

DrumNow Terms of Use

Effective Date: November 23, 2020

This agreement is effective as between DrumNow LLP (“DrumNow”), with a principle address of 10874 Belle Creek Blvd, Commerce City, CO 80640, and each user of the Service (“User”).

By accessing or using the Service (as defined below), you agree that you have read and understood, and, as a condition to your use of the service, you agree to be bound by the following terms and conditions (“Terms”), and as incorporated by reference, DrumNow’s Privacy Policy. Further, if you are accepting these Terms on behalf of a company, organization, government, or other legal entity, you represent and warrant that you are authorized to do so and have the authority to bind such entity to these Terms, in which case the words “you” and “your” as used in these Terms shall refer to such entity.

AS FURTHER DESCRIBED BELOW, THESE TERMS REQUIRE THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS, UNLESS YOU ARE LOCATED IN A JURISDICTION THAT PROHIBITS THE EXCLUSIVE USE OF ARBITRATION FOR DISPUTE RESOLUTION. THESE TERMS ALSO LIMIT THE REMEDIES AVAILABLE TO YOU IN THE EVENT OF A DISPUTE, TO THE FULLEST EXTENT PERMITTED UNDER LAW. Please review Section 14 for the details regarding your agreement to arbitrate any disputes with Company.

1. Introduction

a. Revisions to Terms. DrumNow reserves the right to change or otherwise modify these Terms on an on-going basis. Immaterial changes or modifications to the Terms shall be effective as of the date of posting. Users are encouraged to check these Terms periodically for changes. However, if a change to these Terms materially modifies or alters your rights or obligations, you will be asked to consent to the modified Terms prior to continuing your use of the Services. Disputes arising under these Terms will be resolved in accordance with the version of these Terms that was in effect at the time the dispute arose.

b. Eligibility to use the Service. By agreeing to these Terms, you represent and warrant to DrumNow that (i) you are at least eighteen (18) years of age at the time of accepting these terms; and (ii) your use of the Service is in compliance with any and all applicable laws and regulations.

2. The Service

a. Service Definition. For the purposes of this agreement, the “Service” shall mean the website located at <https://www.drumnow.com> and at <https://drumnow.app> and any associated software, applications (including mobile applications), and Internet services under DrumNow’s control, whether partial or otherwise, used in connection with the services that DrumNow provides. The Service creates original, royalty-free digital audio files in the form of loops (“Packs”) whereas Users are permitted to download or stream the Packs and use them in connection with their own

musical production(s), subject to the DrumNow Subscription Terms of Use (“Subscription Terms of Use”) and these Terms.

b. Third-Party Services. The Service may link to websites owned and operated by third parties (“Third Party Site”). If you use these links, then you will leave the Service. Some Third-Party Sites may use Materials (as defined in Section 5.a) under a license from DrumNow. DrumNow is not responsible for these Third-Party Sites, whether or not DrumNow is affiliated with such Third-Party Sites. DrumNow is not responsible or liable for any loss or damage incurred as a result of any such dealing that you may have with a Third-Party Site as a result of the presence of any third-party advertising on the Service.

3. Account Creation and Your Account

a. Account creation. In connection with your use of the Service, DrumNow may require you to create an account by providing a valid email address, username, and password. You represent and warrant that the information you provide to us upon registration and at all other times will be accurate and complete. DrumNow reserves the right to reject any username or to terminate your username and give such username to another user of the Service in our sole discretion, and without any liability to you. DrumNow also reserves the right to create verified User accounts and to require additional information for the creation of such accounts.

b. Log-in credentials. You are responsible for maintaining the confidentiality of your log-in credentials and are fully responsible for all activities that occur through the use of your credentials. You must notify us immediately at support@drumnow.io if you believe the confidentiality of your log-in credentials have been compromised or if you suspect unauthorized use of your account. DrumNow will not be liable for any loss or damage arising from unauthorized use of your credentials.

c. DrumNow responsibilities. DrumNow will maintain all account credentials in accordance with industry standard practices, and shall make reasonable efforts to notify you in the event of a security breach. If DrumNow becomes aware of a security breach, then DrumNow may attempt to notify you electronically by posting a notice on the Service or sending an email to you. You may have a legal right to receive this notice in writing. To receive free written notice of a security breach, or to withdraw your consent from receiving electronic notice, please email us at support@drumnow.io.

4. DrumNow Subscriptions

a. Subscription Service. DrumNow offers a subscription service, whereas users pay a flat monthly fee in consideration for the ability to download and/or stream Packs available from DrumNow. If you choose to subscribe, then you will receive access to tokens allowing you to download a select number of songs to stream/download. If you choose to subscribe to DrumNow, then your use of the Service is further subject to the DrumNow Subscription Terms of Use in addition to these Terms.

5. Content Ownership and Use

a. Ownership of Services and Packs. The Service is owned and operated by DrumNow. The visual interfaces, graphics, design, compilation, information, data, computer code (including source code or object code), products (including Packs), software, services, and all other elements of the Service (“Materials”) provided by DrumNow are protected by intellectual property and other laws. All Materials included in the Service are the property of DrumNow. You may not use the Materials included in the Service except as expressly authorized by DrumNow. DrumNow reserves all rights to the Materials not granted expressly in these Terms.

b. Your use of the Service and Materials. DrumNow authorizes you, subject to these Terms, to access and use the Service and the Materials solely for the use of the services that DrumNow provides. Any other use is expressly prohibited. Except and solely to the extent that your use of the Service is permitted under these Terms and the Subscription Terms of Use, you may not (i) reproduce, distribute, publicly display, or publicly perform the Service; (ii) make modifications to the Service; or (iii) interfere with or circumvent any feature of the Service, including any security or access control mechanism. If you are prohibited under applicable law from using the Service, you may not use it.

c. Additional licenses. Certain materials made available for download from or through the Service (including Packs) may be subject to additional or different license terms and conditions, such as terms and conditions set forth in a Creative Commons license, or the Subscription Terms of Use. Any such terms and conditions will be identified in advance for such materials, and by downloading any materials governed by any other license terms and conditions, you agree to be bound by and comply with such terms and conditions.

d. Trademarks. DrumNow, the DrumNow logo, and other Drumnow logos, products, and services names are or may be trademarks of DrumNow (“DrumNow Marks”). Without prior written permission, and except as solely enabled by any link we provide, you may not display or use in any manner the DrumNow Marks.

6. Intellectual Property Policy

a. Statement of policy. DrumNow respects the intellectual property of others and takes the protection of intellectual property seriously, and we ask our users to do the same. Infringing activity will not be tolerated on or through the Service. DrumNow’s intellectual property policy is to remove material that DrumNow believes in good faith, upon notice from an intellectual property owner or their agent, is infringing the intellectual property of a third party by being made available through the service.

b. Digital Millennium Copyright Act. The Digital Millennium Copyright Act (“DMCA”) provides recourse for intellectual property owners who believe that material appearing on the internet infringes their rights under United States law. If you believe in good faith that materials posted on the Service infringe your intellectual property rights, then you (or your agent) may send DrumNow a “Notification of Claimed Infringement” requesting that the material be removed, or access to it blocked. The notice must include the following: (1) a physical or electronic signature of a person authorized to act on behalf of the owner of the works that have been allegedly infringed;

(2) identification of the copyrighted work(s) alleged to have been infringed, reasonably sufficient enough to allow DrumNow to locate the material on the Service; (3) the name, address, phone number, and email address of the copyright owner, or agent thereof; (4) a statement that you have a good faith belief that the use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and (5) a statement that the information in the notification is accurate, and under penalty of perjury that the complaining party is authorized to act on behalf of the rights that have allegedly been infringed.

c. Notices and counter-notices. Notices and counter-notices with respect to the Service should be sent to:

DrumNow LLP
10874 Belle Creek Blvd
Commerce City, Colorado 80640
or support@drumnow.io

d. Counter-notices. If you believe in good faith that a notice of copyright infringement has been wrongly filed against you, then the DMCA permits you to send us a counter-notice. To be effective, a counter-notice must be in writing, and provided to DrumNow's designated agent through one of the methods described in Section 6.c of these Terms. A counter-notice must include the following information: (1) a physical or electronic signature of the individual, or agent acting on an individual's behalf; (2) identification of the material that has been removed or to which access has been disabled and the location at which material appeared before it was removed or access to it was disabled; (3) a statement made by the individual, or agent acting on an individual's behalf that evidences a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled; and (4) the individual's, or agent acting on behalf of an individual name, address, and telephone number, and a statement that the individual consents to the jurisdiction of Federal District Court for the judicial district in which the address is located, or if the individual's address is outside of the United States, for any judicial district in which we may be found, and that the individual will accept service of process from the person who provided notification under Section 6.b above or an agent of such person.

e. False Notifications of Claimed Infringement or counter-notices. DrumNow reserves the right to seek damages from any party that submits a notification of claimed infringement or counter-notice in violation of 17 U.S.C. § 512(f). Please consult a lawyer or your legal advisor prior to submitting a Notification of Claimed infringement or counter-notice to ensure its validity.

7. User Feedback and Bug Reports

a. You agree that DrumNow may ask you to provide input and suggestions regarding problems with or proposed modifications or improvements to the Service ("Feedback"). If you choose to provide input, then you agree that you grant DrumNow an unrestricted, perpetual, irrevocable, non-exclusive, fully-paid, royalty-free right to exploit the Feedback in any manner and for any purpose, including to improve the Service and create other products and services. Further, DrumNow may contact you about any feedback that you provide.

8. User Prohibitions

a. User Prohibitions. By agreeing to these Terms, you acknowledge that you may only use the Service for its intended purpose. You agree to use the Service in compliance with all privacy, data protection, intellectual property, and other applicable laws. Further, you agree that you may not: (1) interfere with security-related features of the Service, including by: (a) disabling or circumventing features that prevent or limit use or copying of any content; or (b) reverse engineering or otherwise attempting to discover the source code of any portion of the Service except to the extent that the activity is expressly permitted by applicable law; (2) interfere with the operation of the Service or any user's enjoyment of the Service, including by: (a) uploading or otherwise disseminating any virus, adware, spyware, worm, or other malicious code; (b) making any unsolicited offer or advertisement to another user of the Service; (c) collecting personal information about another user or third party without consent; or (d) interfering with or disrupting any network, equipment, or server connected to or used to provide the Service; (3) use the Service in an illegal way or in violation of any applicable law or that otherwise results in fines, penalties, and other liability to us or others; or (4) assist or permit any persons in engaging in any of the activities described in this section.

9. DISCLAIMER OF WARRANTIES

TO THE FULLEST EXTENT PERMITTED BY LAW, (A) THE SERVICE AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE SERVICE ARE PROVIDED "AS IS" AND ON AN "AS AVAILABLE" BASIS AND (B) DRUMNOW DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, OTHER THAN THOSE IMPLIED BY LAW, RELATING TO THE SERVICE AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE SERVICE, INCLUDING: (I) ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, OR NON-INFRINGEMENT; AND (II) ANY WARRANTY ARISING OUT OF COURSE OF DEALING, USAGE, OR TRADE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW. DRUMNOW DOES NOT WARRANT THAT THE SERVICE OR ANY PORTION OF THE SERVICE, OR ANY MATERIALS OR CONTENT OFFERED THROUGH THE SERVICE WILL BE UNINTERRUPTED, SECURE, OR FREE OF ERRORS, VIRUSES, OR OTHER HARMFUL COMPONENTS.

10. LIMITATION OF LIABILITY

TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL DRUMNOW, ITS AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, SERVICE PROVIDERS, PARTNERS, AND LICENSORS (COLLECTIVELY, "DRUMNOW ENTITIES") BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, OR ANY OTHER INTANGIBLE LOSS) ARISING OUT OF OR RELATING TO YOUR ACCESS TO OR USE OF, OR YOUR INABILITY TO ACCESS OR USE, THE SERVICE OR ANY MATERIALS OR CONTENT ON THE SERVICE, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE, OR ANY OTHER LEGAL THEORY, AND

WHETHER OR NOT ANY DRUMNOW ENTITY HAS BEEN INFORMED OF THE POSSIBILITY OF DAMAGE.

EXCEPT AS PROVIDED IN SECTION 14 AND TO THE FULLEST EXTENT PERMITTED BY LAW, THE AGGREGATE LIABILITY OF THE SPLICE ENTITIES TO YOU FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THE USE OF OR ANY INABILITY TO USE ANY PORTION OF THE SERVICE OR OTHERWISE UNDER THESE TERMS, WHETHER IN CONTRACT, TORT, OR OTHERWISE, IS LIMITED TO THE GREATER OF \$100 AND THE AMOUNTS YOU HAVE PAID TO COMPANY, IF ANY, DURING THE SIX-MONTH PERIOD PRIOR TO THE DATE OF YOUR CLAIM AGAINST DRUMNOW.

EACH PROVISION OF THESE TERMS THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS INTENDED TO AND DOES ALLOCATE THE RISKS BETWEEN THE PARTIES UNDER THESE TERMS. THIS ALLOCATION IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THESE TERMS. THE LIMITATIONS IN THIS SECTION 10 WILL APPLY EVEN IF ANY LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE

11. Indemnification

To the fullest extent permitted by law, you are responsible for your use of the Service, and you agree to defend and indemnify the DrumNow Entities from and against any claim brought by a third party, and any related liability, damage, loss, and expense, including reasonable attorneys' fees and costs, arising out of or connected with: (i) your unauthorized use of, or misuse of the Service; (ii) your violation of any portion of these Terms, or any applicable law or regulation connected with the Service; (iii) your violation of any third party right, including any intellectual property right or publicity, confidentiality, other property, or privacy right; or (iv) any dispute or issue between you and any third party. DrumNow reserves the right, at DrumNow's expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you (without limiting your indemnification obligations with respect to that matter), and in that case, you agree to cooperate with our defense of those claims.

12. Term and Termination

a. Term. These Terms are effective beginning when you accept the Terms or when you first access or use the Service and shall be effective until terminated in accordance with the following.

b. Termination. If you violate any provision of these Terms, your authorization to access the Service and these Terms automatically terminates. In addition, DrumNow may, at its sole discretion, terminate these Terms or suspend or terminate your access to the Service, at any time for any reason or no reason, with or without notice, to the fullest extent permitted by applicable law. We may also change, suspend, or discontinue any aspect of the Service at any time. You may terminate your account with and these Terms at any time by sending an email to support@drumnow.io or use any termination functionality that may be offered through the Service.

13. General Terms

a. Entire agreement. You agree that these Terms, including the Subscription Terms of Use and Privacy Policy (each being “Ancillary Terms”) constitute the entire agreement between you and DrumNow concerning your use of the Service. If there is a conflict between any Ancillary Terms and these Terms, the Ancillary Terms will govern solely to the extent of the conflict.

b. Waiver. No waiver of any provision of this Agreement will be effective unless made in writing and signed by the waiving party. The failure of either party to require the performance of any term or obligation of this Agreement, or the waiver by either party of any breach of this Agreement, will not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.

c. Severability. If any portion or provision of these Terms is, to any extent, declared illegal or unenforceable by a court of competent jurisdiction, then the remainder of these Terms, or the application of such portion or provision in circumstances other than those as to which it is so declared illegal or unenforceable, will not be affected, and each portion and provision of these Terms will be valid and enforceable to the fullest extent permitted by law.

d. Governing law. The laws of the State of Colorado, excluding its choice of law provisions, will govern these Terms and any dispute that arises between you and DrumNow. All disputes related to these Terms or the Service will be brought solely in the federal or state courts located in Denver County, Colorado, United States, and you consent to personal jurisdiction and waive any objection as to inconvenient forum.

e. Headings. The headings and captions in this Agreement are for convenience only and in no way define or describe the scope or content of any provision of this Agreement.

14. Arbitration, Class Waiver, and Waiver of Jury Trial

a. Generally. In the interest of resolving disputes between you and DrumNow in the most expedient and cost effective manner, and except as described in Section 14.c, YOU AND DRUMNOW AGREE THAT EVERY DISPUTE ARISING IN CONNECTION WITH THESE TERMS WILL BE RESOLVED BY BINDING ARBITRATION. Arbitration is less formal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, may allow for more limited discovery than in court, and can be subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. This agreement to arbitrate disputes includes all claims arising out of or relating to any aspect of these Terms, whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory, and regardless of whether a claim arises during or after the termination of these Terms. YOU UNDERSTAND AND AGREE THAT, BY ENTERING INTO THESE TERMS, YOU AND COMPANY ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

b. Exceptions. Despite the provisions of Section 14.a, nothing in these Terms will be deemed to waive, preclude, or otherwise limit the right of either party to: (i) bring an individual action in small claims court; (ii) pursue an enforcement action through the applicable federal, state, or local agency if that action is available; (iii) seek injunctive relief in a court of law in aid of arbitration; or (iv) to file suit in a court of law to address an intellectual property infringement claim.

c. Arbitration. The arbitration will be conducted by JAMS, an established alternative dispute resolution provider. Disputes involving claims and counterclaims under \$250,000, not inclusive of attorneys' fees and interest, shall be subject to JAMS's most current version of the Streamlined Arbitration Rules and procedures available at <http://www.jamsadr.com/rules-streamlined-arbitration/>; all other claims shall be subject to JAMS's most current version of the Comprehensive Arbitration Rules and Procedures, available at <http://www.jamsadr.com/rules-comprehensive-arbitration/> (the "JAMS Rules"). The JAMS Rules are available at www.jamsadr.com or by calling JAMS at 800-352-5267. If JAMS is not available to arbitrate, the parties will select an alternative arbitral forum.

d. Authority of Arbitrator. The arbitrator will have exclusive authority to (a) determine the scope and enforceability of this Section 14 and (b) resolve any dispute related to the interpretation, applicability, enforceability or formation of this Section 14 including, but not limited to, any claim that all or any part of this Section 14 is void or voidable. The arbitration will decide the rights and liabilities, if any, of you and DrumNow. The arbitration proceeding will not be consolidated with any other matters or joined with any other cases or parties. The arbitrator will have the authority to grant motions dispositive of all or part of any claim. The arbitrator shall have the authority to award monetary damages and to grant any non-monetary remedy or relief available to an individual under applicable law, the arbitral forum's rules, and the Terms (including this Section 14).

e. Notice of Arbitration; Process. A party who intends to seek arbitration must first send a written notice of the dispute to the other party by certified U.S. Mail or by Federal Express (signature required) or, only if that other party has not provided a current physical address or the parties consent, then by electronic mail ("Notice of Arbitration"). DrumNow's address for Notice is: DrumNow LLP, 10874 Belle Creek Blvd, Commerce City, CO 80640. The Notice of Arbitration must: (i) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought ("Demand"). The parties will make good faith efforts to resolve the claim directly, but if the parties do not reach an agreement to do so within 30 days after the Notice of Arbitration is received, you or DrumNow may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by you or DrumNow must not be disclosed to the arbitrator until after the arbitrator makes a final decision and award, if any. If the arbitrator awards you an amount higher than the last written settlement amount offered by Company in settlement of the dispute prior to the award, Company will pay to you the higher of: (i) the amount awarded by the arbitrator; or (ii) \$10,000.

f. Fees If the arbitrator finds that you cannot afford to pay JAMS's filing, administrative, hearing and/or other fees and cannot obtain a waiver from JAMS, DrumNow will pay them for you. In addition, DrumNow will reimburse all such JAMS's filing, administrative, hearing and/or other fees for claims totaling less than \$10,000 unless the arbitrator determines the claims are frivolous. You may choose to have the arbitration conducted by telephone, based on written submissions, or in person in the country where you live or at another mutually agreed location. Any judgment on

the award rendered by the arbitrator may be entered in any court of competent jurisdiction. 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 DrumNow for all monies previously disbursed by it that are otherwise your obligation to pay under the JAMS Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator must issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the decision and award, if any, are based. 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 14 days of the arbitrator's ruling on the merits.

g. No Class Actions. YOU AND DRUMNOW AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and DrumNow agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding.

h. Modifications to this Arbitration Provision. If DrumNow makes any future change to this arbitration provision, other than a change to Company's address for Notice of Arbitration, you may reject the change by sending us written notice within 30 days of the change to DrumNow's address for Notice of Arbitration, in which case your account with DrumNow will be immediately terminated and this arbitration provision, as in effect immediately prior to the changes you rejected will survive.

i. Enforceability. If Section 14.h is found to be unenforceable or if the entirety of this Section 14 is found to be unenforceable, then the entirety of this Section 14 will be null and void and, in that case, the parties agree that the exclusive jurisdiction and venue described in Section 13 will govern any action arising out of or related to these Terms.