

the_clave_artist_agreement_5v0.doc

29/08/2006

This Agreement specifies the terms and conditions that apply to The Artist's access and use of the Services available through The Clave website www.theclave.com .

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1. Service or Agreement Changes.

The Clave has sole discretion as to the operation, availability and scope of the Service. We reserve the right to modify, expand, update, discontinue or otherwise change the Service (or component thereof), or the terms of this Agreement. We will notify The Artist of any material changes to this Agreement, the Service Plan, or any Policy by posting the revised terms to our Site. We also may send a notice of changes to The Artist's email address provided by The Artist at registration. The Artist should refer to the Site frequently and check the date of the Agreement, Service Plans, and Policies to ensure that The Artist has reviewed and are familiar with the most recent version. Unless we state otherwise, the change, addition or deletion will apply to The Artist's future use of the Service. The Artist is deemed to accept the changes, additions or deletions if (a) The Artist does not notify The Clave to the contrary in writing within fifteen (15) days (or such other time as specified in our notice) of the date we post the changes on our Site or notify The Artist by email such changes, or (b) The Artist use the Services after such notice period. If The Artist does not agree to any change, The Artist's sole remedy is to terminate this Agreement pursuant to the Term of Service Clause.

2. Role of the Parties.

When a Customer buys goods or services from The Artist, The Artist is the seller. The Clave is a processing mechanism and not a distributor or supplier. We act on behalf of The Artist solely for the purpose of processing transactions initiated by Customers and remitting amounts associated with such Transactions (less applicable charges) to The Artist.

3. Disputes.

The Clave is merely an intermediary for facilitating distribution of the Artists Material to the Customer and is not an Agent of either party, we will not be involved in resolving any disputes arising out of or related to any Transaction. IF A DISPUTE

ARISES BETWEEN the ARTIST AND A CUSTOMER, THE ARTIST RELEASE THE CLAVE (AND ITS AGENTS AND EMPLOYEES) FROM ANY AND ALL CLAIMS, DEMANDS, AND DAMAGES (ACTUAL AND CONSEQUENTIAL) OF EVERY KIND AND NATURE ARISING OUT OF OR IN ANY WAY CONNECTED WITH SUCH DISPUTE AND ANY TRANSACTION BETWEEN THE ARTIST AND A CUSTOMER.

4. Artist's Product.

The Artist is solely responsible for the sale and distribution of any of the Artist's goods, products, services, materials, code, data, text (whether or not perceptible by users), multimedia information (including, but not limited to, sound, data, audio, video, graphics, photographs, or artwork), or any other items or materials accessible through The Clave.

5. Pricing & Payment

The Artist is solely responsible for ensuring that the pricing of any Products listed on the web site is correct.

The Artist agrees to pay our current fees (currently 30% for music and 40% for video). The Clave reserves the right to change the fees associated with the Service with 15 days notice. The Artist agrees to pay all federal, state, local sales, use, value added, excise, duty and any other applicable taxes assessed with respect to the Service and the sale of any Product.

Net Funds Remitted. Subject to the terms of this Agreement, The Clave will pay the Artist the amounts received by The Clave less any fees owed by the Artist under this Agreement and the amount of any credit notes. (Bitpass (the payment service currently used) takes approximately 1 month to clear funds paid by people downloading files.)

Payments will be made at the end of each quarter. Payments will be made through the PayPal service or as agreed between the parties.

Currency. All accounts and all fees, charges, and payments collected or paid through the Service are denominated in US currency.

6. Records & Auditing

The Clave will maintain records of transactions. Where there have been payments to The Clave for the Artists Product, The Clave will provide the Artist with a record of these payments per quarter. Once per annum the Artist may request to audit the sales records of The Clave using an agreed and recognised independent auditor. All costs of this Audit will be paid for by the Artist. Should there be any discrepancy in favour of the Artist, The Clave will pay the Artist the outstanding amount plus 50%.

7. Term of Service

This Agreement will come into effect once The Clave receives the Artist's Product from the Artist.

The Agreement shall remain in full force and effect in until terminated by either party. Either Party may terminate this Agreement for any reason by providing the other party thirty (30) days prior written notice. The Artist may terminate this Agreement at any time by notifying The Clave via an email to info@theclave.com .

The Clave may immediately terminate or suspend the Service upon written notice for The Artist's violation of any term of this Agreement.

Should this Agreement be terminated for any reason, we will not be liable to The Artist for compensation, reimbursement or damages on account of the loss of prospective profits, anticipated sales, goodwill or on account of expenditures, investments, leases or commitments in connection with The Artist's use of the Service, or for any other reason whatsoever arising from such termination. Any termination of this Agreement shall not relieve The Artist of any obligations to pay fees and costs accrued prior to the termination date and any other amounts owed by The Artist to The Clave as provided in this Agreement or The Artist's Service Plan. Upon termination of this Agreement, all licenses granted hereunder shall terminate. The Clave reserves the right to refuse to provide The Artist with the Service, with or without notice, if The Artist has supplied any information which is misleading, untrue, inaccurate or incomplete.

8. Proprietary Rights

The Clave's License Grant. We hereby grant to The Artist the right to use, reproduce, publish, perform and display the trade name, trademarks, service mark or other indicia or origin (the "**Marks**") of The Clave: in promotional and marketing materials and electronic and printed advertising, publicity, press releases, newsletters and mailings.

The Artist's License Grant. The Artist hereby grant to The Clave the right to use, reproduce, publish, perform and display The Artist's Marks as designated by The Artist: (a) in connection with the development, use, reproduction, modification, adaptation, publication, display and performance of the Service offered and/or accessible through the Site; and (b) in promotional and marketing materials and electronic and printed advertising, publicity, press releases, newsletters and mailings about or related to the Artist's use of the Service.

Use of Trademarks. Each party shall strictly comply with all standards with respect to the other party's Marks which may be furnished by such party from time to time, and all uses of the other party's Marks in proximity to the trade name, trademark, service name or service mark of any other person or entity shall be consistent with the standards furnished by the other party from time to time. Further, neither party shall create a combination mark consisting of one or more Marks of each party. All uses of the other party's Marks shall inure to the benefit of the party owning such Marks. Each party hereby acknowledges and agrees that, as between the parties, the other party is the owner of the Marks identified as its Marks in any written notice provided to the other party pursuant to this Agreement. Either party may update or change the list of Marks usable by the other party hereunder at any time by written notice to the other party.

Injunctive Relief. It is understood and agreed by both parties that a breach of the provisions of the license grants in this Section may cause irreparable damage for which recovery of monetary damages would be inadequate and that a party may seek and shall have the right to injunctive relief or other equitable relief to protect its intellectual property rights and other rights under this Agreement, in addition to any and all remedies available at law.

9. The Artist's Warranties.

The Artist represents and warrant to The Clave that:

(a) **Authority.** The Artist has all necessary right, power and ability to execute this Agreement and to perform its obligations therein. No authorization or approval from any third party is required in connection with such party's execution, delivery or performance of this Agreement. This Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms. The Artist's obligations under this Agreement do not violate any law or breach any other agreement to which The Artist is bound;

(b) **Registration Information.** All representations and statements made by The Artist in The Artist's registration and this Agreement (or in any other document relating hereto by The Artist or on The Artist's behalf) are true, accurate and complete in all material respects;

(c) **Lawful Business.** The Artist is engaged in a lawful business that includes the sale of products and/or services to Customers, and are duly licensed to conduct such business under the laws of all jurisdictions in which The Artist conduct business;

(d) **Compliance with Laws.** The Artist shall comply with all applicable laws and the terms of this Agreement and will not engage in any of the prohibited activities listed therein;

(e) **Necessary Rights.** The Artist has all necessary right and title to sell, promote and distribute The Artist's Products and such sale, promotion and distribution does not infringe or misappropriate the Proprietary Rights of any person or entity nor violate any applicable law;

10. Disclaimers; Limitation of Liability

Disclaimer. THE SITE AND THE SERVICE (INCLUDING ANY SOFTWARE AND ANY OTHER ITEMS USED OR PROVIDED BY THE CLAVE IN CONNECTION WITH THE SERVICE) ARE PROVIDED "AS IS" OR "AS AVAILABLE." THE CLAVE MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SITE OR SERVICE, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT, OR ANY WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE.

Limitation of Liability. THE CLAVE AND IT'S SERVICE PROVIDERS AND SUPPLIERS SHALL HAVE NO LIABILITY FOR ANY INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF PROFIT, REVENUE AND USE) ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE, WHETHER ACTIVE, PASSIVE OR IMPUTED), PRODUCT LIABILITY, STRICT LIABILITY OR OTHER THEORY, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL WE OR OUR SERVICE PROVIDERS OR SUPPLIERS HAVE ANY LIABILITY FOR UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT, INTERCEPTION OR DESTRUCTION OF ANY INFORMATION OR DATA THROUGH ACCIDENT, MISUSE, OR FRAUDULENT MEANS OR DEVICES.

Limitation of Remedy. OTHER THAN NET FUNDS THEN DUE AND OWING TO THE ARTIST, THE TOTAL LIABILITY OF THE CLAVE FOR ANY REASON AND UPON ANY CAUSE OF ACTION SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID TO THE CLAVE BY THE ARTIST UNDER THIS AGREEMENT DURING THE MONTH IMMEDIATELY PRECEDING THE DATE ON WHICH THE CLAIM AROSE. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS. THE FEES FOR THE SERVICE SET BY THE CLAVE HEREUNDER HAVE BEEN AND WILL CONTINUE TO BE BASED UPON THIS ALLOCATION OF RISK. IF THE ARTIST IS DISSATISFIED WITH THE SERVICE OR WITH ANY APPLICABLE TERM OR CONDITION GOVERNING ITS USE, THE ARTIST'S SOLE AND EXCLUSIVE REMEDY IS TO TERMINATE THIS AGREEMENT.

Exception for Certain States or Jurisdictions. The laws of certain states or other jurisdiction do not allow limitations on implied warranties, or the exclusion or limitation of certain damages. If these laws apply, some or all of the above disclaimers, exclusions, or limitations may not apply to The Artist, and The Artist may have rights in addition to those contained in this Agreement. In such jurisdiction, our liability is limited to the greatest extent permitted by law.

11. Indemnification.

The Artist agrees to indemnify, defend and hold harmless The Clave and all employees, officers, directors and agents of The Clave and any of our affiliates from and against any and all claims, suits, actions, demands or proceedings (whether threatened, asserted, or filed) and all related damages, losses, liabilities, cost and expenses (including, but not limited to, reasonable attorneys' fees and the cost of enforcement of this indemnity) arising out of or relating to: (a) any violation or breach by The Artist of any term, representation or warranty of this Agreement, including any Policy; (b) The Artist's unlawful or improper use of the Service; (c) the sale, promotion, advertising, manufacture and distribution of any Products; (d) any damages to our systems caused by The Artist's use of the Service; or (e) any actual or alleged violation of any Proprietary Rights or non-proprietary rights (including, but not limited to, defamation, libel, rights of privacy or publicity) of any person or entity by the Products, The Artist's web site, or The Artist's Marks.

12. Governing Law and Jurisdiction

The formation, existence, construction, performance, validity and all aspects of this Agreement shall be governed by the laws of Ireland.

Except where urgent interlocutory relief is required, the Parties agree that any controversy, claim, dispute or misunderstanding arising or relating to this Agreement shall first be referred to one or more equal number of executive officers of The Clave and Artist. Such officers will meet and negotiate in good faith in an attempt to amicably resolve such controversy, claim, dispute or misunderstanding in writing. If no solution is found within ten [10] Business Days from such meeting, or such longer period as may be expressly agreed by the Parties, the following rules shall apply:

Any disputes or differences which may arise out of, under, or in connection with the performance or validity of this Agreement which cannot be resolved by negotiation shall be finally settled by arbitration under the UNCITRAL Arbitration Rules (as enacted by the Arbitration (International Commercial) Act 1998). The location of arbitration shall be in Dublin, Ireland. All proceedings relating thereto shall be

conducted in the English language. There shall be one [1] Arbitrator and the appointing authority shall be the Chartered Institute of Arbitrators (Irish Branch).

Any cause of action or claim The Artist may have in regard thereto must be commenced within one (1) year after the claim or cause of action arises or such claim or cause of action is barred.

13. General Provisions

Force Majeure. We shall be excused from performance hereunder to the extent that performance is prevented, delayed or obstructed by causes beyond our reasonable control, including but not limited to, acts of God (fire, storm, floods, earthquakes, etc.), acts of terrorism, labor disputes, civil disturbances, satellite launch failures, disruption of satellite transponder, telecommunications, power or other essential services, or interruption or termination of service by any service provider being used by us, or any malicious or unlawful acts of any third party.

No Third Party Beneficiaries. This Agreement is solely for the benefit of the parties hereto, and nothing in this Agreement will be deemed to create any third party beneficiary rights in any person or entity not a party to this Agreement.

Waiver; Amendment. Except as expressly provided herein, the failure of either party to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights. Except as expressly provided by this Agreement, no term or condition of this Agreement may be modified without the prior written consent of The Clave.

No Assignment. The Artist may not assign, without the prior written consent of The Clave, any rights, duties or obligations under this Agreement to any person or entity, in whole or in part, whether by assignment, merger, transfer of assets, sale of stock, operation of law or otherwise, and any attempt to do so shall be void. We may assign this Agreement at any time without notice to The Artist.

Notice. All notices and other communications required or permitted hereunder shall be in writing and delivered in person, by courier, prepaid certified or registered U.S. mail with return receipt to the parties, facsimile with confirmation, or email. Notice shall be effective when received. We shall send notice to The Artist in accordance with the information submitted by The Artist during registration or as otherwise specified by The Artist in writing. The Artist shall provide notice to The Clave as provided on our Site or by email at info@theclave.com

Entire Agreement; Construction. This Agreement, the Policies, and the Service Plan selected by The Artist constitute the complete and exclusive statement of agreement between the parties, and supersede and merge all prior proposals and all other agreements, oral and written, between the parties relating to the subject matter of this Agreement. In the event that any provision of this Agreement shall be determined to be illegal or unenforceable, that provision will be eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. Headings herein are for convenience of reference only and shall in no way affect interpretation of this Agreement.