

CUE AUDIO, INC.
TERMS OF SERVICE

Last Modified: November 1, 2021

These Terms of Service (the “Terms of Service” or “Agreement”) set forth the terms and conditions governing the relationship between CUE Audio, Inc. (“CUE”) and the customer identified in the applicable Web Order, SO or SOW (as defined below) or other agreement (“Customer” or “you”) relating to the services provided by CUE through the CUE Platform or otherwise (the “Services”). CUE and Customer are individually referred to as a “Party” and collectively as the “Parties.”

1. Services.

1.1 Scope of Services. Subject to the terms and conditions of this Agreement, CUE shall provide the CUE Platform services, or other CUE development, customization, implementation and support services, agreed to by the Parties through the www.cueaudio.com website or the CUE portal at portal.cueaudio.com (collectively, a “Web Order”), or as set forth in a Services Order (“SO”), Statement of Work (“SOW”) or other agreement, as further described and defined in Schedule A (the “Services”).

1.2 Platform Terms of Use and Privacy Policy. By entering into this Agreement, Customer agrees to the CUE Platform Terms of Use located at www.cueaudio.com/tou (“Terms of Use”), and the CUE Privacy Policy located at www.cueaudio.com/privacy (“Privacy Policy”), which are incorporated herein by reference. Capitalized terms not defined in this Agreement shall have the meaning set forth in the Terms of Use and Privacy Policy. To the extent the Terms of Use or Privacy Policy are inconsistent with the Terms of Service, the Terms of Service shall control. Customer shall make sure that all users of the Services, including all users of the CUE Apps made available by Customer, agree to the Terms of Use and Privacy Policy.

1.3 Changes to Services. CUE reserves the right, in its sole discretion, to make any changes to the Services that it deems necessary or useful to: (a) maintain or enhance the quality or delivery of CUE’s Services to its customers, the competitive strength of or market for CUE’s Services or the Services’ cost efficiency or performance; or (b) to comply with applicable law.

1.4 Savings Clause. CUE’s failure to perform, or delay in performing, its responsibilities under this Agreement (including any Web Order, SO or SOW) shall be excused if and to the extent that CUE demonstrates that such non-performance or delay is caused by: (i) the failure of Customer or Customer personnel to perform their obligations under this Agreement; (ii) any act performed or omitted by CUE or CUE personnel at the request of Customer; (iii) any act performed by Customer or Customer personnel to the extent that such act was not otherwise agreed by the Parties; or (iv) system failure caused by a malicious third-party technical attack causing a sudden, unplanned increase in network activity above the threshold capacity of CUE systems.

1.5 Third Party Services. CUE may make certain third-party products or services available to Customer, or may make its Services available to be used by Customer within certain third-party products or services (all third-party products and services collectively referred to as “Third-Party Services”), for which CUE makes no representations, warranties or indemnities and will have no other liability hereunder, notwithstanding anything contained in this Agreement. Customer’s exclusive remedy with regard to Third-Party Services shall be against the Third-Party.

2. Access and Use, Customer Restrictions.

2.1 Access and Use. Subject to and conditioned on Customer’s and its Authorized Users’ compliance with the terms and conditions of this Agreement, CUE hereby grants Customer a non-exclusive, non-transferable right to access and use the Services during the term of the applicable Web Order, SO, or SOW, solely for use by Authorized Users in accordance with the terms and conditions herein. Such use is limited

to Customer's internal use. "Authorized User" means Customer's employees, consultants, contractors, and agents (i) who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement and (ii) for whom access to the Services has been purchased.

2.2 Reservation of Rights. Nothing in this Agreement grants any right, title or interest in or to (including any license under) any intellectual property rights in or relating to, the Services, the CUE Platform, or third-party materials, whether expressly, by implication, estoppel or otherwise. All right, title and interest in and to the Services, the CUE Platform, and third-party materials are and will remain with CUE and the respective rights holders in the third-party materials.

2.3 Authorization Limitations and Restrictions. Customer shall not, and shall not permit any other person to, access or use the Services except as expressly permitted by this Agreement and, in the case of third-party materials, the applicable third-party license agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, except as this Agreement expressly permits:

- (a) copy, modify or create derivative works or improvements of the Services;
- (b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available any Services to any person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service;
- (c) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Services, in whole or in part;
- (d) bypass or breach any security device or protection used by the Services or access or use the Services other than by an Authorized User through the use of his or her own then valid access credentials;
- (e) input, upload, transmit or otherwise provide to or through the Services or CUE Platform, any information or materials that are unlawful or injurious, or contain, transmit or activate any harmful code;
- (f) damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the Services, the CUE Platform or CUE's provision of services to any third party, in whole or in part;
- (g) remove, delete, alter or obscure any trademarks, specifications, documentation, warranties or disclaimers, or any copyright, trademark, patent or other intellectual property or proprietary rights notices from any Services, including any copy thereof;
- (h) access or use the Services in any manner or for any purpose that infringes, misappropriates or otherwise violates any intellectual property right or other right of any third party or that violates any applicable law;
- (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws;
- (j) send or store infringing, obscene, threatening, libelous, or otherwise unlawful, unsafe, malicious, abusive or tortious material, including material harmful to children or violative of third-party privacy rights;
- (k) send or store material containing software viruses, worms, trojan horses or other harmful computer code, files, scripts, agents or programs;
- (l) attempt to gain unauthorized access to the Service or its related systems or networks;
- (m) use the Services 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);
- (n) use the Services 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;

(o) engage in any other conduct that restricts or inhibits anyone's use or enjoyment of the Services, the CUE Platform, or which, as determined by CUE, may harm CUE or users of the CUE Platform or Services or expose them to liability;

(p) use any device, software or routine that interferes with the proper working of the Services or the CUE Platform;

(q) access or use the Services for purposes of competitive analysis of the Services, the development, provision or use of a competing software service or product or any other purpose that is to CUE's detriment or commercial disadvantage; or

(r) otherwise access or use the Services beyond the scope of the authorization granted under this Agreement.

2.4 Service Management. Customer shall, throughout the Term, maintain within its organization a service manager to serve as the primary point of contact for day-to-day communications, consultation and decision-making regarding the Services. Each service manager shall be responsible for providing all day-to-day consents and approvals on behalf of such party under this Agreement.

2.5 Customer Obligations. In addition to any other provision of this Agreement, Customer shall: (i) have responsibility for the accuracy, quality, legality, reliability, and appropriateness of all Customer Materials (as defined in Section 6.2); (ii) timely supply CUE with all necessary information and resources including, without limitation, all files, materials, data necessary for the Services, and access to information, personnel, systems and facilities, reasonably requested by CUE (and CUE shall be entitled to rely upon any instructions, guidelines or information provided to CUE by Customer); (iii) use commercially reasonable efforts to prevent unauthorized control or tampering or any other unauthorized access to, or use of, the Services; (iv) comply with all applicable laws (including laws regarding privacy and protection of consumer information) in using the Service; (v) obtain and maintain all computer hardware, software and communications equipment needed to access the Services; (vi) retain sole control over the operation, maintenance, and management of, and all access to and use of, the Customer systems, and sole responsibility for all access to and use of the Services.

2.6 Notice Regarding Photosensitive Epilepsy. To the extent Customer, in its use of the Services, will display or implement the display of flashing lights or strobe lights at a live event, Customer shall provide reasonable notification to all individuals in the area of the show that a flashing light event will be occurring, and that individuals who are susceptible to photosensitive epilepsy or other photo sensitivities should not participate. Customer shall defend, indemnify and hold CUE harmless from all claims for damages relating to the use of flashing lights.

2.7 SDK For Integration with Customer App. To the extent the Services include CUE providing a software development kit ("SDK") to Customer to allow for integration of CUE's Services into Customer's proprietary mobile app, or into Customer's existing third-party mobile app (collectively the "Customer App"), Customer shall be solely responsible for use of the SDK and integration of the Services into the Customer App. As for a third-party Customer App, Customer shall be responsible for working with the third-party and app provider to perform the integration and shall make sure that an appropriate agreement has been entered into between CUE and the third-party to allow for the integration. The SDK may not be provided to the third-party without CUE's prior written approval. The Services, including all content and materials included in the Services, that are integrated into the Customer App shall not be altered in any way by Customer or the third-party without the prior written approval and consent of CUE, and all users of the Customer App must agree to CUE's Terms of Use and Privacy Policy.

2.8 Suspension or Termination of Services. CUE may, directly or indirectly, through disabling technology or other legal means, suspend, terminate, or otherwise deny Customer's, any Authorized User's, or any other person's access to or use of all or any part of the Services, without incurring any resulting obligation or liability, if: (a) CUE receives a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires CUE to do so; or (b) CUE believes, in its discretion, that: (i) Customer or any Authorized User has failed to comply with any term of

this Agreement, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any instruction or requirement of CUE; (ii) Customer or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading, or unlawful activities relating to or in connection with any of the Services; or (iii) this Agreement expires or is terminated. This Section does not limit any of CUE's other rights or remedies, whether at law, in equity, or under this Agreement.

3. Data Backup. The Services do not replace the need for Customer to maintain regular data backups or redundant data archives. CUE HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION OR RECOVERY OF CUSTOMER DATA.

4. Security.

4.1 Customer Control and Responsibility. Customer has and will retain sole responsibility for: (a) all Customer Data, including its content and use; (b) all information, instructions and materials provided by or on behalf of Customer or any Authorized User in connection with the Services; (c) Customer's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems) and networks, whether operated directly by Customer or through the use of third-party services ("Customer Systems"); (d) the security and use of Customer's and its Authorized Users' access credentials; and (e) all access to and use of the Services directly or indirectly by or through the Customer Systems or its or its Authorized Users' access credentials, with or without Customer's knowledge or consent, including all results obtained from, and all conclusions, decisions and actions based on, such access or use. "Customer Data" means information, data, and other content, in any form or medium, that is collected, downloaded, or otherwise received, directly or indirectly from Customer or an Authorized User by or through the Services or that incorporates or is derived from the processing of such information, data, or content by or through the Services.

4.2 Access and Security. Customer shall employ all physical, administrative and technical controls, screening and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all access credentials and protect against any unauthorized access to or use of the Services; and (b) control the content and use of Customer Data, including the uploading or other provision of Customer Data for processing by the Services.

5. Fees; Payment Terms.

5.1 Fees. Customer shall pay CUE the fees and expenses set forth in the applicable Web Order, SO or SOW, or as otherwise set forth in Schedule B ("Fees"). All Fees are non-refundable.

5.2 Taxes. All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Customer is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on CUE's income.

5.3 Payment.

(a) Web Orders/Subscription Services.

(i) If you purchase any Services through a Web Order, you agree to pay the applicable fees and taxes agreed to. CUE's subscription charges are billed according to the schedule you signed up for (i.e. based on the subscription start and end date, be it daily, monthly, quarterly, semi-annually, or annually) and are not refundable once they have been charged. CUE does not issue pro-rated refunds on any unused portion of your subscription.

(ii) A valid payment method, including credit card, is required to process the payment for your subscription Services. You shall provide CUE with accurate and complete billing information including full name, address, state, zip code, telephone number, and valid payment method information. By

submitting such payment information, you automatically authorize CUE to charge all subscription Services fees incurred through your account to any such payment instruments. Should automatic billing fail to occur for any reason, CUE will issue an electronic invoice indicating that you must proceed manually, within a certain deadline date, with the full payment corresponding to the billing period as indicated on the invoice.

(iii) If you do not cancel any subscription Services prior to the end of the subscription Services term, the subscription Services will automatically renew at the current CUE monthly rate and be automatically billed and charged to you using the payment method originally used to purchase the subscription Services. CUE will provide you with a reasonable prior notice of any change in subscription fees to give you an opportunity to terminate your subscription Services before such change becomes effective. Your continued use of the subscription Services after the fee change comes into effect constitutes your agreement to pay the modified subscription Services fee amount.

(b) **SOs and SOWs.** For SOs and SOWs, CUE shall issue invoices to Customer as set forth in the applicable SO or SOW. CUE shall send invoices to Customer at the address set forth in the SO or SOW, or such other address as Customer may later specify by notice. Except as otherwise set forth in a SO or SOW, Customer shall pay all amounts due under this Agreement within 30 days after receipt of the applicable invoice. Payment terms shall be strictly enforced, and late payments shall be assessed monthly interest at the lesser of 1.5% and the maximum rate permitted by applicable law.

5.4 Expenses. Except as otherwise agreed to in an SO or SOW, Customer agrees to reimburse CUE for all preapproved, reasonable and necessary out-of-pocket expenses properly incurred or paid by CUE in connection with, or related to, the performance of the Services.

5.5 Late Payment. Should Customer fail to make timely payments pursuant to the Agreement, CUE may suspend further performance of any or all Services. If Customer fails to pay any due and payable amounts within 10 calendar days after receipt of CUE's written notice that such amounts are past due, Customer shall be deemed to be in material breach of this Agreement.

6. Intellectual Property Rights.

6.1 Services and CUE Materials/Customer-Specific Content. All right, title and interest in and to the CUE Materials, including all Intellectual Property Rights therein, are and will remain with CUE and, with respect to third-party materials included as part of Third-Party Services, the applicable Third-Party providers own all right, title, and interest, including all Intellectual Property Rights, in and to the third-party materials. Customer has no right, license, or authorization with respect to any of the CUE Materials except as expressly set forth in this Agreement. All other rights in and to the CUE Materials are expressly reserved by CUE. "CUE Materials" means the Services, the CUE Platform, specifications, documentation, and CUE systems and any and all other information, data, documents, materials, works, and other content, devices, methods, processes, hardware, software, and other technologies and inventions, including any deliverables, work product, technical or functional descriptions, requirements, plans, or reports, that are provided, created or used in connection with the Services or otherwise comprise or relate to the Services, including all data collected by the CUE Platform and Services. Notwithstanding the above, CUE Materials shall not include any text, images, graphic designs, audio, video or other proprietary content provided by Customer specific to the identification, description or marketing of Customer products and services ("Customer-Specific Content"). To the extent CUE obtains any rights to the Customer-Specific Content, CUE hereby assigns to Customer all right, title and interest in and to the Customer-Specific Content. To the extent Customer obtains any rights to the CUE Materials, Customer hereby assigns to CUE all right, title and interest in and to CUE Materials. "Intellectual Property Rights" means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

6.2 Customer Intellectual Property License. Customer grants to CUE a limited, non-exclusive, royalty-free right and license during the Term, with the right to use the Customer Materials as necessary to fulfill CUE's obligations under this Agreement, solely for the purpose of providing the Services. "Customer

Materials” means trademarks, trade names, service marks, trade dress, designs, artwork and logos of Customer associated with the Services, all images, data and other materials provided by the Customer for the purposes of this Agreement, and all Customer-Specific Content and other content provided by Customer for posting on the CUE Platform or through the Services.

6.3 Feedback. If Customer or any Authorized User transmits or provides any communications or materials to CUE by mail, email, telephone, or otherwise, suggesting or recommending changes to the Services or CUE Platform (“Feedback”), CUE is free to use such Feedback irrespective of any other obligation or limitation between the parties governing such Feedback. Customer hereby assigns to CUE on Customer’s behalf, and on behalf of its employees, contractors and/or agents, all right, title, and interest in, and CUE is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although CUE is not required to use any Feedback.

7. Publicity. Customer agrees that CUE may use Customer’s business name, website URL and logo on its websites and in its marketing materials, identifying Customer as a current or former customer of CUE.

8. Support.

8.1 First Level Customer Service. Customer Audio will provide first level customer service to all Authorized Users with regard to the applicable Services, including without limitation, Authorized User sign-ups and cancellations, issuing Authorized User login information and passwords, and answering general customer service questions.

8.2 Second Level Technical Support. CUE will provide second level technical support to the Customer relating to technical aspects of the CUE Platform which will include email and phone support between the hours of 10 am and 5 pm Central Time, Monday through Friday, except federal holidays or days on which the banks in the City of Dallas, Texas are closed for business. CUE will provide support at no cost to the Customer for the first thirty (30) days from delivery of the Services, or five (5) hours of second level technical support, whichever occurs first.

9. Confidentiality. Each Party shall (a) use Confidential Information (as defined below) of the other Party only for the purposes of exercising rights or performing obligations in connection with this Agreement; and (b) use at least reasonable care to protect from disclosure to any third parties any Confidential Information disclosed by the other Party (including without limitation all precautions employed by a Party with respect to its own Confidential Information), in each case, for a period commencing upon the date of disclosure until the later of three years after disclosure or the termination of this Agreement. Notwithstanding the foregoing, either Party may disclose Confidential Information (a) to its employees or independent contractors for the purpose of performing its obligations or exercising its rights hereunder, provided that each such employee and independent contractor is subject to a written agreement that includes binding use and disclosure restrictions that are at least as protective as those set forth herein; and (b) if required by law or a court, provided the receiving Party uses reasonable efforts to limit disclosure and to obtain confidential treatment or a protective order and allows the disclosing Party to participate in the proceeding. “Confidential Information” means and includes the terms of this Agreement and all confidential and proprietary information of a Party, including, without limitation, computer programs, software, technical drawings, algorithms, know-how, trade secrets, formulas, processes, ideas, inventions (whether patentable or not), designs, schematics and other technical, business, financial, customer and product information, data and development plans, of any nature and in any form whatsoever, provided that such information is marked or designated in writing as “confidential,” “proprietary,” or any other similar term or designation or is disclosed in such a manner that a reasonable person would understand that such information is confidential and proprietary. Customer agrees without limitation that CUE’s prices, proposals and quotes related to a SO or SOW are Confidential Information of CUE. Confidential Information does not include information that the receiving Party can document: (i) is or becomes (through no improper action or inaction by the receiving Party) readily available to the public; (ii) was in its possession or known by it without restriction on disclosure or use prior to receipt from the disclosing Party; (iii) was rightfully disclosed to it by a third

party that rightfully received such information without restriction on disclosure or use; or (iv) was independently developed without use of any Confidential Information of the disclosing Party.

10. Term and Termination.

10.1 Term. Unless earlier terminated in accordance with this Agreement, this Agreement will continue in effect for the period set forth in the applicable Web Order, SO or SOW. For Web Order subscription Services, if you do not cancel any subscription Services prior to the end of the subscription Services term (you may cancel your subscription by logging into your account at portal.cueaudio.com), the subscription Services will automatically renew for an additional term equivalent to the expiring term (e.g. if the term was 30 days it will automatically renew for another 30 day term; if the term was 6 months, it will automatically renew for an additional 6 month term) at the then current rate for the applicable renewal term, and be automatically billed and charged to you using the payment method originally used to purchase the subscription Services. CUE will provide you with a reasonable prior notice of any change in Subscription fees to give you an opportunity to terminate your subscription Services before such change becomes effective. Your continued use of the subscription Services after the fee change comes into effect constitutes your agreement to pay the modified Subscription Services fee amount.

10.2 Termination. In addition to any other express termination right set forth elsewhere in this Agreement:

(a) either party may terminate this Agreement or any Web Order, SO or SOW, effective on written notice to the other party, if the other party materially breaches this Agreement or the applicable Web Order, SO or SOW, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured ninety (90) days (ten (10) days for any failure to pay amounts due) after the non-breaching party provides the breaching party with written notice of such breach; and

(b) either party may terminate this Agreement (and all Web Orders, SOs and SOWs), effective immediately upon written notice to the other party, if the other party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

10.3 Surviving Terms. Any provision or other right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement.

11. Representations and Warranties.

11.1 Mutual Representations and Warranties. Each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing as a corporation or other entity under the laws of the jurisdiction of its incorporation or other organization; (b) it has the full right, power and authority to enter into and perform its obligations and grant the rights, licenses, consents and authorizations it grants or is required to grant under this Agreement; (c) the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such party; and (d) when executed and delivered by both parties, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.

11.2 Additional CUE Warranties. CUE represents and warrants to Customer that CUE will perform the Services in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services.

11.3 Additional Customer Representations, Warranties and Covenants. Customer represents, warrants and covenants to CUE that Customer owns or otherwise has and will have the necessary rights

and consents in and relating to the Customer Materials so that, as received by CUE and processed in accordance with this Agreement, they do not and will not infringe, misappropriate or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any applicable law, and that it will comply with all terms and conditions of any agreement between Customer and the provider of Third-Party Services.

11.4 DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 11.1, SECTION 11.2, ALL SERVICES AND CUE MATERIALS ARE PROVIDED ON AN “AS IS” “WHERE IS” BASIS, AND CUE DISCLAIMS ALL REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AS TO THE SERVICES OR CUE MATERIALS. CUE SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, CUE MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES OR CUE MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER’S OR ANY OTHER PERSON’S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. ALL THIRD-PARTY SERVICES AND MATERIALS ARE PROVIDED “AS IS”, AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY SERVICES OR MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY SERVICES AND MATERIALS.

12. Indemnification.

12.1 CUE Indemnification. Subject to the limitations of Section 13, CUE shall indemnify, defend and hold harmless Customer from and against any and all losses, damages, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys’ fees (“Losses”) incurred by Customer arising out of or relating to any claim, suit, action or proceeding (each, an “Action”) by a third party (other than an affiliate of Customer) that Customer’s use of the Services (excluding Customer Materials and third party materials) in compliance with this Agreement infringes a U.S. Intellectual Property Right. The foregoing obligation does not apply to any Action or Losses arising out of or relating to any:

- (a) access to or use of the Services or CUE Materials in combination with any hardware, system, software, network or other materials or service not provided or authorized in writing by CUE;
- (b) modification of the Services or CUE Materials other than: (i) by or on behalf of CUE; or (ii) with CUE’s written approval in accordance with CUE’s written specification;
- (c) failure to timely implement any modifications, upgrades, replacements or enhancements made available to Customer by or on behalf of CUE; or
- (d) act, omission or other matter described in Section 12.2.

12.2 Customer Indemnification. Customer shall indemnify, defend and hold harmless CUE and its officers, directors, employees, agents, stockholders, successors and assigns (each, a “CUE Indemnitee”) from and against any and all Losses incurred by such CUE Indemnitee in connection with any Action by a third party that arise out of or relate to any: (a) Customer Materials, including any processing of Customer Materials by or on behalf of CUE in accordance with this Agreement; (b) use of any Third Party Services, (c) allegation of facts that, if true, would constitute Customer’s breach of any of its representations, warranties, covenants or obligations under this Agreement; (d) negligence or more culpable act or omission (including recklessness or willful misconduct) by Customer, any Authorized User, or any third party on behalf of Customer or any Authorized User, in connection with this Agreement; or (e) Customer’s violation or alleged violation of applicable law.

12.3 Exclusive Remedy. THIS SECTION 12 SETS FORTH CUSTOMER’S SOLE REMEDIES AND CUE’S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED OR ALLEGED CLAIMS THAT THIS AGREEMENT OR ANY SUBJECT MATTER HEREOF (INCLUDING THE SERVICES AND CUE MATERIALS) INFRINGES, MISAPPROPRIATES OR OTHERWISE VIOLATES ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHT.

13. Limitations of Liability.

13.1 EXCLUSION OF DAMAGES. IN NO EVENT WILL CUE OR ANY OF ITS LICENSORS, SERVICE PROVIDERS OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE OR PROFIT; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES, (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY, OR (d) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

13.2 CAP ON MONETARY LIABILITY. IN NO EVENT WILL THE AGGREGATE LIABILITY OF CUE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, EXCEED THE AMOUNT PAID BY CUSTOMER TO CUE IN THE 3 MONTHS IMMEDIATELY PRIOR TO THE ACTION OR CLAIM. THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

14. Force Majeure. Neither Party shall be liable for any default or delay in the performance of any of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by (a) fires, floods, earthquakes, hurricanes, epidemics, elements of nature or acts of God; (b) acts of war (declared and undeclared), acts of terrorism, sabotage, strikes or other labor disputes, riots or other acts of civil disorders, rebellions or revolutions; (c) extraordinary malfunction of third-party Internet infrastructure, data centers or related systems or (d) acts of any governmental authority with respect to any of the foregoing or other acts such as expropriation, condemnation, embargo, changes in laws, and shelter-in-place or similar orders,, and provided that such default or delay cannot reasonably be circumvented by the non-performing Party through the use of commercially reasonable alternate sources, workaround plans or other commercially reasonable means.

15. Miscellaneous.

15.1 Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

15.2 Notices. Any notice to be given under this Agreement shall be in writing and delivered by hand U.S. mail or electronic mail to the address listed:

If to CUE by regular mail:

If to CUE by special delivery (FedEx/UPS):

CUE Audio, Inc.
PO Box 2770
Albany, TX 76430
Email: legal@cueaudio.com

CUE Audio, Inc.
157 S Main St
Albany, TX 76430
Email: legal@cueaudio.com

If to Customer: the email or mailing address set forth in the applicable Web Order, SO or SOW.

Notices sent in accordance with this Section will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by e-mail, (in each case, with confirmation of transmission), if sent during the addressee's normal business hours, and on the next business day, if sent after the addressee's normal business hours; and (d) on the 3rd day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

15.3 Headings. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

15.4 Non-Solicitation/Non-Hire. During the term of this Agreement and any Web Order, SO or SOW, and for a period of one (1) year following the expiration or termination of this Agreement (including any Web Order, SO or SOW), Customer will not, directly or indirectly, (i) solicit, employ, offer employment to, or otherwise engage as an employee, independent contractor, or otherwise, any individual who is or was an employee of CUE at any time during the term, or in any manner induce or attempt to induce any employee of CUE to terminate their employment with CUE, or (ii) materially interfere with the relationship of CUE with any individual who at any time was an employee of CUE.

15.5 Entire Agreement. This Agreement, together with the Web Order, SO, SOW and any other documents incorporated herein by reference, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

15.6 Assignment Neither Party may assign this Agreement, whether voluntarily, involuntarily, by merger, consolidation, dissolution, operation of law, or in any other manner, without the prior written consent of the other Party; provided, however, that, notwithstanding the foregoing, CUE may assign this Agreement to (i) any affiliate or (ii) a third party by way of merger, acquisition, consolidation or sale or transfer of all or substantially all of its assets or membership units. Any purported assignment of rights in violation of this Section is void.

15.7 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective permitted successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

15.8 Amendment and Modification; Waiver. Except as otherwise provided, no waiver or modification of this Agreement or any Web Order, SO or SOW will be binding upon either Party unless made in writing and signed by duly authorized representatives of such Party, and no failure or delay enforcing any right will be deemed a waiver of such right.

15.9 Severability. If any provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

15.10 Governing Law. All matters relating to the Services, the CUE Platform and this Agreement and any dispute or claim arising therefrom or related thereto (in each case, including non-contractual disputes or claims), shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction).

15.11 Arbitration

(a) **Scope, Governing Rules.** The Parties agree that any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall exclusively be determined by final and binding arbitration administered by the American Arbitration Association (“AAA”) under its Commercial Arbitration Rules and Mediation Procedures (“Commercial Rules”).

(b) **Authority of Tribunal, Judicial Review.** The award rendered by the arbitrator shall be final and non-appealable and binding on the Parties and may be entered and enforced in any court having jurisdiction.

(c) **Selection of Tribunal.** There shall be one arbitrator agreed to by the parties within twenty (20) days of receipt by respondent of the request for arbitration or in default thereof appointed by the AAA in accordance with its Commercial Rules.

(d) **Seat of Arbitration.** The seat or place of arbitration shall be Dallas, Texas, USA, and the Parties waive any objection to arbitration taking place in Dallas.

15.12 Attorneys’ Fees. In the event that any arbitration or any other action, suit, or other legal or administrative proceeding is instituted or commenced by either Party against the other party arising out of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys’ fees and costs from the non-prevailing Party.

SCHEDULE A
SERVICES DESCRIPTIONS

1. Engagement Services

(a) **General.** CUE's Engagement Services are provided by means of Customer sending data over audio from Customer's speaker system to event attendees' mobile devices via an audio file created by Customer. When Customer plays the audio file at the event in accordance with any instructions given by CUE, the Engagement Services will be triggered on the mobile devices of event attendees using either, as applicable, the CUE "CUE Live" app (available from the Apple App Store or Google Play Store), a stand-alone version of the CUE Live app customized for Customer ("Customized Stand-Alone App"), or a Customer App that has integrated CUE's technology (a "Customer App") (for purposes of this Schedule A, the CUE Live app, the Customized Stand-Alone App, and the Customer App are collectively referred to as the "App").

(b) **Requirements for Use.** In addition to any other requirements, in order for the Engagement Services to work on the App, the following needs to occur:

(i) Event attendees must: (A) have the App installed on their mobile devices with the latest updates; (B) accept the CUE Terms of Use and Privacy Policy; (C) enable the App's use of the microphone; (D) have the App open in the foreground; and (E) be in range of the Customer's speaker when the trigger is played.

(ii) Customer's speaker system must provide adequate volume and range for the event attendees' mobile devices to hear the trigger in order to participate.

(iii) Customer must play the trigger in accordance with any instructions provided by CUE.

(c) **Engagement Services Available.**

(i) **Core Engine Data Over Audio.** Using the Customer App that includes the CUE Live App base data over audio functionality obtained through use of the Core Engine SDK, Customer will have access to or the ability to generate ad-hoc WAV files containing the designated bytes for detection on event attendees' mobile iOS devices (running iOS 10.0+) and Android devices (running APK 19+), using standard speakers for signal transmission.

(ii) **Light Show.** Using the CUE portal located at portal.cueaudio.com (the "Customer Portal"), Customer will be able to create a file that will allow Customer to put on a customized light show using attendees' mobile devices through the attendees' use of the applicable App. Using audio files provided by Customer, or standard CUE files, Customer will be able to design one lighting sequence (up to 2 ½ minutes in length) with both LED and on-screen content (the "Light Show"). All audio files, images, icons and content provided by Customer must be in compliance with the terms of the Agreement, must be correctly sized with appropriate ratios upon delivery to CUE, and otherwise meet the requirements of CUE. Upon completion of Customer's Light Show design, Customer will be provided with an audio file that can be played at the event to trigger the Light Show Services on event attendees' Apps. While Customer may be able to make some updates to on-screen content of the Light Show through the Customer Portal, additional audio files and lighting sequence design will require an additional agreement with CUE and additional fees. Sponsor incorporation and Apple Wallet PKPass coupon files for distribution to attendees following the Light Show may also be added for an additional fee.

(iii) **Selfie Cam.** Using the Customer Portal, Customer will be able to select a pre-existing CUE filter or create a new filter in accordance with the terms of the Agreement and the requirements of CUE, that will allow Customer to engage event attendees by orchestrating a massive synchronized selfie through the App (the "Selfie Cam"). All files, images, icons and content provided by Customer must be in compliance with the terms of the Agreement, must be correctly sized with appropriate ratios upon delivery to CUE, and otherwise meet the requirements of CUE. Upon creation of the Selfie Cam Services design, Customer will be provided with an audio file that can be played at the event to trigger the synchronized

Selfie Cam Services on event attendees' open Apps. Event attendees must provide the App with access to the camera for the synchronized Selfie Cam Services to work. After taking the selfie, the event attendee can decide to submit the selfie for posting on the venue video board. If the event attendee decides to share and submit the selfie for posting on the video board, Customer will then be able to decide which selfies to post to the video board. Taking, posting and uploading of the selfie is at the sole discretion of the App user. Customer may only use the submitted selfie (a) to post the selfie on the video board at the live event and (b) to repost it on social media, for up to 1 month after the date of the event, solely for non-commercial purposes relating to coverage of the live event at which the selfie was taken. Customer will promptly delete the selfie after it is no longer needed for the purposes above.

(iv) Trivia. Using the Customer Portal, Customer will be able to design and create a synchronized interactive trivia game that allows the App users at the event, if they so desire, to simultaneously duel as they answer custom multiple-choice questions created by Customer ("Trivia"). All files, images, icons and content provided by Customer must be in compliance with the terms of the Agreement, must be correctly sized with appropriate ratios upon delivery to CUE, and otherwise meet the requirements of CUE. Upon creation of the synchronized Trivia Services design, Customer will be provided with an audio file that can be played at the event to trigger the synchronized Trivia Services on event attendees' Apps.

(A) Inclusions. Except as otherwise agreed, the Trivia Services will allow Customer to create up to twelve (12) trivia questions. At the end of the trivia game session, the App will provide rankings and send Customer a list of participants who submit their information. If included in the Trivia Services, Customer can reward the winner(s) with Apple Wallet / Google Pay coupons or other prizes.

(B) Requirements. All creation of the Trivia Services file must be in accordance with the terms of this Agreement and the requirements and instructions of CUE, including the following:

- Customer will provide questions with four multiple-choice answers to be used in the game;
- Questions are limited to six rows of text with 23 characters per row;
- Answers are limited to 25 characters;
- A minimum of 10 players is required to perform the ranking and provide email notification of the winner(s);
- Customer can only play the audio file once per Trivia game as multiple broadcasts of the trigger will result in a loss of synchronization and will invalidate the ranking and results provided.

2. Customized CUE Live App. CUE will create a customized stand-alone version of the CUE Live App (the "Customized Stand-Alone App") for publication and download via the Apple App Store and Google Play store. Creation and customization will be as set forth in this Agreement and the requirements and options provided for by CUE including those set forth at <https://s3.amazonaws.com/cueaudio-toolkit/images/CUEAudioRequestList.pdf>, and will require the timely provision of content and materials by Customer. Publication of the App is subject to the approval process and timeline of Apple and Google. It will normally take 1-2 weeks after all necessary information, data and content is provided by Customer for the Customized Stand-Alone App to be published and available for download.

3. Customized CUE Live App Software Development Kit (SDK).

(a) CUE will develop and provide an SDK that can be used by Customer or Customer's third-party app provider to integrate certain functionality of the CUE Live App, customized for Customer, into the Customer App. The creation of the SDK will be as set forth in this Agreement and the requirements and options provided for by CUE including those set forth at <https://s3.amazonaws.com/cueaudio-toolkit/images/CUEAudioRequestList-SDK.pdf>, and will require the timely provision of content and materials by Customer. The Customer App must be compatible with the iOS or Android mobile operating systems and must contain the latest version and updates provided by CUE, for the integration to work.

(b) The SDK will normally be created and provided within 1-2 weeks after all necessary information, data and content is provided by Customer. Customer shall be responsible for all integration into the Customer App, including the cost of all integration. No use of the SDK shall be made by any third party (including the third-party app provider), all use of the SDK must be in accordance with the terms of this Agreement, and no integration shall occur, without CUE's approval and an agreement between the third-party and CUE addressing such use.

4. **Core Engine SDK**. CUE will provide an SDK that can be used by Customer or Customer's third-party app provider to integrate CUE Live App's base data-over-audio functionality to allow the transmission and reception of data packets through audio into the Customer App. This will include an iOS and Android framework for the purpose of transmitting and/or decoding up to 25 bits per second into or from high-frequency (16kHz or higher) audio. The Customer App must be compatible with the iOS or Android mobile operating systems and must contain the latest version and updates provided by CUE for the integration to work. Customer shall be responsible for all integration into the Customer App, including the cost of all integration. No use of the SDK shall be made by any third party (including the third-party app provider), all use of the SDK must be in accordance with the terms of this Agreement, and no integration shall occur, without CUE's approval and an agreement between the third-party and CUE addressing such use.

SCHEDULE B

FEES

The Fees for the Services shall be as set forth or agreed to in the applicable Web Order, SO or SOW. The Fees for some additional services are set forth below.

1. **Changes to Engagement Services.** Any resizing or editing of Customer images will be billed at an hourly rate of \$250 per each hour or portion thereof. Additional Customer requested audio files (up to 2 1/2 minutes in duration) with corresponding light show design will be provided the rate of \$750 or otherwise as set forth in the Web Order, SO or SOW.
2. **Technical Support.** For Technical Support requested by Customer beyond that covered in the Agreement, Customer agrees to pay to CUE an hourly rate of \$250 per each hour or portion thereof of technical support provided by CUE for all instances that require more than thirty (30) minutes of technical support delivered by CUE.