:

- (a) identification of the copyrighted work that is claimed to be infringed;
- (b) identification of the allegedly infringing material that is requested to be removed, including a description of where it is located on the Service;

- (c) information for our copyright agent to contact you, such as an address, telephone number and e-mail address;
- (d) a statement that you have a good faith belief that the identified, allegedly infringing use is not authorized by the copyright owners, its agent or the law;
- (e) a statement that the information above is accurate, and under penalty of perjury, that you are the copyright owner or the authorized person to act on behalf of the copyright owner; and
- (f) the physical or electronic signature of a person authorized to act on behalf of the owner of the copyright or of an exclusive right that is allegedly infringed.

Notices of copyright infringement claims should be sent by mail to: Arpeggi Labs, Inc., Attn: Copyright Manager, 548 Market St, PMB 58661, San Francisco, California 94104-5401, or by e-mail to support@arpeggi.io. It is our policy, in appropriate circumstances and at our discretion, to disable or terminate the accounts of users who repeatedly infringe copyrights or intellectual property rights of others.

8. THIRD-PARTY SERVICES AND MATERIALS

- 8.2 Use of Third-Party Materials in the Services. Certain Services may display, include or make available content, data, information, applications or materials from third parties (“**Third-Party Materials**”) or provide links to certain third-party websites (such as secondary NFT marketplaces). By using the Services, you acknowledge and agree that the Company is not responsible for examining or evaluating the content, accuracy, completeness, availability, timeliness, validity, copyright compliance, legality, decency, quality or any other aspect of such Third-Party Materials or websites. We do not warrant or endorse and do not assume and will not have any liability or responsibility to you or any other person for any third-party services, Third-Party Materials or third-party websites, or for any other materials, products, or services of third parties. Third-Party Materials and links to other websites are provided solely as a convenience to you.

9. DISCLAIMERS, LIMITATIONS OF LIABILITY AND INDEMNIFICATION

- 9.2 Disclaimers. Your access to and use of the Services are at your own risk. You understand and agree that the Services are provided to you on an “AS IS” and “AS AVAILABLE” basis. Without limiting the foregoing, to the maximum extent permitted under applicable law, the Company, its parents, affiliates, related companies, officers, directors, employees, agents, representatives, partners and licensors (the “**the Company Entities**”) DISCLAIM ALL WARRANTIES AND CONDITIONS, WHETHER EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. The Company Entities make no warranty or representation and disclaim all responsibility and liability for: (a) the completeness, accuracy, availability, timeliness, security or reliability of the Services, (b) any aspects of any content uploaded to the Website by others users of the Services, (c) any harm to your computer system, corrupted Wallet files, loss of data, or other harm that results from your access to or use of the Services, (d) the operation or compatibility with any other application or any particular system or device, (e) whether the Services will meet your requirements or be available on an uninterrupted, secure or error-free basis, and (f) the deletion of, or the failure to store or transmit, Your Content and other communications maintained by the Services. No advice or information, whether oral or written, obtained from the Company Entities or through the Services, will create any warranty or representation not expressly made herein.

- 9.3 Limitations of Liability. TO THE EXTENT NOT PROHIBITED BY LAW, YOU AGREE THAT IN NO EVENT WILL THE COMPANY ENTITIES BE LIABLE (A) FOR DAMAGES OF ANY KIND, INCLUDING DIRECT, INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING, BUT NOT LIMITED TO, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOSS OF USE, DATA OR PROFITS, BUSINESS INTERRUPTION OR ANY OTHER DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO YOUR USE OR INABILITY TO USE THE SERVICES), HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, WHETHER UNDER THESE TERMS OR OTHERWISE ARISING IN ANY WAY IN CONNECTION WITH THE SERVICES OR THESE TERMS AND WHETHER IN CONTRACT, STRICT LIABILITY OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) EVEN IF THE COMPANY ENTITIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, OR (B) FOR ANY OTHER CLAIM, DEMAND OR DAMAGES WHATSOEVER RESULTING FROM OR ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR THE DELIVERY, USE OR PERFORMANCE OF THE SERVICES. SOME JURISDICTIONS (SUCH AS THE STATE OF NEW JERSEY) DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE EXCLUSION OR LIMITATION MAY NOT APPLY TO YOU. THE COMPANY IS NOT LIABLE FOR CONTENT, INCLUDING CONTRIBUTIONS, POSTED ON THE SERVICES. THE COMPANY ENTITIES' TOTAL LIABILITY TO YOU FOR ANY DAMAGES FINALLY AWARDED SHALL NOT EXCEED THE GREATER OF ONE HUNDRED DOLLARS (\$100.00), OR THE AMOUNT YOU PAID THE COMPANY ENTITIES, IF ANY, IN THE PAST SIX (6) MONTHS FOR THE SERVICES (OR OFFERINGS PURCHASED ON THE SERVICES) GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS WILL APPLY EVEN IF THE ABOVE STATED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.
- 9.4 Indemnification. By entering into these Terms and accessing or using the Services, you agree that you shall defend, indemnify and hold the Company Entities harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) incurred by the Company Entities arising out of or in connection with: (a) your violation or breach of any term of these Terms, including any applicable NFT License Terms, or any applicable law or regulation, (b) your violation of any rights of any third party, (c) your access to or use of the Services, (d) Your Content, and (e) your negligence or wilful misconduct.
- 9.5 Assumption of Risks.
- (a) You acknowledge and agree that there are risks associated with purchasing and holding NFTs and using blockchain technology. These include, but are not limited to, risk of losing access to NFT due to loss of private key(s), custodial error or purchaser error, risk of mining or blockchain attacks, risk of hacking and security weaknesses, risk of unfavorable regulatory intervention in one or more jurisdictions, risks related to token taxation, risk of personal information disclosure, risk of uninsured losses, unanticipated risks, and volatility risks.
- (b) The prices of collectible blockchain assets are extremely volatile and subjective and collectible blockchain assets have no inherent or intrinsic value. Each NFT has no inherent or intrinsic value. You acknowledge and affirm that you are collecting, trading, or purchasing Kit NFTs for purposes of acquiring digital collectibles for your personal use and enjoyment, and not for any investment or speculative purposes. Any economic benefit that may be derived from appreciation in the value of a Kit NFT is incidental to obtaining it for its collectible purpose. You agree that Kit NFTs are not to be used as a

substitute for currency or medium of exchange, resale, or redistribution and that you are not acquiring any equity or other ownership or revenue sharing interest in Company, its affiliates, or any brand as a result of your acquisition of Kit NFT(s).

- (c) We will use commercially reasonable efforts to deploy secure and functional smart contracts underlying the Kit NFTs minted directly by us. However, we will not be liable or responsible to you for any failure in the intended function of any smart contracts underlying any Kit NFTs, or any bugs, viruses, exploits, logic gaps, or malicious code which may be incorporated into any such smart contracts, or which could be used to commit fraud or otherwise cause harm. You acknowledge that you have obtained sufficient information to make an informed decision to purchase a Kit NFT, including carefully reviewing the code of the smart contract and the Kit NFT, and fully understand and accept the functions of the same. Further, we will not be liable for any failure or removal of the storage system used to store Your Content that is linked to or associated with Kit NFTs, or for any failures in the underlying blockchain on which the NFTs' ownership may be recorded.
- (d) The regulatory regime governing blockchain technologies, cryptocurrencies, and tokens is uncertain, and new regulations or policies may materially adversely affect the potential utility or value of your Kit NFT(s). Upgrades to any blockchain network or hard forks in such networks, or a change in how transactions are confirmed on such blockchain networks may have unintended, adverse effects on all blockchains, including any that are related to your Kit NFT(s).
- (e) Any purchase or sale you make, accept, or facilitate outside of the Website of any Kit NFTs will be entirely at your risk. We do not authorize, control, or endorse purchases or sales of Kit NFTs outside of the Website. We expressly deny and disclaim any liability to you and deny any obligation to indemnify you or hold you harmless for any losses you may incur by transacting, or facilitating transactions, in any Kit NFTs outside of the Website.

9.6 THE LAWS OF CERTAIN JURISDICTIONS, INCLUDING NEW JERSEY, DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS, OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS.

10. ARBITRATION AND CLASS ACTION WAIVER

10.2 **PLEASE READ THIS SECTION CAREFULLY – IT MAY SIGNIFICANTLY AFFECT YOUR LEGAL RIGHTS, INCLUDING YOUR RIGHT TO FILE A LAWSUIT IN COURT AND TO HAVE A JURY HEAR YOUR CLAIMS. IT CONTAINS PROCEDURES FOR MANDATORY BINDING ARBITRATION AND A CLASS ACTION WAIVER.**

10.3 Informal Process First. You and the Company agree that in the event of any dispute relating in any way to the Company's services and/or products, including the Services, and any use or access or lack of access thereto, either party will first contact the other party and make a good faith sustained effort to resolve the dispute before resorting to more formal means of resolution, including without limitation, any court action, after first allowing the receiving party thirty (30) days in which to respond. Both you and the Company agree that this dispute resolution procedure is a condition precedent which must be satisfied before initiating any arbitration against the other party.

- 10.4 Arbitration Agreement and Class Action Waiver. After the informal dispute resolution process, any remaining dispute, controversy, or claim (collectively, “**Claim**”) relating in any way to the Company’s services and/or products, including the Services, and any use or access or lack of access thereto, will be resolved by arbitration, including threshold questions of arbitrability of the Claim. You and the Company agree that any Claim will be settled by final and binding arbitration, using the English language, administered by JAMS under its Comprehensive Arbitration Rules and Procedures (the “**JAMS Rules**”) then in effect (those rules are deemed to be incorporated by reference into this section, and as of the date of these Terms). Because your contract with the Company, these Terms, and this Arbitration Agreement concern interstate commerce, the Federal Arbitration Act (“**FAA**”) governs the arbitrability of all disputes. However, the arbitrator will apply applicable substantive law consistent with the FAA and the applicable statute of limitations or condition precedent to suit. **Arbitration will be handled by a sole arbitrator in accordance with the JAMS Rules. Judgment on the arbitration award may be entered in any court that has jurisdiction. Any arbitration under these Terms will take place on an individual basis – class arbitrations and class actions are not permitted. You understand that by agreeing to these Terms, you and the Company are each waiving the right to trial by jury or to participate in a class action or class arbitration.**
- 10.5 Exceptions. Notwithstanding the foregoing, you and the Company agree that the following types of disputes will be resolved in a court of proper jurisdiction:
- (a) disputes or claims within the jurisdiction of a small claims court consistent with the jurisdictional and dollar limits that may apply, as long as it is brought and maintained as an individual dispute and not as a class, representative, or consolidated action or proceeding;
 - (b) disputes or claims where the sole form of relief sought is injunctive relief (including public injunctive relief); or
 - (c) intellectual property disputes.
- 10.6 Costs of Arbitration. Payment of all filing, administration, and arbitrator costs and expenses will be governed by the JAMS Rules, except that if you demonstrate that any such costs and expenses owed by you under those rules would be prohibitively more expensive than a court proceeding, the Company will pay the amount of any such costs and expenses that the arbitrator determines are necessary to prevent the arbitration from being prohibitively more expensive than a court proceeding (subject to possible reimbursement as set forth below).
- Fees and costs may be awarded as provided pursuant to applicable law. If the arbitrator finds that either the substance of your claim or the relief sought in the demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all fees will be governed by the JAMS rules. In that case, you agree to reimburse the Company for all monies previously disbursed by it that are otherwise your obligation to pay under the applicable rules. If you prevail in the arbitration and are awarded an amount that is less than the last written settlement amount offered by the Company before the arbitrator was appointed, the Company will pay you the amount it offered in settlement. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees or expenses at any time during the proceeding and upon request from either party made within fourteen (14) days of the arbitrator’s ruling on the merits
- 10.7 Opt-Out. **You have the right to opt-out and not be bound by the arbitration provisions set forth in these Terms by sending written notice of your decision to opt-out to**

support@arpeggi.io or to the U.S. mailing address listed in the “How to Contact Us” section of these Terms. The notice must be sent to the Company within thirty (30) days of your first registering to use the Services or agreeing to these Terms; otherwise you shall be bound to arbitrate disputes on a non-class basis in accordance with these Terms. If you opt out of only the arbitration provisions, and not also the class action waiver, the class action waiver still applies. You may not opt out of only the class action waiver and not also the arbitration provisions. If you opt-out of these arbitration provisions, the Company also will not be bound by them.

- 10.8 **WAIVER OF RIGHT TO BRING CLASS ACTION AND REPRESENTATIVE CLAIMS.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, YOU AND THE COMPANY EACH AGREE THAT ANY PROCEEDING TO RESOLVE ANY DISPUTE, CLAIM, OR CONTROVERSY WILL BE BROUGHT AND CONDUCTED ONLY IN THE RESPECTIVE PARTY’S INDIVIDUAL CAPACITY AND NOT AS PART OF ANY CLASS (OR PURPORTED CLASS), CONSOLIDATED, MULTIPLE-PLAINTIFF, OR REPRESENTATIVE ACTION OR PROCEEDING (“CLASS ACTION”). YOU AND THE COMPANY AGREE TO WAIVE THE RIGHT TO PARTICIPATE AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS ACTION. YOU AND THE COMPANY EXPRESSLY WAIVE ANY ABILITY TO MAINTAIN A CLASS ACTION IN ANY FORUM. IF THE DISPUTE IS SUBJECT TO ARBITRATION, THE ARBITRATOR WILL NOT HAVE THE AUTHORITY TO COMBINE OR AGGREGATE CLAIMS, CONDUCT A CLASS ACTION, OR MAKE AN AWARD TO ANY PERSON OR ENTITY NOT A PARTY TO THE ARBITRATION. FURTHER, YOU AND THE COMPANY AGREE THAT THE ARBITRATOR MAY NOT CONSOLIDATE PROCEEDINGS FOR MORE THAN ONE PERSON’S CLAIMS, AND IT MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A CLASS ACTION. FOR THE AVOIDANCE OF DOUBT, HOWEVER, YOU CAN SEEK PUBLIC INJUNCTIVE RELIEF TO THE EXTENT AUTHORIZED BY LAW AND CONSISTENT WITH THE EXCEPTIONS CLAUSE ABOVE.

IF THIS CLASS ACTION WAIVER IS LIMITED, VOIDED, OR FOUND UNENFORCEABLE, THEN, UNLESS THE PARTIES MUTUALLY AGREE OTHERWISE, THE PARTIES’ AGREEMENT TO ARBITRATE SHALL BE NULL AND VOID WITH RESPECT TO SUCH PROCEEDING SO LONG AS THE PROCEEDING IS PERMITTED TO PROCEED AS A CLASS ACTION. If a court decides that the limitations of this paragraph are deemed invalid or unenforceable, any putative class, private attorney general, or consolidated or representative action must be brought in a court of proper jurisdiction and not in arbitration.

11. ADDITIONAL PROVISIONS

- 11.2 **Updating These Terms.** We may modify these Terms from time to time in which case we will update the “Last Revised” date at the top of these Terms. If we make changes that are material, we will use reasonable efforts to attempt to notify you, such as by e-mail and/or by placing a prominent notice on the first page of the Website. However, it is your sole responsibility to review these Terms from time to time to view any such changes. The updated Terms will be effective as of the time of posting, or such later date as may be specified in the updated Terms. Your continued access or use of the Services after the modifications have become effective will be deemed your acceptance of the modified Terms. No amendment shall apply to a dispute for which an arbitration has been initiated prior to the change in Terms
- 11.3 **Termination of License and Your Account.** If you breach any of the provisions of these Terms, all licenses granted by the Company will terminate automatically. Additionally, the Company may

suspend, disable, or delete your Account and/or the Services (or any part of the foregoing) with or without notice, for any or no reason, including if you repeatedly submit songs to the Services that infringe third-party intellectual property or proprietary rights. If the Company deletes your Account for any suspected breach of these Terms by you, you are prohibited from re-registering for the Services under a different name. In the event of Account deletion for any reason, the Company may, but is not obligated to, delete any of your Content. The Company shall not be responsible for the failure to delete or deletion of your Content. All sections which by their nature should survive the termination of these Terms shall continue in full force and effect subsequent to and notwithstanding any termination of this Agreement by the Company or you. Termination will not limit any of the Company's other rights or remedies at law or in equity.

- 11.4 Injunctive Relief. You agree that a breach of these Terms will cause irreparable injury to the Company for which monetary damages would not be an adequate remedy and the Company shall be entitled to equitable relief in addition to any remedies it may have hereunder or at law without a bond, other security or proof of damages.
- 11.5 California Residents. If you are a California resident, in accordance with Cal. Civ. Code § 1789.3, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by contacting them in writing at 1625 North Market Blvd., Suite N 112 Sacramento, CA 95834, or by telephone at (800) 952-5210.
- 11.6 Export Laws. You agree that you will not export or re-export, directly or indirectly, the Services and/or other information or materials provided by the Company hereunder, to any country for which the United States or any other relevant jurisdiction requires any export license or other governmental approval at the time of export without first obtaining such license or approval. In particular, but without limitation, the Services may not be exported or re-exported (a) into any U.S. embargoed countries or any country that has been designated by the U.S. Government as a "terrorist supporting" country, or (b) to anyone listed on any U.S. Government list of prohibited or restricted parties, including the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List (any such person a "**Restricted Party**"). By using the Services, you represent and warrant that you are a Restricted Party or located in any such country. You are responsible for and hereby agree to comply at your sole expense with all applicable United States export laws and regulations.
- 11.7 Miscellaneous. If any provision of these Terms shall be unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from these Terms and shall not affect the validity and enforceability of any remaining provisions. These Terms and the licenses granted hereunder may be assigned by the Company but may not be assigned by you without the prior express written consent of the Company. No waiver by either party of any breach or default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default. The section headings used herein are for reference only and shall not be read to have any legal effect. The Services are operated by us in the United States. Those who choose to access the Services from locations outside the United States do so at their own initiative and are responsible for compliance with applicable local laws. These Terms are governed by the laws of the State of New York, without regard to conflict of laws rules, and the proper venue for any disputes arising out of or relating to any of the same will be the arbitration venue set forth in Section 10, or if arbitration does not apply, then the state and federal courts located in New York. You and the Company agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to the interpretation or construction of these Terms.

11.8 How to Contact Us. You may contact us regarding the Services or these Terms at: Arpeggi Labs, Inc., 548 Market St, PMB 58661, San Francisco, California 94104-5401, or by email at support@arpeggi.io.